

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR WESTLYN**

Town of Plainfield  
Hendricks County, Indiana

**Cross-Referenced Instrument Numbers:**

\_\_\_\_\_ (Plat for Westlyn Section 1)

\_\_\_\_\_ (Plat for Westlyn Section 2)

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR WESTLYN**

THIS DECLARATION (hereafter "Declaration") made as of the date set forth below by PULTE HOMES OF INDIANA, LLC (hereafter "Declarant");

WITNESSETH, that the following facts are true:

Declarant is the owner of certain real estate, located in Plainfield, Hendricks County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (hereafter "Property"), upon which a residential subdivision known as Westlyn (hereafter "Development") will be developed; and

Declarant desires to subdivide and develop the Property subject to the terms of this Declaration; and

The term "Property", "Development" and "Westlyn" shall hereafter mean and refer to the entirety of the Westlyn subdivision.

NOW, THEREFORE, the Declarant hereby declares that the Property and 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 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 restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained.

## **ARTICLE 1 DEFINITIONS**

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

Section 1.1 “Association” shall mean and refer to Westlyn Homeowners Association, Inc., an Indiana nonprofit corporation established with the Indiana Secretary of State when its Articles of Incorporation were filed on \_\_\_\_\_, \_\_\_\_\_, and its successors and assigns.

Section 1.2 “Board of Directors” shall mean the board of directors, or governing body, of the Association.

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

Section 1.4 “Bulk Rate Contracts” means one or more contracts entered into by Declarant or the Association for the provision of services of any kind or nature by which a particular service is provided to all or a portion of the Development, or by which various services are offered at the option of each Owner, or both. The services provided under Bulk Rate Contracts may include, without limitation, services provided by Development Systems (hereafter defined) and services for cable television, telecommunications, internet access, “broadband”, security monitoring, trash pick-up, propane and natural gas, lawn and landscaping maintenance, and wastewater, and other services which are considered by the Declarant or the Board to be beneficial to all or a portion of the Development.

Section 1.5 “Committee” shall mean the Architectural Control Committee, as more fully described in Article 6 of this Declaration.

Section 1.6 “Common Area” shall mean any Common Area designated on current and future Plats by the prefix of “C.A.” or the phrase “Common Areas”. “Common Area” shall also mean to include any improvements or areas within public rights-of-way or easements (public and private), portions of Lots, private streets (if any), landscaping easements, entry features or other areas that are to be repaired and maintained by the Association as a common expense of the Association as determined by the Board to be necessary or appropriate for the common benefit of the Owners.

Section 1.7 “Design Guidelines” shall mean such documents (if any) adopted by the Declarant and/or the Committee that establish minimum standards of design, construction and maintenance, which are consistent with the level of quality and character desired for the Development and the provisions in this Declaration and to assist Builders and Owners in the planning, design, maintenance, and construction of residences and all site improvements.

Section 1.8 “Development Period” means the period of time commencing with Declarant’s acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. During the Development Period, the Declarant reserves the right to facilitate the development,

construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

Section 1.9 “Drainage Board” means the Hendricks County Drainage Board.

Section 1.10 “Governing Documents” means this Declaration, the Design Guidelines (if any), the Articles of Incorporation filed with the Indiana Secretary of State, By-Laws, the Rules and Regulations promulgated by the Board, and resolutions of the Board, as each may be adopted and amended from time to time.

Section 1.11 “Lake Area” means any portion of Common Area on which a lake now exists or is later constructed by Declarant and “Lake” means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 1.12 “Lot” shall mean and refer to a discreet lot or building parcel for a Residence, as reflected on a Plat.

Section 1.13 “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 and a Builder.

Section 1.14 “Person” shall mean an individual, firm, corporation, partnership, trust or other legal entity or any combination thereof.

Section 1.15 “Plat” shall mean the subdivision plats of the Property which are or will be recorded with the Recorder of Hendricks County, Indiana.

Section 1.16 “Refuse Collection” shall mean the collection, from each Residence, of charges for trash and garbage removal, for which the Association contracts, unless the municipality provides such service.

Section 1.17 “Residence” shall mean a residential dwelling unit situated upon a Lot, together with any approved improvements.

Section 1.18 “Special Use” shall mean any use defined or identified in any applicable zoning ordinance as a “Special Use”.

Section 1.19. “Town” means the Town of Plainfield, Indiana.

## ARTICLE 2 CHARACTER OF THE DEVELOPMENT

Section 2.1 In General. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. 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 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 Westlyn than the number of Lots depicted on a 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 appearing on a Plat and amendments thereto, on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

Section 2.3 Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Governing Documents is mandatory and is not a substitute for compliance with applicable law. Please be advised that the Governing Documents do not purport to list or describe each legal requirement or restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review the Plat applicable to their Lot, all applicable laws, and all other requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Committee for approval. Furthermore, approval by the Committee should not be construed by the Owner that any improvement complies with the terms and provisions of any applicable law, requirements, regulations or encumbrances which may affect the Owner’s Lot. Certain encumbrances may benefit parties whose interests are not addressed by the Architectural Control Committee. The Association, each Owner, resident, or other user of any portion of the Property must comply with the Governing Documents and applicable law, as supplemented, modified or amended from time to time. The Plat may include certain building restrictions, and each Owner is advised to review the Plat applicable to their Lot prior to constructing any improvements on their Lot. Additionally, as specified in the Plat, the maintenance of certain easements and other improvements within the Property may be the responsibility of the Association.

