

75.00  
33  
2.00  
NON ✓

2009015796 DECLARATIO \$77.00  
03/23/2009 12:00:45P 33 PGS  
Jennifer J Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF WESTMONT**

**THIS DECLARATION** (hereafter "Declaration"), made this 8th day of December, 2008, by PPV, LLC, an Indiana limited liability company (hereafter "Declarant");

**WITNESSETH:**

**WHEREAS**, PPV, LLC is the owner of certain Property, located in Hamilton County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (the "Real Estate");

**WHEREAS**, the real estate located in Hamilton County and particularly described in what is attached hereto and incorporated herein by reference as Exhibit "B", along with all real estate contiguous therewith, shall hereafter be referred to as the "Additional Real Estate";

**WHEREAS**, the word "Property" shall hereinafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as may be made subject to this Declaration per the terms of Article III below.

**WHEREAS**, PPV, LLC desires to subdivide and develop the Property and in connection therewith, to impose certain covenants, conditions and restrictions on the Property; and

**WHEREAS**, the term "Declarant", as used throughout this Declaration, shall mean and refer to PPV, LLC and its successors and assigns.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Lots (hereafter defined) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following covenants, conditions, and restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The covenants, conditions and restrictions shall inure to the benefit of the Declarant and its successors and assigns in title to the Property or any part or parts thereof.

## ARTICLE I

### DEFINITIONS

The following are the definitions of the terms as they are used in this Declaration:

Section 1.1 "Association" shall mean the *Westmont Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article X of this Declaration.

Section 1.2 "Board" or "Board of Directors" shall mean the Board of Directors of the *Westmont Homeowners Association, Inc.*

Section 1.3 "Builder" means a person or entity regularly engaged in the business of constructing single family residences for sale and responsible for the original construction of a residence on a Lot.

Section 1.4 "Committee" shall mean the *Development Standards and Architectural Control Committee*, as more fully described in Article VII of this Declaration.

Section 1.5 "Common Area" shall mean those areas (i) designated on current and future Plats as a "Block", "Common Area", "C.A" and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Property.

Section 1.6 "Declarant" means PPV, LLC and its successors and assigns.

Section 1.7 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending on the earlier of (i) forty-five (45) days after when Declarant no longer owns any Lot or any other portion of the Property or (ii) when the Declarant executes and records, in the Office of the Recorder of Hamilton County, Indiana, a written instrument by which the Declarant terminates the Class B membership.

Section 1.8 "Pond Area" means any Common Area, or portion thereof, on which a Pond now exists or is later constructed by Declarant and "Pond" means a body of water which now exists or is later constructed by Declarant in a Pond Area.

Section 1.9 "Lot" shall mean any homesite, for the construction of a Residence, identified on a Plat that is recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.10 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 1.11 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.12 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hamilton County, Indiana.

Section 1.13 "Residence" shall mean any structure intended exclusively for occupancy by single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential lot.

Section 1.14 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

Section 2.1. In General. Lots may be used only for residential purposes. All Property located within a Plat which has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for single-family residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.2. Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record and rights-of-way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

## ARTICLE III

### ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY

Section 3.1 Additions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. Declarant shall have the right, and hereby reserves on to itself the unilateral right, at any time, and from time to time, at any time prior to the end of the Development Period, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hamilton County, Indiana, a written instrument so declaring the same to be part of the Property, which written instrument may be a declaration of annexation contained in a Plat,

or an amendment or supplement to this Declaration. Any such written instrument may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate.

Upon recording of any such instrument on or before the end of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners and Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the end of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

Section 3.2 Withdrawals. So long as it has a right to annex Additional Real Estate pursuant to Section 3.1, Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Property, which has not yet been improved with Residences, from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant.

## ARTICLE IV

### EASEMENTS

Section 4.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

(A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic cable, high speed internet lines, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such

conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

(B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property and/or, (ii) installing landscaping, mounding, fencing, masonry walls, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

(C) Easement Work. Notwithstanding any architectural approval under Article VII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation, liability or obligation of replacement, whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in

Section 4.1 (A) above.

Section 4.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 4.2 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association upon the expiration of any Development Period.

(A) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit the installation and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any Drainage, Utility and Sewer Easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a Pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(B) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Pond Easement") and right-of-way in and to any Pond Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Pond" or any other Common Area within the Property used as a water retention or detention area, or on which a Pond now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, including dewatering or aquatic maintenance, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or Ponds in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(C) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities

Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising and/or identifying the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(D) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Utility and Sewer Easement, Pond Easement, and/or Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Utility and Sewer Easement, Pond Easement, and/or Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

(E) The title of (i) the Declarant or the Association to the Common Area owned by the Association during the Development Period and (ii) any Owner of any Lot shall be subject to the rights and easements reserved herein.

## ARTICLE V

### ADDITIONAL PROVISIONS RESPECTING SANITARY SEWER UTILITY

Section 5.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and also give utility companies, whether public or private, as well as any governmental authorities, the right of ingress/egress.

Section 5.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without an obligation of repair or replacement.

Section 5.3 No mounding, lighting, fencing, signs, retaining walls, landscaping walls,

entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways may be removed by the applicable utilities without the obligation of repair replacement.

Section 5.4 All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Residence to its connection to the sanitary sewer main.

Section 5.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited.

Section 5.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

## ARTICLE VI

### COVENANTS AND RESTRICTIONS

Section 6.1 Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the applicable zoning ordinance of the municipality having zoning jurisdiction over the Property may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 6.2 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 6.3 Lighting. All homes will have exterior lights in compliance with the Guidelines, or as otherwise approved by the Committee. Street lights may be installed by Declarant in the utility easements on Lots, in the Common Areas, and in public rights-of-way. During the Development Period, and in the Declarant's sole discretion, street lights shall be operated and maintained by the Association. After the Development Period, the Association shall have the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 6.4 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling or Residence, temporary or permanent, nor may any structure of a temporary character be used as a dwelling or Residence.

Section 6.5 Driveways. All driveways in the Property shall be concrete in material, unless otherwise approved by the Committee.



**Section 6.6 Water Systems.** Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, or other charges lawfully established with respect to connections thereto.

**Section 6.7 Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the municipality or local governmental board having jurisdiction, "Drainage Easements" shall exist in drainage swales and shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

**Section 6.8 Signs.** Except for such signs as Declarant may in its absolute discretion display in connection with the identification of development of the Property and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a Builder to advertise the property during construction and sale.

**Section 6.9 Fencing.** This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant. No fence, wall, hedge, or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Committee and the prime root thereof is within six (6) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All plans for approval of fencing which are submitted to the Committee shall identify all corners of the subject Lot, as determined by a licensed surveyor, and the Lot Owner shall be responsible for installing the fence in accordance with the approved plans. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. No fence or wall shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence or wall. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences. The Committee may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Pond and design standards for fences. All fences shall be kept in good repair. Each Owner shall properly maintain, mow, and trim grass on all portions of such Owner's Lot, including the portions of the Lot located on the other side of a fence installed upon such Lot.

**Section 6.10 Nuisances.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood hereby established. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or the Association of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

**Section 6.11 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except for a period of time not more than 24 hours prior to the removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

**Section 6.12 Livestock and Poultry.** 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 kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Committee and the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Members at any meeting.

**Section 6.13 Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom will not blow upon any other Lot. Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

**Section 6.14 Antennae Systems.** To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Committee. The Committee shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the Lot, sides or rear of the Residence. It is the intent of this provision that the Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Committee conflict with federal law, such rules as do not

conflict with federal law shall remain in full force and effect.