Section 2.4 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property or the Common Area (collectively, the “Conceptual Plans”) are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and improvements, including but not limited to any amenity centers and open spaces, reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Common Area or outside of the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Builder or other developer of any portion of the Property or the Common Area makes any representation or warranty concerning such land uses and improvements shown on the Conceptual Plans or otherwise planned for the Property or the

Common Area and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statements made by the Declarant or any of Declarant's representatives regarding any existing or proposed land uses, or proposed or planned improvements in making the decision to purchase any land or improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property and/or the Common Area will likely extend over several years, and agrees that the Association may not engage in, or use Association funds to support, any protest or challenge, or make any form of objection to, development of the Property or the Common Area or changes in the Conceptual Plans as they may be amended or modified from time to time.

### **ARTICLE 3 EASEMENTS**

Section 3.1 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, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision 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 and pursuant to Section 5.8 below, 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 applicable 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 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 or, (ii) installing landscaping, mounding, 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, maintain and replace 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. Finally, no Owner shall be permitted to remove anything within any of the easements described in this subparagraph (B) without the prior written approval of the Declarant during the Development Period, and thereafter by the Association.
- (C) Easement Work. Notwithstanding any architectural approval under Article 6 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 or liability 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 3.1(A) above and without any obligation of replacement.

Section 3.2 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 shall run with the land, and Declarant's right to further alter or grant easements shall

automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

- (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 Declarant to properly install 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, Sewer and other Development 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 lake(s) or 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 defined upon a Plat as a drainage, sewer, utility, cable, transmission, flowage or similar type easement.
- (B) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement (“Lake Easement”) and right-of-way in and to any Lake Area(s) now or hereafter shown on the Plat as a “Block”, “Common Area”, or “Lake” or any other Common Area within the Property used as a water retention or detention area, or on which a Lake 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 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 Board of Directors of 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 lakes 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, a sign and facilities easement (“Sign and Facilities Easement”) to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising 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 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, Flowage, Utility, Sewer and Lake, 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, Flowage, Utility, Sewer, Lake, 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 Hendricks County, Indiana.

#### **ARTICLE 4**

#### **ADDITIONAL PROVISIONS RESPECTING OF SANITARY SEWER UTILITY**

Section 4.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies the right of ingress/egress.

Section 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or rights-of-way is at risk of being removed, damaged, or destroyed by the applicable utilities without the obligation of replacement.

Section 4.3 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 rights-of-way is at risk of being removed by the applicable utilities without the obligation of replacement.

Section 4.4 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 4.5 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

## **ARTICLE 5 COVENANTS AND RESTRICTIONS**

Section 5.1 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 any applicable ordinance 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 Westlyn 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 5.2 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. The number of the street address of each Residence shall be placed on both the front façade of the Residence and the mailbox for that Residence. The address number affixed the front façade of the Residence shall be located in a position clearly visible from the public street in full compliance with the Plainfield Fire Code.

Section 5.3 Lighting. All Residences will have two dusk-to-dawn coach lights that operate on a photo cell located on the sides of the garage doors, regardless of the number of garage doors. In the interests of safety and aesthetics of the neighborhood, the Owner of each Lot shall maintain the appearance and working condition of their garage lights. Such lights must be illuminated during nighttime hours (i.e., immediately following dusk and preceding dawn). Declarant shall cause street lights to be installed in the utility easements on Lots and in the Common Areas. Street lights shall be operated and maintained by the Association. The Association reserves the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 5.4 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 5.5 Garages. All Residences must have a minimum of a two (2) car attached garage.

Section 5.6 Driveways. All driveways must be concrete in material. Per the Canak/Derringer Zoning Ordinance, no other driveway material is permitted. All driveways, including location, shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee.

Section 5.7 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, availability, or other charges lawfully established with respect to connections thereto.

Section 5.8 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, the Owner of such downstream Lot shall make provision 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 Drainage Board, "Drainage Easements" reserved as drainage swales 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. Lots may be included in a legal drain established by the Drainage Board. In such event, each Lot will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the lake control structures included in such legal drain, which assessment will be a lien against the Lot in favor of the Drainage Board. 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 5.9 Signs. Unless otherwise permitted by the Declarant prior to the end of the Development Period, and thereafter by the Board of Directors of the Association, except for political signs, 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 or lease.

In addition, an Owner may place one sign on the inside of a window advertising a Residence "for rent", provided the sign does not exceed one and one-half feet (1½') by one and one-half feet (1½') in size and is removed within five (5) days after a lease is signed.

Also, directional, marketing or other signs, billboards or monuments may be erected on any Lot or elsewhere in the Development by Declarant and its assignees and licensees (including but not limited to any Builder) designated in writing by Declarant as having the right to erect such signs, billboards or monuments.