**Section 6.15 Exterior Lights.** Except on Lots on which there is maintained a sales office or model home by the Declarant, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

**Section 6.16 Electric Bug Killers.** Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

**Section 6.17 Association's Right to Perform Certain Maintenance.** In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The corresponding costs incurred by the Association shall be assessed to the Owner and shall constitute a lien on such Owner's Lot. The Owner of such Lot shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any amounts due and owing under this Section 6.17 in the same manner as assessments are collected per the terms of Article XI below, together with reasonable attorney's fees and costs of collection. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

**Section 6.18 Awnings.** Except on Lots on which there is maintained a sales office or model home by the Declarant, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers are permitted anywhere on the Property.

**Section 6.19 Diligence in Construction.** Subject to inclement weather, every Residence shall be completed within fifteen (15) months after the beginning of such construction or placement. For cause shown, this fifteen (15) month period may be extended by the Committee. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months after the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

**Section 6.20 HVAC Units.** All heat pumps, air conditioning units or gas meters shall be installed along the side elevations of the Residence or the rear elevation of the Residence and, if installed along the side elevation, shall be (i) set back at least fifteen (15) feet from the front elevation and (ii) screened from view in accordance with a landscape plan approved by the Committee.

**Section 6.21 Pond and Pond Area(s).** Except as otherwise provided, no individual using

a Pond, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Pond, diversion of water, elevation of any Pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Pond management, except as provided in the Declaration. A Pond may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Ponds and Pond Areas may or may not exist on the Property, and the reference throughout this Declaration to Ponds and Pond Areas is made in order to address Ponds and Pond Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Pond or Pond Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Pond or Pond Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area including, without limitation, Common Areas on which a Pond exists.

**Section 6.22 Mailboxes.** All mailboxes and posts must be approved by the Committee and shall be standard as to size, location, post, design, height, material, composition and colors. The Builder shall install the initial mailbox for each Lot, meeting the above criteria, at the Lot Owner's expense. The Owner shall, at the Owner's expense, maintain, repair, replace and paint said mailbox and post in conformance with all other mailboxes.

**Section 6.23 Maintenance of Lots and Improvements.** Each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such 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. Additionally, all Lots shall have an automatic irrigation system for the entire yard, unless otherwise approved by the Committee, and shall be free of weeds and properly irrigated in order to maintain a good and healthy appearance;
- (B) Remove all debris or rubbish from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,
- (E) Within thirty (30) days following completion of a Residence, or an alternative date approved by the Committee in writing, the Owner shall landscape the Lot in accordance with the provisions set forth in this Declaration and the Owner's lot development plan approved by the Committee, .

**Section 6.24 Miscellaneous.** No clotheslines may be erected on any Lot.

**Section 6.25 Outbuildings and Animal Quarters.** Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, animal quarters, and play houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property, provided, however, that a pool house which (i) is used for changing and/or showering but not as sleeping quarters, (ii) is constructed on a foundation with footers (iii) is architecturally consistent with and uses the same exterior building materials as the Residence and (iv) is approved by the Committee shall be allowed. Animal quarters or kennels which are connected to the Residence must be approved by the Committee.

**Section 6.26 Play Equipment.** Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot, and (iii) any swing and slide sets are constructed of wood. Metal swing and slide sets are prohibited. Prior approval by the Committee of the design, location, color, material and use of any equipment greater than eight (8) feet in height shall be required, and aluminum or metal play equipment is prohibited.

**Section 6.27 Plumbing.** All plumbing vent stacks are to be located on the rear of the Residence unless an alternative location is approved by the Committee.

**Section 6.28 Subsurface Drains and Sump Pump Discharges.** Subsurface drains have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

(A) The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

(B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.

(C) Any Owner or Builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals shall be responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which

time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.

Section 6.29 Swimming Pools and Hot Tubs. Only permanent, in-ground, professionally constructed pools which are approved by the Committee shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools shall be oriented to minimize the potential affect on neighboring Lots, shall be enclosed by a fence which obstructs unauthorized access or have an automatic pool cover, and shall comply with all other applicable laws, statutes, ordinances, and regulations pertaining to safety. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. Hot Tubs must also be approved by the Committee.

Sections 6.30 Tennis Courts, Racquetball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted without the prior approval from the Committee. All submittals to the Committee shall include landscape plans. Basketball goals may be installed on a Lot adjacent to driveway without Committee approval provided that they are permanent and have clear fiberglass or glass backboards supported by black posts. Independent basketball courts may not be constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are prohibited. Temporary or portable basketball courts will not be permitted.

Section 6.31 Vents. All metal and PVC roof or range vents shall be painted to blend with roof color.

Section 6.32 Windows-Doors. If storm doors are installed, they must be painted to match exterior of the Residence, and must be approved by the Committee. No unfinished aluminum doors or windows are allowed. All curtains, blinds or other window coverings shall be tasteful and commensurate with the type of Residences on the Property.

Section 6.33 Street Signs. Decorative street signs that do not conform to applicable municipal standards may be installed by Declarant in the Declarant's sole and absolute discretion. Such decorative street signs, if any, shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the controlling municipality. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs.

Section 6.34 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, are prohibited.

Section 6.35 Garbage and Other Refuse. No Lot Owner in the Property shall burn or

permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost, on his or her Lot.

**Section 6.36 Home Occupations.** No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following requirements, as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is (i) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; (ii) no commodity sold upon the premises; (iii) no person is employed other than a member of the immediate family residing in the Residence; and (iv) no manufacture or assembly operations are conducted. Provided however, that in no event shall a child day care, barber shop, styling salon, animal hospital, any form of animal care or treatment such as dog trimming, or any other similar activities be permitted as a home occupation. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales trailers, model homes, and sales offices.

**Section 6.37 Open Drainage Ditches and Swales.** The following shall apply to open ditches and swales:

(A) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, shall not be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Association. Property Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Owner causing such damages.

(B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches shall be responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association may cause said repairs to be accomplished and the invoice for such repairs shall be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the amount owed, together with reasonable attorney's fees, shall be a lien on the subject Lot and Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.

**Section 6.38 Roofing Materials.** The roofing materials on all Residences shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee.

**Section 6.39 Solar Panels.** Solar panels shall not be permitted on any Residence unless the solar panel is (i) not reasonably visible from the street or another Residence and (ii) is approved by the Committee. The Committee, in reviewing a request for a solar panel, shall

consider landscaping, location, size, aesthetics, and the visibility of the solar panel.

**Section 6.40 Temporary Structures.** No temporary structure, trailer, or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder. Any such temporary structure, trailer, garage, or other outbuilding shall be removed immediately upon completion of the primary Residence.

**Section 6.41 Utility Services.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat.

**Section 6.42 Parking of Larger Vehicles.** Trucks one (1) ton or larger in size, campers, trailer, motor homes, RVs, boats, snowmobiles, jet ski or similar vehicles shall not remain on any driveway or Lot, except within a closed garage, for more than twelve (12) consecutive hours within any one hundred twenty (120) hour period. There shall be no outside storage of commercial trucks, trailers, boats, inoperable vehicles, equipment, or fuel tanks.

**Section 6.43 Storage.** There shall be no outside storage of commercial trucks, trailers, boats, inoperable vehicles, equipment, or fuel tanks.

**Section 6.44 Wells.** Water wells, which are approved by the Committee and may be used only for irrigating lawns and landscaping, may be drilled on Lots and Common Areas so long as the water from such wells will not discolor sidewalks or concrete and, in the event of such discoloration, the responsible Owner shall be liable for all clean-up costs. All wells must comply with all applicable laws, statutes, ordinances, and regulations, and all well equipment, tanks, pumps and other related infrastructure shall be underground. Well heads shall not be located in front yards or side yards, and shall be property screened and landscaped.

**Section 6.45 Occupancy or Residential Use of Partially Completed Residence Prohibited.** No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

**Section 6.46 Streets, Sidewalks, and Street Landscaping.**

(A) **Installation.** Owners, at their expense, shall be responsible for installing sidewalks along and within the segment of the Street adjacent to their Lot.

(B) **Street Lights and Decorative Street Signs.** All street lights and decorative street signs, if any, located within a Common Area and public rights-of-way shall be maintained by the Association.

**Section 6.47 Construction and Landscaping: Time Requirements; Divestiture; Penalties.** All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with a Lot development plan approved by the Committee. All landscaping specified on the landscaping plan approved by the Committee shall be installed on the Lot strictly in accordance with such approved plan within sixty (60) days following substantial completion of the Residence, unless delayed due to adverse weather conditions.



**Section 6.48 Septic Systems.** No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

**Section 6.49 Owners of Lots 1 and 18.** The Owner of the lot identified on a Plat as Lot 1 shall maintain the portion of the Common Area located between the eastern boundary of said Lot 1 and the entryway wall, but shall not also maintain the entryway wall. The Owner of what is identified on a Plat as Lot 18 shall maintain the portion of the Common Area located between the eastern boundary of said Lot 18 and the entryway wall, but shall not also maintain the entryway wall.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROLS**

**Section 7.1 Approvals.** Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by an officer thereof, and with respect to the Committee, by one (1) member thereof. The Committee may, in its discretion, unilaterally promulgate written architectural and design guidelines (the "Guidelines") which (i) may, from time to time, be changed, or amended by the Committee without notice to or consent of Owners and (ii) shall be binding upon the Owners.

**Section 7.2 Committee: Development Standards and Architectural Control Committee.** A Development Standards and Architectural Control Committee, composed of at least three (3) members, shall exist and shall be appointed by the Declarant until the end of the Development Period. Such members shall be subject to removal by the Declarant at any time, with or without cause, until the end of the Development Period. Any vacancies from time to time shall be filled by appointment of the Declarant until the end of the Development Period.

**Section 7.3 Continuation of Committee.** After the end of the Development Period, the Directors of the Association, or their designees, shall continue the actions of the Committee with like powers and duties.

**Section 7.4 Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

**Section 7.5 Exercise of Discretion.** Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the

exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

Section 7.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 7.7 Liability of Committee, Declarant, Developer. Neither the Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, whether the improvements result in any encroachments, the compliance of proposed plans with laws and zoning ordinances, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections of each Lot prior to purchasing the Lot and/or commencing on said Lot.

Section 7.8 Common Areas Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Property or any section thereof and/or (iii) street signage.

Section 7.9 Lot Improvements. No Residence, dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement which plans shall be prepared and certified by a professional engineer. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. The exterior materials proposed to be used and the proposed landscaping shall comply with the Guidelines, unless otherwise approved by the Committee. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale

of 1/4" = 1' and all plot plans shall be drawn by a professional to a scale of 1" = 10', or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent homeowner or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a common area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 7.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

- (A) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Declaration; and
- (B) The design, color scheme, and square footage of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.

Section 7.11 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots, and any such variance granted shall not be considered as precedent setting.

Section 7.12 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

## ARTICLE VIII

### CONTIGUOUS LOTS

Section 8.1 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be

treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one single-dwelling house; provided, however, that with respect to the combined Lots, the Owner of the combined Lots shall be obligated to pay Annual Assessments, One-Time Assessments, and Special Assessments for each originally platted lot constituting the combined Lots, and such Annual Assessments, One-Time Assessments, and Special Assessments shall be a lien on the combined Lots, all per the terms and conditions of Article XI below. In addition, the Owner must obtain all requisite and necessary permits and approvals from the municipality having zoning jurisdiction over the Property.

## ARTICLE IX

### USE AND OWNERSHIP OF COMMON AREA

Section 9.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot. The Common Areas shall be conveyed by quitclaim deed to the Association. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Association.

Section 9.2 Use. Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Association. Any Common Area depicted on the recorded Plats or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the Plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

## ARTICLE X

### WESTMONT HOMEOWNERS ASSOCIATION, INC.

Section 10.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the property, (ii) the maintenance and repair of the Common Area including, but not limited to, any and all lighting, landscaping, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments, water features, Ponds, and signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street

signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement, (v) the performance of any other obligations and duties of the Association specified herein. The foregoing provisions of this Section 10.1 notwithstanding, an Owner shall be responsible and liable for any damage to any Common Areas or improvements thereon caused by such Owner or such Owner's agent, contractor, or guest, and the costs of repair or replacement necessitated by such damage shall be immediately paid by the Owner to the Association and may be assessed as a Violation Assessment and enforced per the terms of Article XI below.

**Section 10.2 Board of Directors.** Prior to the Applicable Date, members of the Board of Directors shall be appointed by the Declarant, vacancies in the Board of Directors shall be filled by the Declarant, and members of the Board of Directors may be removed and replaced by the Declarant, at any time and for any reason. After the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

**Section 10.3 Classes of Membership and Voting Rights.** The Association shall have the following two classes of voting membership:

(A) **Class A.** Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

(B) **Class B.** The Class B member shall be the Declarant. The Declarant shall be entitled to twenty (20) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earliest (hereafter "Applicable Date"):

- (i) December 31, 2050; or
- (ii) The end of the Development Period; or
- (iii) When the Declarant executes and records, in the Office of the Recorder of Hamilton County, Indiana, a written instrument by which the Declarant terminates the Class B membership.

**Section 10.4 Membership.** Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s)

unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 10.5 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less. At all times after the Development Period, the Association shall be managed by a professional management company.

Section 10.6 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources, nor take a public position in opposition to future phases of Westmont proposed by the Declarant, or changes to current phases, proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf of the Association.

## ARTICLE XI

### ASSESSMENTS

Section 11.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

- (A) Annual Assessments (hereafter defined);
- (B) One-Time Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of the Declaration, capital improvements and operating deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 11.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations can effectively be met.

Section 11.3 Annual Assessment.

- (A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an

Owner other than Declarant. The Annual Assessment, commencing during the calendar year in which the first Lot is conveyed to an Owner other than the Declarant or a Builder, shall be One Thousand Two Hundred Dollars (\$1,200.00) per Lot per year. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for Annual Assessments shall be January 1<sup>st</sup> of each calendar year, and such Assessment shall be subject to collection and late charges beginning on January 31<sup>st</sup> of each calendar year.

(B) Purpose of Assessments. The Annual Assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration including, without limitation, (i) the obligation to maintain and repair all Common Areas and all improvements located therein, (ii) the establishment of a reserve for replacement, to be separately maintained in an FDIC insured account with a financial institution, to fund significant capital expenditures maintenance, repair and replacement of all Common Areas, including, without limitation, all water features, landscaping, signs, gates, lighting and other improvements within the Common Areas, (iii) to pay insurance premiums for casualty insurance insuring the improvements in the Common Area, and for errors and omissions insurance pertaining to the actions of the Board of Directors and Officers of the Association and (iv) the costs of professional management to manage the officers of the Association.

(C) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 11.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board during any calendar year shall be entitled to increase, and collect from Owners, the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

Section 11.4 One-time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant to an Owner, the purchaser of such Lot and/or Residence shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Four Hundred Fifty Dollars (\$450.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 11.5 Special Assessment. In addition to such other Special Assessments as may

be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and/or for operating deficits which the Association may from time to time incur.

**Section 11.6 Violation Assessment.** In addition to all other Assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against this Declaration or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

**Section 11.7 Basis for Assessment.**

(A) **Lots Generally.** Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(B) **Lots Owned by Declarant.** Declarant shall not be required to pay any Annual Assessments or Special Assessments.

**Section 11.8 Notice and Due Date.** Written notice of Special Assessments and such other Assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all Assessments shall be established by the Board of Directors.