Political signs shall be permitted but only to the extent allowed by Indiana law currently found at Indiana Code 32-21-13, or as later amended or replaced. Political signs must be ground mounted, displayed only on an Owner's Lot and may not be located on, nor encroach on, another Lot, Common Area, or any property owned or maintained by the Association. The Association may remove a Political Sign displayed in violation of this Section.

Section 5.10 Fencing. This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. No fence shall be erected in this Development without prior written approval of the Committee. Generally, no fences shall be constructed forward of the rear building line of the Residence on any Lot without the approval of the Committee. Exceptions to this location restriction may be made on a case by case basis.

All fencing must be wrought iron, its aluminum equivalent or like material, and be of such style designated by the Committee in the current Design Guidelines.

No fence shall be erected or maintained on or within any Landscaping 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. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences; provided, however, that all fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than ten (10) feet from the property line of such Lot, unless otherwise approved by the Committee. Owners of Lots adjoining Lots on which a fence is erected within six (6) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee.

Generally, fences shall not be higher than forty-eight inches (48") feet from ground level. Rear yard fences shall be wrought iron style and may be up to six feet (6') in height from ground level if the Committee approves such height.

In instances where privacy screening is necessary or desirable, exceptions to the above material or height restrictions may be approved by the Committee on a case by case basis. Opaque privacy screens up to six feet (6') in height shall be permitted around patio areas so long as they do not extend more than seventeen feet (17') from the back of the Residence. For such privacy screens, the Committee encourages the use of materials that will not fade or warp (such as vinyl or composite material), but the Committee may approve the use of wood material for a privacy screen so long as the Owner treats the wood every two years as necessary to maintain an attractive appearance.

The Committee may impose a landscaping component as part of any request to install a fence. Fencing in rear or side yard areas of Lake Lots should generally not be taller than forty-eight inches (48") nor located within ten feet (10') of the high-water mark. Fencing shall be placed within areas permitted in the Design Guidelines. No rear yard fence shall be allowed within any landscape easement. Gates and monumentation for an individual Lot may be approved by the Developer or Committee on a case by case basis.

The Committee may establish further restrictions with respect to fences, including limitations on the installation of fences in the rear yard of a Lot abutting a Lake and Design Guidelines for fences. All fences must be kept in good repair.

No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and eight (8) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points 25 feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a street, in which case the edge of the driveway pavement shall be substituted for one of the street Lot lines.

Any electronic restraining device intended to keep a household pet from leaving the boundaries of that Owner's Lot, such as an "invisible fence", shall not be considered a fence requiring prior approval so long as there is no conspicuous equipment or apparatus located in open view that could be observed from any right-of-way, Common Area, or path in the subdivision.

Section 5.11 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. 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 if the barking is deemed excessive and unreasonable by the Board of Directors. 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 5.12 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 inside the garage of the Residence except not more than 24 hours prior to or after its removal thereof, when it may be placed at the curb of the Lot. An Owner may keep their containers outside the garage, but only if the containers are out of public view and the Owner receives the prior approval from the Committee. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.13 Animals, 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 customary household pets in reasonable numbers may be kept subject to rules and regulations adopted by the Board of Directors and 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. There shall be no "tie outs", exterior dog runs, crates, houses or cages for pets of any kind allowed on the Lot. An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. All pets not confined by fences (or approved invisible pet containment) within the Lot, shall be on leashes when walked. The Owner shall be responsible for the cleaning of any Common Area or within the Lot made dirty by his or her pet's excrement and shall be fully liable for the expenses of any cleaning not performed by the Owner. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Property to enforce local animal control laws and ordinances.

Section 5.14 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot. Owners shall at all times comply with all applicable legal requirements for outside burning.

Section 5.15 Antennas and Receivers. No satellite dish or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or the rules and regulations of the Association, or (c) it is a satellite dish one (1) meter (approximately 39”) or less in diameter and not affixed to the roof of a residence; or (d) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority. Per the Canak/Derringer Zoning Ordinance, in no event will an antenna or a tower be permitted.

Section 5.16 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, 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 5.17 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 5.18 Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorney’s fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

Section 5.19 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 cost incurred by the Association shall be assessed to the Owner. The Owner 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 outstanding maintenance assessments in the manner described in Article 10. 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. The Association shall provide written notice to the Owner that he or she has failed to properly maintain his or her Lot and that the Association intends to do so at the Owner's expense at least ten (10) days prior to exercising any powers granted by this Section 5.19.

Section 5.20 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no awnings or patio covers will be permitted anywhere on the Property unless approved in advance by the Committee or in compliance with the Design Guidelines. All approved awnings and patio covers must be kept in good repair and attractive in appearance.

Section 5.21 Diligence in Construction. Subject to inclement weather or other Acts of God, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. 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 from 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 5.22 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 5.23 Lake and Lake Area(s). Except as otherwise provided, no individual using a Lake, 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 Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, ice fishing, 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. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area unless required by the applicable municipality. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 5.24 Mailboxes. All mailboxes and posts will initially be installed by the Declarant or a Builder. Mailboxes shall be standard as to size, location, post, design, height, material, composition and colors. After initial installation, the Association shall maintain, repair and replace the mailboxes and posts as part of the common expenses of the Association. No Owner shall be permitted to remove or alter the mailbox and post associated with such Owner's Lot.

Notwithstanding the above, if a “cluster” mailbox or mail station is required by applicable regulatory authorities, such system shall negate the above paragraph and the Association shall perform the necessary maintenance, repair and replacement as part of the common expenses of the Association.

Section 5.25 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;
- (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, dying or diseased trees and shrubs from the Lot; and,
- (E) Within sixty (60) days following completion of a Residence, the Owner shall landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.26 Clotheslines. No clotheslines may be erected on any Lot unless approved in writing by the Committee or in compliance with the Design Guidelines.

Section 5.27 Outbuildings. Any and all forms of detached outbuildings or accessory buildings, including but not limited to, mini-barns, sheds, storage sheds, animal quarters, and play houses on any Lot, are prohibited, unless the same are necessary or incident to the Declarant’s or Builder’s business or activities upon the Property. Notwithstanding the above, the Committee may permit a bath house or similar structure in conjunction with an approved swimming pool.

Section 5.28 Play Equipment. For the Lots in Section 1, 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, (iii) such swing and slide sets are constructed of wood or such other material that is acceptable to the Committee, and (iv) such equipment is properly secured and fastened to the ground so as to avoid being blown over onto another Lot or the Common Areas. Metal swing and slide sets are prohibited. Any play equipment that is permanently installed (such as being set in concrete) in the yard or elsewhere on the Lot, regardless of its height, shall require prior approval by the Committee. Any other equipment higher than eight (8) feet shall

require approval of the design, location, color, material and use by the Committee, and aluminum or metal play equipment is prohibited.

For the Lots in Section 2 (those being Lots 1 through 18), none of the play equipment described above will be permitted.

Section 5.29 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.30 Sidewalks. Each Residence shall have a continuous concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalks shall be installed by the Declarant or Builder and included in the purchase price of the Residence. Each Owner of a Lot shall be responsible for the repair, maintenance and replacement of the sidewalk which is adjacent to, or upon, such Owner's Lot, including but not limited to snow removal within 24 hours of a snow event. This shall include the removal of any debris or other obstructions that might impede pedestrian usage of the sidewalk.

Section 5.31 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 Residence 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 will be held responsible for such action and will be given ten (10) days' notice, by registered mail or other verifiable method of delivery, 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 Owners (and/or Builders) 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 10 of this Declaration.

- (D) In no case will maintenance and repair of sump pump discharge lines and subsurface drain laterals be the responsibility of the Town.

Section 5.32 Swimming Pools and Hot Tubs. Except for children's unfiltered splash pools, no above-ground swimming pools shall be permitted in the Property, even if they are inflatable. Only permanent, in-ground pools with professional construction, approved in writing in advance by the Committee, shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. All approved in ground swimming pools must have an electrically powered, locking safety cover and/or an enclosure fence of at least five feet (5') in height that complies with the Section above specifically concerning fences and shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee. All equipment rooms, bath houses, or dressing rooms that are not part of the original construction of the Residence shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee. Hot tubs must also be approved in advance by the Committee.

Section 5.33 Tennis Courts, Basketball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, pickle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted. Only permanent basketball goals are permitted but only if approved in advance by the Committee. All basketball goals must have clear backboards.

Section 5.34 Vents. All metal and PVC roof or range vents must be painted to blend with roof color.

Section 5.35 Windows and Doors. If storm doors are installed, they must be painted or finished to match the exterior of the Residence. No unfinished aluminum doors or windows will be allowed.

Section 5.36 Street Signs. Decorative street signs that do not conform to the Town's standards nevertheless may be installed by Declarant in the Development. The Association shall maintain any such decorative street signs and the Association shall repair or replace them if damaged in accordance with applicable rules and regulations of the Town. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs and agrees to hold the Town harmless related thereto.

Section 5.37 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, shall be and hereby are prohibited.

Section 5.38 Garbage and Other Refuse. No Lot Owner in the Development 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, unless otherwise approved by the Committee.

Section 5.39 Home Occupations and Business Activity. No Lot or Lots shall be used by an Owner or tenant, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation or business, which satisfies the following definition 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 residential character thereof and in connection with which there is: (a) 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; (b) the existence or operation of the business activity is not apparent or detectable by sight (e.g., no sign may be erected advertising the business within the Property), sound, or smell from outside the Residence; (c) the business activity does not involve door-to-door solicitation of residents within the Property; (d) no commodity is sold upon the premises; (e) no person is employed other than a member of the immediate family residing in the Residence; (f) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is significantly greater than that which is typical of Residences in which no business activity is conducted; (g) the business activity does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board; and (h) the business does not require the installation of any machinery other than that customary to normal homes and household operations. The term "business", as used in this provision, will be construed to have its ordinary, generally accepted meaning and will include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (j) such activity is intended to or does generate a profit; or (k) a license is required. Leasing of a Residence in compliance with Section 5.50 below will not be considered a business within the meaning of this Section. This Section will not apply to any activity conducted by the Declarant or a Builder. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation: licensed child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog grooming, or any other similar activities.