**Section 11.9 Assessment Liens.** All Assessments, together with interest thereon, attorney's fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

**Section 11.10 Failure of Owner to Pay Assessments.** No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Residence belonging to such Owner, may exempt himself or herself from paying Annual Assessments or Special Assessments, or from contributing toward the expenses of administration and/or maintenance and repair of the Common Areas and toward any other expense lawfully agreed upon. Each Owner shall be personally liable for the payment of all Annual Assessments, One-Time Assessments, Special Assessments, Violation Assessments and all other charges. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual Assessments, One-



Time Assessments, Special Assessments, or Violation Assessments when due, the lien for such Assessment on the Owner's Residence may be foreclosed by the Board of Directors for and on behalf of the Association, as provided by law, in the same manner as mortgages are foreclosed. Upon the failure of an Owner to make payments of any Annual Assessments, One-Time Assessments, Special Assessments, or Violation Assessments within ten (10) days after such are due, the Board of Directors, in its discretion and regardless of whether litigation is commenced, may:

- (1) impose a uniform late charge, which will be considered an addition to the Assessment, in an amount to be determined by the Board of Directors of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) require that, in addition to the delinquent assessment and any applicable late charge, the Owner of the respective Residence also pay (i) any attorney's fees incurred incident to the collection of the delinquent assessment and (ii) collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts;
- (4) suspend such Owner's right to use the Common Areas as provided in the Indiana Nonprofit Association Act of 1991, as amended; and
- (5) suspend such Owner's right to vote as provided in the Indiana Nonprofit Association Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Annual Assessments, One-Time Assessments, Special Assessments, and/or Violation Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Annual Assessments, One-Time Assessments, Special Assessments, and/or Violation Assessments without foreclosing or waiving the lien securing the same. In any action to recover an Annual Assessment, One-Time Assessments, Special Assessment, and/or Violation Assessments, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collections costs incurred by the Association to the managing agent for processing delinquent Owners' accounts and reasonable attorney's fees, from the Owner of the respective Residence.

Section 11.11 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of Assessments on a Lot showing the balance due the Association, if any.

Section 11.12 Subordination of the Lien to Mortgages. The lien of the Assessments

## ARTICLE XIV

### TITLES

Section 14.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

## ARTICLE XV

### COMPACTION

Section 15.1 Compacted Fill Material on Lots. The Property and Lots contain fill material and, with respect to the compaction of Lots, each Owner acknowledges and agrees that:

- A. Declarant makes no warranties or representations of any kind or nature, express or implied, with respect to the actual level or depth of fill on any of the Lots;
- B. Declarant makes no warranties or representations of any kind or nature, express or implied, with respect to the condition of the Property or any of the Lots or the type, size, or structural requirements for foundations, footers, pilings, or other subsurface devices that may be necessary to support any improvements on the Property on any of the Lots;
- C. It is the sole responsibility of each Owner, at Owner's sole cost and expense, to perform, with respect to such Owner's Lot, any soil and compaction testing that may be necessary to determine the existing subsurface soil conditions in order that any improvements will be supported on adequate foundations, footers, pilings, or other structural support devices;
- D. It is the sole responsibility of each Owner, at such owner's sole cost and expense, to follow and comply with, and to cause such Owner's builder to follow and comply with the foregoing responsibilities during construction of such Owner's Residence; and
- E. Each Owner, at such Owner's sole cost and expense, shall be responsible, with respect to such Owner's Lot and Residence, for effecting any construction changes and any repairs necessary to address any compaction and/or subsurface soil conditions.

**ARTICLE XVI**  
**MISCELLANEOUS**

Section 16.1 Invalidation of anyone of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 16.2 If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States of America.

Section 16.3 Duration. This Declaration and its covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the last and shall be binding on all parties and all Persons claiming under them until January 1, 2070, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless changed per the terms of Article XVIII below.

**ARTICLE XVII**

**DECLARANT'S RIGHTS**

Section 17.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Hamilton County, Indiana.

Section 17.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant in the development of the Property or the construction of Residences within the Property. Therefore, notwithstanding anything in this Declaration to the contrary, the Declarant may maintain and carry out upon any portion of the Property, including any Common Area, Lot, and/or such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Property and the construction or sale of Residences including, without limitation, business offices, signs, model units, sales offices, and sales trailers.

**ARTICLE XVIII**

**AMENDMENT TO THIS DECLARATION**

Section 18.1 This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified from time to time and at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Until the end of the Development Period, this Declaration may also be amended unilaterally, from time to time and at any time, without notice or vote, by Declarant.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first above written.

DECLARANT:

PPV, LLC, an Indiana limited liability company

By: Platinum Properties, LLC, an Indiana limited liability company, its Manager

By: 

Steven R. Edwards  
Vice President and Chief Financial Officer

**EXHIBIT "A"**

**LAND DESCRIPTION – REAL ESTATE**

**Westmont – Section One**

A part of the South Half of Section 21, Township 18 North, Range 3 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Half Section being marked by a Harrison Monument; thence South 89 degrees 38 minutes 41 seconds West along the South line of said Half Section a distance of 1,337.65 feet to the Southeast corner of the West Half of the Southeast Quarter of said Section; thence continuing South 89 degrees 38 minutes 41 seconds West along said South line 480.00 feet to a MAG nail with washer stamped "S & A Firm #0008" and the POINT OF BEGINNING of this description; thence North 00 degrees 13 minutes 55 seconds East parallel with the East line of said Half Quarter Section a distance of 600.00 feet to a 4" x 4" x 36" long precast concrete monument with a cross cast in the top (hereafter referred to as a concrete monument); thence North 89 degrees 38 minutes 41 seconds East parallel to the South line of said Quarter Section a distance of 480.00 feet to a concrete monument and the East line of said Half Quarter Section; thence North 00 degrees 13 minutes 55 seconds East along said East line 545.78 feet to a 5/8" rebar with cap stamped "S & A Firm #0008" (hereafter referred to as a S & A rebar); thence South 89 degrees 38 minutes 41 seconds West 203.81 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 20.76 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 160.00 feet to a S & A rebar; thence North 00 degrees 21 minutes 19 seconds West 120.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 454.52 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 31.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 210.00 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 49.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 160.00 feet to a S & A rebar; thence North 00 degrees 21 minutes 19 seconds West 90.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 151.81 feet to a S & A rebar and the West line of the Southeast Quarter of said Section 21; thence continuing South 89 degrees 38 minutes 41 seconds West 628.35 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 1,254.97 feet to a MAG nail with washer stamped "S & A Firm #0008" and the South line of the South Half of said Section 21; thence North 89 degrees 38 minutes 41 seconds East along said South line a distance of 619.25 feet to the Southeast corner of the Southwest Quarter of said Section 21 being marked by a MAG nail with washer stamped "S & A Firm #0008"; thence continuing North 89 degrees 38 minutes 41 seconds East along said South line a distance of 857.48 feet to the place of beginning, containing 48.326 acres, more or less, subject to all legal highways, rights-of-ways, easements, and restrictions of record.

**EXHIBIT "B"**

**LAND DESCRIPTION – ADDITIONAL REAL ESTATE**

**Westmont - Overall**

A part of the South Half of Section 21, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Half Section; thence South 89 degrees 38 minutes 41 seconds West along the South line of said Half Section a distance of 1,337.65 feet to the Southeast corner of the West Half of the Southeast Quarter of said Section; thence continuing South 89 degrees 38 minutes 41 seconds West along said South line 480.00 feet to the POINT OF BEGINNING of this description; thence North 00 degrees 13 minutes 55 seconds East parallel with the East line of said Half Quarter Section a distance of 600.00 feet; thence North 89 degrees 38 minutes 41 seconds East parallel to the South line of said Quarter Section a distance of 480.00 feet to the East line of said Half Quarter Section; thence North 00 degrees 13 minutes 55 seconds East along said East line 2,030.82 feet to the Northeast corner of said Half Quarter Section; thence South 89 degrees 40 minutes 24 seconds West along the North line of said Quarter Section a distance of 1,345.38 feet to the Northeast corner of the Southwest Quarter of said Section; thence South 89 degrees 39 minutes 54 seconds West along the North line of said Quarter Section a distance of 748.82 feet to the Northeast corner of Westwood Estates, Section 1, recorded as Instrument Number 2003-124222 in Plat Cabinet 3, Slide 313 in the Office of the Recorder, Hamilton County, Indiana; thence South 00 degrees 05 minutes 41 seconds East along the East line of Westwood Estates, Section 1 and parallel to the West line of the East Half of said Quarter Section a distance of 1,315.72 feet to the North line of the Bennett Subdivision, recorded as Instrument Number 2004-49422 in Plat Cabinet 3, Slide 443 in said Recorder's Office; thence along the Northern and Eastern lines of said Bennett Subdivision by the next two (2) courses; 1) North 89 degrees 38 minutes 41 seconds East 116.48 feet; 2) South 00 degrees 21 minutes 19 seconds East 662.66 feet to the Southeast corner of said Bennett Subdivision; thence continuing South 00 degrees 21 minutes 19 seconds East 653.25 feet to the South line of said Half Section; thence North 89 degrees 38 minutes 41 seconds East along said South line 1,476.74 feet to the place of beginning, containing 115.824 acres, more or less.

Except:

**Westmont – Section One**

A part of the South Half of Section 21, Township 18 North, Range 3 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Half Section being marked by a Harrison Monument; thence South 89 degrees 38 minutes 41 seconds West along the South line of said Half Section a distance of 1,337.65 feet to the Southeast corner of the West Half of the Southeast Quarter of said Section; thence continuing South 89 degrees 38 minutes 41 seconds West along said South line 480.00 feet to a MAG nail with washer stamped "S & A Firm #0008" and the POINT OF BEGINNING of this description; thence North 00 degrees 13 minutes 55 seconds East parallel with the East line of said Half Quarter Section a distance of 600.00 feet to a 4" x 4" x 36" long precast concrete monument with a cross cast in the top (hereafter referred to as a

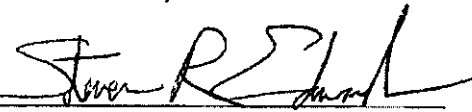
concrete monument); thence North 89 degrees 38 minutes 41 seconds East parallel to the South line of said Quarter Section a distance of 480.00 feet to a concrete monument and the East line of said Half Quarter Section; thence North 00 degrees 13 minutes 55 seconds East along said East line 545.78 feet to a 5/8" rebar with cap stamped "S & A Firm #0008" (hereafter referred to as a S & A rebar); thence South 89 degrees 38 minutes 41 seconds West 203.81 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 20.76 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 160.00 feet to a S & A rebar; thence North 00 degrees 21 minutes 19 seconds West 120.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 454.52 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 31.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 210.00 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 49.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 160.00 feet to a S & A rebar; thence North 00 degrees 21 minutes 19 seconds West 90.00 feet to a S & A rebar; thence South 89 degrees 38 minutes 41 seconds West 151.81 feet to a S & A rebar and the West line of the Southeast Quarter of said Section 21; thence continuing South 89 degrees 38 minutes 41 seconds West 628.35 feet to a S & A rebar; thence South 00 degrees 21 minutes 19 seconds East 1,254.97 feet to a MAG nail with washer stamped "S & A Firm #0008" and the South line of the South Half of said Section 21; thence North 89 degrees 38 minutes 41 seconds East along said South line a distance of 619.25 feet to the Southeast corner of the Southwest Quarter of said Section 21 being marked by a MAG nail with washer stamped "S & A Firm #0008"; thence continuing North 89 degrees 38 minutes 41 seconds East along said South line a distance of 857.48 feet to the place of beginning, containing 48.326 acres, more or less, subject to all legal highways, rights-of-ways, easements, and restrictions of record.

**FIRST AMENDMENT TO BYLAWS OF  
WESTMONT HOMEOWNERS ASSOCIATION, INC.**

The undersigned, being all of the members of the Board of Directors of the Westmont Homeowners Association, Inc. (the "Association") hereby amend the Bylaws of the Association (the "ByLaws") to replace all references to "PPV, LLC" by "Sweet Charity Estates, LLC" and, as such, by way of example and not by way of limitation, the "Declarant", as defined in the ByLaws, shall mean and refer to Sweet Charity Estates, LLC an Indiana limited liability, and its successors and assigns and shall not mean and refer to PPV, LLC, an Indiana limited company, and its successors and assigns.

The following is executed this 17<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
Paul F. Rioux, Director

  
\_\_\_\_\_  
Steven R. Edwards, Director

  
\_\_\_\_\_  
Kenneth R. Brasseur, Director



**BYLAWS**  
**OF**  
**WESTMONT**  
**HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**GENERAL**

**Section 1.** The name of the corporation is the WESTMONT HOMEOWNERS ASSOCIATION, INC. (hereinafter referred to as the "Association").

**Section 2.** The principal office of the Association shall be located at Platinum Properties, LLC, 9757 Westpoint Drive, Suite 600, Indianapolis, IN 46256, until and unless changed in accordance with law by the Board of Directors.

**Section 3.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE II**

**DEFINITIONS**

**Section 1.** "Declarant" shall mean PPV, LLC, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Declaration, including, without limitation, any mortgagee acquiring title to any portion of the Property (as such term is defined in the Declaration) pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

**Section 2.** "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Westmont which was recorded in the Office of the Recorder of Hamilton County.

**Section 3.** "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Declaration and the "Corporation" in the Articles of Incorporation of this Association.

**Section 4.** "Applicable Date" shall mean and refer to the date the Class B membership terminates as specified in Section 5.03(b) of the Articles of Incorporation of this Association.

Section 5. All of the terms as defined and used in the Declaration shall have the same meanings in these Bylaws and reference is specifically made to Article I of the Declaration containing definitions of terms.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership, Transfer, Voting Rights. Reference is hereby made to Article IX of the Declaration and Article V of the Articles of Incorporation which sets forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of Members, all of which terms, provisions and conditions are incorporated herein by reference.

Section 2. Quorum. The presence of Members or of proxies entitled to cast twenty five percent (25%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum.

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the Members of the Association. Cumulative voting shall not be permitted.

Section 4. Majority Required. A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the Bylaws or by statute.

Section 5. Meetings. Meetings of the Members of the Association shall be in accordance with the following provisions:

A. Place. Meetings of the Members shall be held at such place in Hamilton County, Indiana, as may be designated by the Board of Directors of the Association.

B. Annual Meetings. The first annual meeting of the Members shall be at any time determined by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular day or date for successive annual meetings, which date shall be not more than one (1) year after the close of each fiscal year of the Association. If the Members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the Members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

C. Special Meetings. Special meetings of the Members shall be called by the President of the Association, by resolution of the Board of Directors of the Association or upon a

written petition signed by Members of the Association who are entitled to vote ten percent (10%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

D. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days in advance of the meeting.