Notwithstanding any provision in this Declaration to the contrary, Declarant and its assignees and licensees, including but not limited to Builders authorized by Declarant in writing, may construct improvements and carry on and maintain upon or within portions of the Common Area (including without limitation amenity centers or other buildings) and within any Residence and on any Lot owned by Declarant or its assignees or licensees or authorized Builders, as applicable, such exclusive and non-exclusive uses, events and other activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the sale, leasing, marketing and/or construction of Residences on Lots or the development of the Property, including, but not limited to, signs, flags and other marketing materials, model homes, and marketing, sales, construction, leasing and other business offices. Declarant and its assignees and licensees have an easement over and across the Common Area for such uses, events and activities at no charge.

Section 5.40 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, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant or, after the Development Period, by the Association. Lot 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 Lot Owner.
- (B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail or other verifiable method of delivery, 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 Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article 10 of this Declaration.

Section 5.41 Roofing Materials. The roofing materials on all Residences shall be similar in color and material, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee. No Owner shall be permitted to change or replace the shingles or other roofing materials without obtaining the prior written approval of the Committee unless the change or replacement is identical to what was originally in place.

Section 5.42 Solar Energy Systems. No solar energy systems (including solar panels) shall be permitted on any Residence or upon any Lot unless approved in advance by the Committee or as otherwise mandated by law. The Committee shall have the power to adopt Design Guidelines concerning the same.

Section 5.43 Vehicles and Parking. Only normal passenger vehicles are permitted to be parked within the Property. Normal passenger vehicles include automobiles, vans, motorcycles, mini-bikes, sport utility vehicles, and trucks with a maximum load capacity of less than one ton. Boats or other watercraft (over a 48-hour period), campers, recreational vehicles, tractors/trailers, trailers of any kind, temporary storage units, dumpsters, buses, mobile homes, "commercial vehicles" (defined below) business trucks or vans, or any other vehicles other than normal passenger vehicles shall not be permitted to be parked or stored anywhere within the Property (which includes any street within Westlyn as well as any of the Common Areas), unless they are parked or stored completely enclosed within the Owner's garage.

For the purposes of this provision, "commercial vehicles" mean any and all kinds of vehicles that have a maximum load capacity of one ton or more and upon which commercial

lettering or equipment is visible, and that are being used for commercial or business purposes. Work-related vehicles upon which commercial lettering and/or designs are visible, including vans and trucks, will be permitted if they have a maximum load capacity of less than one ton. No junk or disabled vehicle or other vehicle on which current registration plates are not displayed shall be kept in Westlyn, except as may be completely enclosed within a garage. No repair work shall be done within Westlyn on any vehicles, including passenger vehicles, except as may be completely enclosed within a garage.

Section 5.44 Wells. Water wells shall not be drilled on any of the Lots.

Section 5.45 Streets, Sidewalks, and Street Landscaping.

- (A) Maintenance. Declarant shall maintain all streets, sidewalks and curbs in a good condition satisfactory for the purpose for which they were constructed until the public authority has accepted them. However, prior to such acceptance, the Association will be responsible for general maintenance and upkeep of the streets and curbs such as street sweeping or cleaning and minor repairs. Declarant's maintenance shall not include snow removal.
- (B) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the appropriate governmental authority. Each Owner shall cut all grass and trim all other landscaping in the rights-of-way adjoining his Lot lines and shall maintain all sidewalks in the rights-of-way nearest his Lot lines. Each Owner shall immediately replace any street trees and lighting required by this Declaration, the Plat, or any other document controlling maintenance of Lots.
- (C) Street Lights and Decorative Street Signs. All street lights and decorative street signs located within the right-of-way of any street shall be maintained by the Association.

Section 5.46 Construction and Landscaping. 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, including time limitations.

Section 5.47 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by a public agency or public or private utility) shall be installed or maintained on any Lot.

Section 5.48 Rules and Regulations; Availability of Other Governing Documents. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Areas. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Development as well as its own books, records and financial statements available for inspection by Owners or by holders, insurers and guarantors of first mortgages, that are secured by Lots in the Development. These documents shall be available

during normal business hours or under other reasonable circumstances. Costs to reproduce copies other than by electronic delivery shall be at the cost of the requesting Owner.

Section 5.49 Notice of Canak/Derringer Zoning Ordinance. Notice is hereby given of the Canak/Derringer Zoning Ordinance and other laws or codes that may be relevant to the Association's operations and administration which are deemed to be incorporated herein by this reference.

Section 5.50. Residence Rentals.