E. Order of Business. The order of business at all meetings of the members shall, to the extent applicable, be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

F. Voting by Co-Owners and Entities. The vote appurtenant to any Lot in which more than one person owns an interest may be exercised by any of such persons present at any meeting, unless the Association is advised (by objection or protest at the meeting or written notice prior thereto) by any other person owning an interest in such Lot that the Owners of the Lot are unable to agree upon the manner in which the vote appurtenant to such Lot shall be cast at such meeting or on any particular question to come before such meeting. In such event, the vote appurtenant to the Lot shall not be counted at the meeting or on the particular question noted, as the case may be. In the event any Lot is owned by a corporation, then the vote appurtenant to such Lot shall be cast by a person designated in a certificate signed by the president or any vice president of such corporation and attested by the secretary or an assistant secretary of such corporation and filed with the Secretary of the Association prior to the meeting. The vote appurtenant to any Lot owned by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and unless any objection or protest by any other such trustee or partner is noted at such meeting or in writing prior thereto, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

G. Suspension of Voting Rights. No Class A Member shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

## ARTICLE IV

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. The Initial Board of Directors, named in Section 6.02 of the Articles of Incorporation of this Association, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. After the Applicable Date, nomination for election to the Board of Directors shall be made from the floor at the annual meeting of the members of the Association. Such nominations may be made only from among Members of the Association, or persons deemed to be Members eligible to serve as directors thereof or otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Election. After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the Members of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE V

### BOARD OF DIRECTORS

Section 1. Number and Qualification. Until the Applicable Date, the affairs of the Association shall be governed by the Initial Board of Directors and shall consist of not fewer than three (3) members nor more than five (5) members. After the Applicable Date, the Board of Directors shall consist of five (5) members.

Section 2. Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

Section 3. Initial Board of Directors. The initial Board of Directors named in the Articles of Incorporation (the "Initial Board") shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date.

Section 4. Term of Office Generally. Such Directors shall hold office until the next annual meeting of Members, or until their successors are elected, or until they are removed or resign.

Section 5. Duties. The Board of Directors shall have the following duties:

A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding twenty-five percent (25%) of the total votes of the membership entitled to vote;

B. To supervise all officers, agents and employees of the Association;

C. To establish the Annual Assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these Bylaws;

D. To fix the amount of any Special Assessment against each Member for each Lot owned, all in accordance with the terms of the Declaration and these Bylaws;

E. To send written notice of each assessment to each Owner in accordance with the Declaration;

F. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;

G. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;

H. To procure and maintain the insurance coverages required by the Declaration and such other insurance coverages as the Board of Directors, in its sole discretion, deems necessary or advisable;

I. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as required by the Declaration; and,

J. To cause all of the Common Areas and all easements hereunder, including but not limited to Lake Easements, Landscape Easements, Drainage Easements, and Utility Easements to be maintained to the extent to the Association's responsibilities therefor as provided in the Declaration.

Section 6. Vacancies. Until the Applicable Date any vacancy in the Board of Directors shall be filled by the Declarant. Thereafter, any vacancy in the Board of Directors shall be filled by vote of the majority of remaining Directors, even though they may constitute less than a

quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association as such director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties, and any Director may be paid and compensated for services to the Association in a capacity other than as a director.

Section 8. Removal of Directors. Prior to the Applicable Date, the Declarant may remove Director(s), with or without cause. After the Applicable Date, Directors may be removed by Members of the Association, with or without cause, if the number of votes cast to remove would be sufficient to elect the Directors at a meeting to elect Directors. After the Applicable Date, a Director or Directors may be so removed by the Members only at a meeting called for the purpose of removing the Director(s). Any such meeting must state that the purpose of the meeting is for voting upon the removal of Director(s). In such case, the removed Director(s) successor(s) shall be elected at the same meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles of Incorporation, these Bylaws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

## ARTICLE VI

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors 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 of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

A. President. The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall

have the power to appoint committees from among the Members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

B. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the President.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE VII

### COMMITTEES

The Board of Directors shall appoint the committees provided for in the Declaration. In addition, the Board of Directors or the President may appoint various other committees to carry out the purposes of the Association. Members of such committees may, but need not, be members of the Board of Directors.

## ARTICLE VIII

### BOOKS OF ACCOUNT AND FISCAL YEAR

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas, private streets, and all easements and any other expenses incurred by or on behalf of the Association and the Members. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive a statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, and the



Bylaws of the Association, and other rules concerning the Property, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Association shall commence January 1, and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

## ARTICLE IX

### CONTRACTS, LOANS & CHECKS

Section 1. Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these Bylaws, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

## ARTICLE X

### MISCELLANEOUS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members of the Association, by a vote of a majority of a quorum of Members present in person or by proxy. In addition, the Board of Directors of the Association shall have the right and power, without the consent of the Members, to make, alter, amend or repeal these Bylaws.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

COPY

FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF WESTMONT

This First Amendment (the "First Amendment") is to the Declaration of Covenants, Conditions, and Restriction of Westmont and is made on the date corresponding to the signature below;

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of Westmont was recorded with the Recorder of Hamilton County, Indiana, on the 23<sup>rd</sup> day of March, 2009, as Instrument No. 2009015796 (the "Declaration");

WHEREAS, unless otherwise defined in this First Amendment, all words, terms, and phrases used throughout this First Amendment shall have the meaning ascribed to them in the Declaration; and

WHEREAS, the Declaration incorrectly identifies PPV, LLC as the owner of the Real Estate and as the Declarant, and the purpose of this First Amendment is only to amend the Declaration to identify Sweet Charity Estates, LLC, as the owner of the Real Estate and as the Declarant.

NOW, THEREFORE, in consideration of the foregoing preambles and recitations, it is acknowledge and agreed, as follow:

Section 1. Preambles and Recitations. The foregoing preambles, recitations, and definitions are made a part hereof as though fully set forth herein.

Section 2. Amendment. The Declaration is hereby amended to replace all references to "PPV, LLC" by "Sweet Charity Estates, LLC" and, as such, by way of example, but not by way of limitation, the Declaration is hereby amended (i) to identify the owner of the Real Estate and the Declarant as Sweet Charity Estates, LLC and (ii) so that, the "Declarant" is Sweet Charity Estates, LLC and not PPV, LLC.

Section 3. Amended Declaration. All provisions of the Declaration, which are not amended by this First Amendment, shall remain unchanged and in full force and effect, and the Declaration, as amended by this First Amendment, shall remain in full force and effect.

2009050819 AMND DECL \$14.00  
08/24/2009 10:23:11A 2 PGS  
Jennifer J Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

Sweet Charity Estates, LLC, an Indiana limited liability company

By: Platinum Properties, LLC, an Indiana limited liability company, its Manager

By:   
Steven R. Edwards  
Vice President and Chief Financial Officer

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

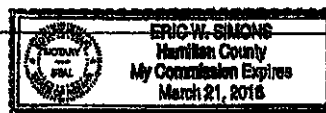
Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards, Vice President and Chief Financial Officer of Platinum Properties, LLC, the Manager of Sweet Charity Estates, LLC, and acknowledged the execution of the foregoing First Amendment this 17<sup>th</sup> day of August, 2009.

My Commission Expires:

Eric W. Simons  
Notary Public

Resident of \_\_\_\_\_ County, Indiana

Printed:



PPV, LLC, an Indiana limited liability company  
By: Platinum Properties, LLC, an Indiana limited liability company, its Manager

By:

Steven R. Edwards  
Steven R. Edwards  
Vice President and Chief Financial Officer

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards, Vice President and Chief Financial Officer of Platinum Properties, LLC, the Manager of PPV, LLC, and acknowledged the execution of the foregoing First Amendment this 17<sup>th</sup> day of August, 2009.

My Commission Expires:

Eric W. Simons  
Notary Public

Resident of \_\_\_\_\_ County, Indiana

Printed:



This instrument prepared by: Charles D. Frankenberger, Nelson & Frankenberger, 3105 E. 98<sup>th</sup> Street, Suite 170, Indianapolis, IN 46280 - (317) 844-0106.

Pursuant to IC 36-2-11-15(b)(2), I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law - Charles D. Frankenberger.