- (A) Subject to the further terms of Section 5.50.B, no more than twenty percent (20%) of the total Lots in Development may be rented to a third party for income, except as may be otherwise provided in this Section 5.50 (the "Rental Cap"). Lots owned by an immediate family member of the occupant or a trust in which the occupant is the settlor, grantor, trustee, or beneficiary shall not be subject to the Rental Cap and shall effectively be considered to be owner-occupied. Neither shall the Rental Cap apply to Lots acquired by a lender through foreclosure, deed in lieu, or other similar proceedings for the period that they are owned by the lender.
- (B) The same legal entity may not own more than two (2) Lots for lease at the same time.
- (C) If an Owner wishes to rent his or her Lot, but the Rental Cap has been reached, the Owner may submit a written request to the Association to waive the Rental Cap because of hardship. The hardship exceptions and waiver provisions of this Section 5.50(C) shall be available to all Lots depicted on Exhibit B, regardless of whether they may be depicted with a red dot. The Owner must inform the Association in writing of the specific circumstances of the hardship and provide the Association with a copy of the lease. The approval and finding of hardship shall be at the discretion of the Association. Examples of hardship may include:
  - i. Temporary or permanent relocation of the residence of an Owner to a point outside of a two hundred (200) mile radius of the perimeter of the Property made necessary due to a change of employment or location of employment of at least one (1) such Owner;
  - ii. The Owner is a reservist in the United States Armed Forces who is called to temporary active duty or active-duty personnel in the United State Armed Forces, and is temporarily deployed;
  - iii. Death of an Owner;
  - iv. Divorce or marriage of an Owner;
  - v. Medical conditions of the Owner which make continued residence in the Dwelling difficult or impractical;

- vi. The Owner's relocation to a long-term care facility; or
- vii. Any other personal or financial situation that, without allowing renting or leasing of a Dwelling Unit, will cause significant financial harm to the Owner

The Association may approve or deny such requests as it deems appropriate on a case-by-case basis.

- (D) No Residence or other portion of a Lot may be used as a lodging house, hotel, bed and breakfast lodge, or any similar purpose, but Residences may be leased for residential purposes for an initial lease term of not less than six (6) months (unless a shorter period is approved by Declarant during the Development Period). No Residence may be advertised for lease as a short-term rental (defined as being less than a six (6) month term) on any website, other advertising medium, or a short-term rental platform through which unaffiliated parties offer to rent a short-term rental to an occupant and collects consideration for the rental from the occupant. (For example, VRBO or Airbnb). All leases must be for the entire Residence and Lot and must be in writing. The Owner must provide a copy of this Declaration, the Rules and Regulations and the other Governing Documents to its lessee. An Owner must deliver a copy of each Residence lease to the Association within thirty (30) days after the effective date of the lease.
- (E) An Owner who leases such Owner's Residence is deemed to have assigned such Owner's rights to use the Development's amenities and other Common Areas to the lessee(s) of such Residence and such Owner is not entitled to use the Development's amenities and other Common Areas while the Residence is occupied as a rental property. All lessees and other occupants of a Residence are obligated to comply with all Rules and Regulations and all obligations contained in the Governing Documents, including without limitation repairing and maintaining the occupied Lot and Residence in accordance with the Governing Documents. The Owner of a leased Residence is responsible to the Association for any violation of the Governing Documents by the Owner's lessee and their guests or invitees, and for any expense incurred by the Association in connection with enforcing the Governing Documents due to such violation. In the event of any such violation of the Governing Documents, the applicable Owner, upon notice thereof by the Association, shall immediately take all necessary actions to correct such violation. Neither the Association nor the Declarant will be liable to an Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Governing Documents against the Owner's lessee or other occupants of the Residence, nor liable to any Owner for any claim or damages of any kind resulting from another Owner's leasing of such Owner's Residence or the activities or conduct of such Owner's lessee or other occupants of the Residence.

- (F) All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
- (G) To ensure any lease property is properly maintained during the term of the lease, in addition to providing a copy of the lease to the Association, the Owner must also provide a copy of the service plan for the property, to include mowing, fertilization, weed control, trimming, and landscape bed maintenance. This plan must include frequency for each item as well as the service provider that will be providing such services to the property for approval by the Association.
- (H) Notwithstanding any provision in this Declaration to the contrary, unless otherwise required by applicable law, (i) any additional restriction pertaining to the leasing of Residences must be adopted by an amendment to this Declaration, and (ii) after the expiration of the Development Period, no amendment to this Declaration for that purpose will be effective without the express written consent of one hundred percent (100%) of the total number of votes in the Association. The Board may not adopt additional restrictions on the leasing of Residences by the adoption of a rule or regulation.

## **ARTICLE 6 ARCHITECTURAL CONTROLS**

Section 6.1 Approvals. Approvals, determinations, 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 as included in the meeting minutes of such Committee and submitted to the Board of Directors as needed for approval.

Section 6.2 Architectural Control Committee. An Architectural Control Committee (the "Committee"), composed of at least three (3) members, shall exist and shall be appointed by the Declarant. During the Development Period, such members shall be subject to removal by the Declarant at any time, with or without cause, and any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Association the power to appoint and remove one or more members of the Committee; provided, however, that any such relinquishment must be in writing and shall be only on the terms and conditions expressed in such writing.

Section 6.3 Continuation of Committee. Until the earlier of the time when the Declarant provides written notification to the Association of discontinuance of this Committee, or at the end of the Development Period, whichever occurs first, the Committee shall be a standing committee of the Association with like powers, consisting of a minimum of three (3) persons, appointed by a majority vote of the Board of Directors. The persons appointed by the Board to the Committee shall consist of Owners of Lots and may be, but need not be, members of the Board of Directors. The exception to this is that the Chair of the Committee must be a Board member. The Board may at any time remove any member of the Committee upon a majority vote

by the members of the Board of Directors. At the Board's discretion, three (3) or more members of the Board may serve as the Committee.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to and actually received by 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, it shall specify the reason(s) for disapproval and 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 6.5 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 6.6 Inspection. The Owner, by submission for the approval of any alteration or addition, approves the Architectural Control Committee, Board of Directors or their appointed management agent to inspect the construction and or completed project and grants them access to the Lot to do so.