**Amendment:**

NOW THEREFORE, in furtherance of the recitals set forth above, and in accordance with Section 18.1 of the Declaration, Declarant hereby adopts the following amendment to the Declaration:

A. Article VI, Section 6.23(A) of the Declaration is hereby deleted and replaced with the following:

(A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

B. Article XI, Section 11.3(A) is hereby deleted and replaced with the following:

(A) The amount of the Annual Assessment provided for herein shall be established annually by the Board of Directors. The Annual Assessment shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. The Annual Assessment for the calendar year shall be prorated to year-end. The Board of Directors shall fix the amount of the Annual Assessment at least thirty (30) days in advance of the due date of the Annual Assessment. The initial due date for Annual Assessment shall be January 1<sup>st</sup> of each calendar year, and such Assessment shall be subject to collection and late charges beginning on January 31<sup>st</sup> of each calendar year.

C. Article XVII, Section 17.2 is hereby deleted and replace with the followings:

Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant in the development of the Property or the construction of Residences within the Property. Therefore, notwithstanding anything in this Declaration to the contrary, the Declarant may maintain and carry out upon any portion of the Property, including any Common Area or Lot, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Property and the construction and sale of Residences including, without limitation, the construction and use of business offices, signs, model units, sales offices, and sales trailers. None of the rights granted to Declarant herein shall be subject to the review and approval of the Committee, including but not limited to the design of and materials used in building Residences sold by Declarant. Nothing in this Declaration is intended to exempt a Builder who is not also a Declarant from the control of the Committee.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed as of the date written above.

Declarant:

**RH OF INDIANA, L.P.**

By: RH Builders of Indiana,  
its general partner

By: [Signature]  
Name: KENNETH E. WINDLER  
Title: ASSISTANT VP

**M/I HOMES OF INDIANA, L.P.**

an Indiana limited partnership  
By: M/I Homes First Indiana, LLC,  
an Indiana limited liability company,  
its general partner

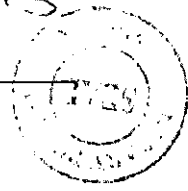
By: [Signature]  
Name: Mark Conner  
Title: VP of Land

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for said County and State, personally appeared Kenneth E Windler, the Asst. V.P. of RH Builders of Indiana, Inc., the general partner of RH of Indiana, LP, an Indiana limited partnership, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants, Conditions, and Restrictions of Westmont for and on behalf of said corporation and limited partnership.

Witness my hand and Notarial Seal this 6 day of August, 2011-2013.

[Signature]  
Wanda Wooldridge, Notary Public  
My County of Residence: Hamilton



My Commission Expires: 9-6-14

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Intelle Comm., the VP of Legal of M/I Homes First of Indiana, LLC, the general partner of M/I Homes Indiana, LP, an Indiana limited partnership, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants, Conditions, and Restrictions of Westmont for and on behalf of said corporation.

Witness my hand and Notarial Seal this 6 day of August, 2013.

Cassie Braughton  
Printed: Cassie Braughton

My Commission Expires: 8/20/15  
My County of Residence: Putnam



Cassie Braughton  
Notary Public, State of Indiana  
My Commission Expires 8/20/2015  
County of Residence: Putnam

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Wanda Wooldridge

This instrument was prepared by Wanda Wooldridge, RH of Indiana, LP, 9025 N. River Road, Suite 100, Indianapolis, IN 46240

JAN - 6 2015

24.00  
⑤

2014052872 AMENDMENT \$19.00  
11/21/2014 03:15:03P 3 PGS  
Mary L. Clark  
HAMILTON County Recorder IN  
Recorded as Presented

2014054283 AMENDMENT \$24.00  
12/02/2014 02:40:54P 5 PGS  
Mary L. Clark  
HAMILTON County Recorder IN  
Recorded as Presented

\* Re-recorded to correct scrivener's error – Exhibit A missing from original recording

**Cross Reference:** (i) The Declaration of Covenants, Conditions, and Restrictions of Westmont recorded with the Recorder of Hamilton County, Indiana, on the 23<sup>rd</sup> day of March, 2009, as instrument number 2009015796, (ii) the First Amendment to the Declaration of Covenants, Conditions, and Restrictions of Westmont was recorded with the Recorder of Hamilton County, Indiana, on the 24<sup>th</sup> day of August, 2009, as instrument number 2009050819 and (iii) the Second Amendment to the Declaration of Covenants, Conditions, and Restrictions of Westmont was recorded with the Recorder of Hamilton County, Indiana, on the 13<sup>th</sup> day of August, 2013, as instrument number 2013052484.

### THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WESTMONT

This Third Amendment (the "Third Amendment") is to the Declaration of Covenants, Conditions, and Restriction of Westmont and is effective as of the date corresponding to the signature below;

#### WITNESSETH:

**WHEREAS,** (i) the Declaration of Covenants, Conditions, and Restrictions of Westmont was recorded with the Recorder of Hamilton County, Indiana, on the 23<sup>rd</sup> day of March, 2009, as Instrument No. 2009015796 (ii) the First Amendment to the Declaration of Covenants, Conditions, and Restrictions of Westmont was recorded with the Recorder of Hamilton County, Indiana, on the 24<sup>th</sup> day of August, 2009, as instrument number 2009050819 and (iii) the Second Amendment to the Declaration of Covenants, Conditions, and Restrictions of Westmont was recorded with the Recorder of Hamilton County, Indiana, on the 13<sup>th</sup> day of August, 2013, as instrument number 2013052484 (collectively the "Declaration");

**WHEREAS,** as set forth in the Assignment of Declarant's Rights Under the Declaration of Covenants, Conditions and Restrictions of Westmont recorded on the 11<sup>th</sup> day of July, 2013 with the Recorder of Hamilton County, Indiana as instrument number 2013043214, RH of Indiana, L.P. and M/I Homes of Indiana, L.P. (collectively the "Declarant") are together the Declarant under the Declaration;

**WHEREAS,** unless otherwise defined in this Third Amendment, all words, terms, and phrases used throughout this Third Amendment shall have the meaning ascribed to them in the Declaration; and

**WHEREAS,** pursuant to Article III, the Declarant has the right to add to the Property and subject the Declaration to all or any part of the Additional Real Estate; and

**WHEREAS,** the Declarant desires to add to the Property and subject all of the Additional Real Estate to the Declaration.



NOW, THEREFORE, in consideration of the foregoing preambles and recitations, it is acknowledge and agreed, as follows:

**Part 1. Preambles and Recitations.** The foregoing preambles, recitations, and definitions are made a part hereof as though fully set forth herein.

**Part 2. Addition to the Property.** The Declarant hereby adds to the Property all of the Additional Real Estate (which is described in Exhibit A attached hereto) and subjects the Additional Real Estate in all respects to the Declaration and all of the rights, obligations, restrictions and privileges thereof.

**Part 3. Amended Declaration.** All provisions of the Declaration, which are not amended by this Third Amendment, shall remain unchanged and in full force and effect, and the Declaration, as amended by this Third Amendment, shall remain in full force and effect.

RH of Indiana, L.P.

By: RH Builders of Indiana, Inc., its  
general partner

By: [Signature]  
Kenneth E. Windler,  
Assistant Vice President


STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF Marion )

Before me, a Notary Public, in and for said County and State, personally appeared Kenneth E. Windler, the Assistant Vice President of RH Builders of Indiana, Inc., the general partner of RH of Indiana, L.P., and acknowledged the execution of the foregoing Third Amendment this 19 day of November 2014 for and on behalf of said entity.

My Commission Expires:  
8-27-22

Resident of Hamilton County, Indiana

[Signature]  
Notary Public  
Printed: Wanda Wooldridge



M/I Homes of Indiana, L.P.

By: M/I Homes First Indiana LLC, general partner

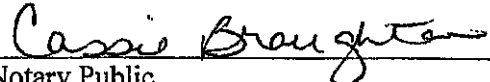
By:   
Cliff White,  
Area President

STATE OF INDIANA )  
  ) SS:  
COUNTY OF Marion )

Before me, a Notary Public, in and for said County and State, personally appeared Cliff White, Area President of M/I Homes First Indiana LLC., a general partner of M/I of Indiana, L.P., and acknowledged the execution of the foregoing Third Amendment this 13 day of November 2014 for and on behalf of said entity.