Section 6.7 Liability of the Committee and the Declarant; Indemnity.

- (A) Generally. Neither the Committee nor any agent thereof, nor the Declarant, nor the 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. Any errors in or omissions from the documents submitted to Declarant or the Committee shall be the responsibility of the entity or person submitting the documents, and neither Declarant nor the Committee shall have any obligation to check for errors in or omissions from any such documents, or to check for such documents' compliance with the general provisions of this Declaration, municipal codes and other regulations, state statutes or the common law, whether the same relate to Lot lines, building lines, easements, building standards or any other issue. 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, or the materials to be used. All parties should seek professional construction advice, engineering, and required municipal permits and inspections on each Lot prior to proposing construction. Furthermore, the Committee shall review the elevations ONLY of any proposed Residence or

other improvements such that the Committee shall not be liable for any alleged deficiencies concerning the height or placement of any improvements. Thus, neither the Declarant nor the Committee shall be responsible for anything related to height, setbacks, grade, finished floor or other elevations, drainage, or home position upon a Lot. The Town and applicable building ordinances shall control such matters.

- (B) NO LIABILITY OF DECLARANT OR COMMITTEE. DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR (i) THE CREATION, SELECTION, MANAGEMENT OR OPERATION OF THE COMMITTEE, (ii) ANY ACTIONS TAKEN OR OMITTED TO BE TAKEN BY OR ON BEHALF OF THE COMMITTEE IN CONNECTION WITH THIS DECLARATION OR THE PROPERTY, OR (iii) ANY LIABILITIES, OBLIGATIONS, DEBTS, ACTIONS, CAUSES OF ACTION, CLAIMS, DEBTS, SUITS OR DAMAGES INCURRED BY OR ON BEHALF OF OR ARISING IN CONNECTION WITH THE COMMITTEE, THE PROPERTY OR THE DUTIES AND OBLIGATIONS OF THE COMMITTEE PURSUANT TO THIS DECLARATION. FURTHERMORE, NEITHER DECLARANT, THE ASSOCIATION, MEMBERS OF THE COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE COMMITTEE, THE BOARD OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES AND QUITCLAIMS ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN. PLANS AND SPECIFICATIONS ARE NOT REVIEWED, APPROVED AND/OR REJECTED FOR ENGINEERING OR STRUCTURAL DESIGN, ADEQUACY OF MATERIALS OR ADEQUACY OF SOILS OR DRAINAGE, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, NEITHER DECLARANT, THE ASSOCIATION, THE COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS.

- (C) INDEMNIFICATION OF DECLARANT AND COMMITTEE. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION, SUBJECT TO ANY LIMITATIONS IMPOSED UNDER APPLICABLE LAW OR IN THE BY-LAWS, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE COMMITTEE AND DECLARANT PARTIES FROM AND AGAINST ALL DAMAGES, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, REASONABLY INCURRED IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED ACTION, SUIT OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE THEN BOARD) TO WHICH ANY MEMBER OF THE COMMITTEE OR ANY OF THE DECLARANT PARTIES MAY BECOME A PARTY BY REASON OF ITS ACTIVITIES UNDER OR IN CONNECTION WITH THIS DECLARATION.

Section 6.8 No Improvements Unless Approved by the Committee. No dwelling, building structure, fence, wall, deck, driveway, swimming pool, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be erected, altered, added onto or repaired upon any portion of any Lot, nor shall any of the same be modified or altered, without the prior written approval of the Committee. Any change in the appearance or the color of any part of the exterior of a Residence or the Lot shall be deemed a change thereto and shall also require the prior approval of the Committee. However, Committee approval is not required for any improvements constructed, erected, altered, added onto or repaired by Declarant, or a Builder designated in writing by Declarant during the Development Period to be exempt from the Committee approval requirements.

Section 6.9 Committee Application Process. 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, alteration or modification. 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. 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, setbacks, 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. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to ensure that a resident is not encroaching on an adjacent Lot 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. Notwithstanding anything to the contrary in

the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute discretion, the Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Committee.

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 6.10 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, the Design Guidelines, the Plats, or the rules and regulations adopted by the Board of Directors;
- (B) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures; and
- (C) The proposal should preserve or enhance the value and desirability of the Property and be consistent with the interests, welfare or rights of the Declarant, the Association and any other Owner.

Section 6.11 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 or to comply with written request of municipality in charge of applicable permits. No variance or adjustment shall be granted which is knowingly materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting.

Section 6.12 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.

Section 6.13 Design Guidelines. The Declarant and, after the Applicable Date, the Committee, may adopt Design Guidelines. The Declarant and the Committee reserve the right to make any amendments, repeals, or modifications to the Design Guidelines that they deem necessary or appropriate at any time and without advance notice. The Design Guidelines are incorporated into this Declaration by reference.