My Commission Expires:  
8/20/15

Resident of Putnam County, Indiana

  
Notary Public

Printed: Cassie Braughton



**Cassie Braughton**  
Notary Public, State of Indiana  
My Commission Expires 8/20/2015  
County of Residence: Putnam

This instrument prepared by: Wanda Wooldridge, 9025 North River Road, Suite 100, Indianapolis, IN 46240.

Pursuant to IC 36-2-11-15(b)(2), I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law – Wanda Wooldridge.

Exhibit A

Additional Real Estate

Ryland's Parcel:

A part of the South Half of Section 21, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Half Section; thence South 89 degrees 38 minutes 41 seconds West along the South line of said Half Section a distance of 1,337.65 feet to the Southeast corner of the West Half of the Southeast Quarter of said Section; thence continuing South 89 degrees 38 minutes 41 seconds West along said South line 480.00 feet to the Southeast corner of Westmont, Section 1 a subdivision in Hamilton County, Indiana, the Final Plat of which is recorded as Instrument Number 2009-015797, Plat Cabinet 4, Slide 524, Dated: March 23, 2009 in the Office of the Recorder, Hamilton County, Indiana; thence along the bounds of said Subdivision by the next ten (10) courses: 1) North 00 degrees 13 minute 55 seconds East 600.00 feet parallel with the East line of said Half Quarter Section; 2) North 89 degrees 38 minutes 41 seconds East 480.00 feet parallel to the South line of said Quarter Section to the East line of said Half Quarter Section; 3) North 00 degrees 13 minutes 55 seconds East 545.78 feet along said East line to the POINT OF BEGINNING of this description; 4) thence South 89 degrees 38 minutes 41 seconds West 203.81 feet; 5) South 00 degrees 21 minutes 19 seconds East 20.76 feet; 6) South 89 degrees 38 minutes 41 seconds West 160.00 feet; 7) North 00 degrees 21 minutes 19 seconds West 120.00 feet; 8) South 89 degrees 38 minutes 41 seconds West 454.52 feet; 9) South 00 degrees 21 minutes 19 seconds East 31.00 feet; 10) South 89 degrees 38 minutes 41 seconds West 185.00 feet; thence North 00 degrees 21 minutes 19 seconds West 226.00 feet; thence South 89 degrees 38 minutes 41 seconds West 185.00 feet; thence North 00 degrees 21 minutes 19 seconds West 165.00 feet; thence North 02 degrees 49 minutes 33 seconds East 200.31 feet; thence North 55 degrees 55 minutes 45 seconds East 181.25 feet; thence North 50 degrees 01 minutes 42 seconds East 167.18 feet; thence North 25 degrees 15 minutes 58 seconds East 202.73 feet; thence North 00 degrees 19 minutes 36 seconds West 185.00 feet; thence South 89 degrees 38 minutes 41 seconds West 176.00 feet; thence North 00 degrees 19 minutes 36 seconds West 211.22 feet to the South right of way line of West 141<sup>st</sup> Street recorded as Instrument Number 1995-6669 in said Recorder's Office; thence North 89 degrees 40 minutes 24 seconds East 1,000.62 feet along said South right of way line to the East line of said Half Quarter Section also the West line of Saddle Creek, Section 3 recorded as Instrument Number 1999-11339 in Plat Cabinet 2, Slide 227 in said Recorder's Office; thence South 00 degrees 13 minutes 55 seconds West 1,445.04 feet along said West line to the Northeast corner of said Westmont, Section 1 and the place of beginning, containing 32.402 acres, more or less.

NOTE: The acreage calculation above is included for identification purposes only.

**M/I's Parcel:**

A part of the South Half of Section 21, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Half Section; thence South 89 degrees 38 minutes 41 seconds West along the South line of said Half Section a distance of 1,337.65 feet to the Southeast corner of the West Half of the Southeast Quarter of said Section; thence continuing South 89 degrees 38 minutes 41 seconds West along said South line 480.00 feet to the Southeast corner of Westmont, Section 1 a subdivision in Hamilton County, Indiana, the Final Plat of which is recorded as Instrument Number 2009-015797, Plat Cabinet 4, Slide 524, Dated: March 23, 2009 in the Office of the Recorder, Hamilton County, Indiana; thence along the bounds of said Subdivision by the next sixteen (16) courses: 1) North 00 degrees 13 minutes 55 seconds East 600.00 feet parallel with the East line of said Half Quarter Section; 2) North 89 degrees 38 minutes 41 seconds East 480.00 feet parallel to the South line of said Quarter Section to the East line of said Half Quarter Section; 3) North 00 degrees 13 minutes 55 seconds East 545.78 feet along said East line; 4) thence South 89 degrees 38 minutes 41 seconds West 203.81 feet; 5) South 00 degrees 21 minutes 19 seconds East 20.76 feet; 6) South 89 degrees 38 minutes 41 seconds West 160.00 feet; 7) North 00 degrees 21 minutes 19 seconds West 120.00 feet; 8) South 89 degrees 38 minutes 41 seconds West 454.52 feet; 9) South 00 degrees 21 minutes 19 seconds East 31.00 feet; 10) South 89 degrees 38 minutes 41 seconds West 185.00 feet to the POINT OF BEGINNING of this description; 11) South 89 degrees 38 minutes 41 seconds West 25.00 feet; 12) South 00 degrees 21 minutes 19 seconds East 49.00 feet; 13) South 89 degrees 38 minutes 41 seconds West 160.00 feet; 14) North 00 degrees 21 minutes 19 seconds West 90.00 feet; 15) South 89 degrees 38 minutes 41 seconds West 151.81 feet to the West line of said Southeast Quarter; 16) South 89 degrees 38 minutes 41 seconds West 628.35 feet to the East line of the Bennett Subdivision, recorded as Instrument Number 2004-49422 in Plat Cabinet 3, Slide 443 in said Recorder's Office; thence North 00 degrees 21 minutes 19 seconds West 60.95 feet to the North line of said Bennett Subdivision; thence South 89 degrees 38 minutes 41 seconds West 116.48 feet to the East line of Westwood Estates, Section 1, recorded as Instrument Number 2003-124222 in Plat Cabinet 3, Slide 313 in said Recorder's Office; thence North 00 degrees 05 minutes 41 seconds West 1,275.72 feet along the East line of said Westwood Estates and parallel to the West line of the East Half of said Quarter Section to the South right of way line of West 141<sup>st</sup> Street recorded as Instrument Number 1995-8689 in said Recorder's Office; thence North 89 degrees 39 minutes 54 seconds East 748.98 feet along said South right of way line; thence North 89 degrees 40 minutes 24 seconds East 344.37 feet along said South right of way line; thence South 00 degrees 19 minutes 36 seconds East 211.22 feet; thence North 89 degrees 38 minutes 41 seconds East 176.00 feet; thence South 00 degrees 19 minutes 36 seconds East 185.00 feet; thence South 25 degrees 15 minutes 58 seconds West 202.73 feet; thence South 50 degrees 01 minutes 42 seconds West 167.18 feet; thence South 55 degrees 55 minutes 45 seconds West 181.25 feet; thence South 02 degrees 49 minutes 33 seconds West 200.31 feet; thence South 00 degrees 21 minutes 19 seconds East 185.00 feet; thence North 89 degrees 38 minutes 41 seconds East 185.00 feet; thence South 00 degrees 21 minutes 19 seconds East 226.00 feet to the place of beginning containing 33.174 acres more or less.

NOTE: The acreage calculation is included above for identification purposes only.