Section 6.14 Non-Applicability to Declarant. Declarant and its designees shall have no obligation to submit plans to, or receive approval from, the Committee. The Declarant shall have exclusive control of new construction within the Development. No provision of this Declaration, as the same relates to new construction, may be modified without Declarant's consent.

Section 6.15 Non-Applicability to Residences to be Newly Constructed. The Declarant shall always have the sole authority to approve the original Residence and landscaping on any Lot within the Development even after the Declarant no longer serves as or appoints the Committee. The Declarant intends to build all of the Residences within Westlyn. However, that is not a requirement. Thus, the Declarant may choose to sell Lots to one or more Builders who would then build Residences. The architectural control provisions and requirements set forth above in this Article 6 shall not be applicable to any new, originally constructed Residences and related structures, improvements and landscaping to be constructed on unimproved Lots. However, after such original construction, the provisions of this Article 6 shall be applicable.

Section 6.16 Improvements by Declarant. Notwithstanding any provisions contained in this Declaration to the contrary, to the extent that any improvements constructed or modified by the Declarant on the Property do not comply with a restriction or requirement contained in this Declaration, the Committee shall be deemed to have granted Declarant a variance from such restriction or requirement and such improvements shall not be considered to violate any restriction or requirement in this Declaration or any of the other Governing Documents.

## **ARTICLE 7 CONTIGUOUS LOTS**

Section 7.1 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 (including the obligation to pay Assessments to the Association), so long as the Lots remain improved with one single-dwelling house. In addition, the Owner must obtain from the Town all requisite and necessary permits and approvals.

## **ARTICLE 8 USE AND OWNERSHIP OF COMMON AREA; PUBLIC STREETS**

Section 8.1 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 8.2 Use. The Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end of the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Board of Directors of the Association. Any Common Area depicted on the recorded plats of the Development 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.

Section 8.3 Certain Obligation and Access Rights to the Common Area.

- (A) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners and the Development, as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- (B) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 8.4 Public Right-of-Way. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way. All parking and egress shall be regulated by the authorities responsible for public streets. The Association does not have any obligation to regulate such parking.

**ARTICLE 9  
THE ASSOCIATION**

Section 9.1 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 Areas including, but not limited to, any and all lighting, landscaping, amenity areas, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments 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 Common Areas, and (v) the performance of any other obligations and duties of the Association specified or reasonably inferred herein.

Section 9.2 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors shall manage the affairs of the Association. During the Development Period, Directors need not be members of the Association. However, thereafter, all Directors must be Owners and members of the Association.

Section 9.3 Indemnification. Subject to the limitations and requirements of the Indiana Nonprofit Corporations Act and in the By-Laws, the Association shall indemnify, defend and hold harmless every officer, director and committee member against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member.

Section 9.4 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 five (5) 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. It shall also be assumed that the number of Lots in the Property shall be the maximum number allowed by the applicable zoning approval which shall include the current extent of the Property. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier (hereafter "**Applicable Date**"):
  - (i) December 31, 2050; or
  - (ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership.

Section 9.5 Membership. Initially, the person who serves as incorporator of the Association shall be the member (the "Initial Member"). The Initial Member shall remain a

member of the Association until the Association's Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member shall cease to be a member, unless he or she also qualifies as Class A or Class B member. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member, a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 9.6 Professional Management. At all times, the Association shall employ the services of a professional manager or management company to assist the Board of Directors in the management and administration of the Association. 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. However, prior to the Applicable Date, no such contract shall be for a term longer than one (1) year. 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 sixty (60) days or less. Also, no such management agreement or contract shall contain an automatic renewal provision; any such a provision shall be deemed null and void.

Section 9.7 Association Insurance. The Association shall purchase the following coverage:

- (A) Liability Insurance. The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or owners policies insuring the Association against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the fulfillment by the Association of its obligations specified in this Declaration, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against, including, without limitation, claims arising out of the Common Areas. Each policy purchased by the Association shall have limits of not less than Two Million Dollars (\$2,000,000.00) covering all claims for personal injury and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage arising out of a single occurrence. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the fulfillment by the Association of its obligations specified in this Declaration, liability for non-owned and hired automobiles, liability for property of others and liability arising out of the Common Areas. All such policies will name the Association as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, which would preclude the insurer from (i) denying the claims of an Owner because of the negligent acts of either the Association, the Declarant or any other Owners or (ii) denying the claims of either the Declarant or the Association because of the negligent acts of an Owner.
  
- (B) Casualty Insurance. The Association may purchase and pay the costs of a policy or policies of insurance to allow the Association to insure from the fulfillment by the Association of its obligations specified in this Declaration. Such casualty insurance may insure, without limitation, any improvements located within the Common Areas.

- (C) Fidelity Coverage. The Association shall purchase adequate (i) errors and omissions insurance protecting and insuring the Association and its officers and directors against liability for negligence in the fulfillment of their obligations and duties, and (ii) fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible for handling funds of the Association (including, if practicable, the Association’s property manager and property management company), such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board of Directors.
- (i) Such bonds shall name the Association as an obligee;
  - (ii) Such bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual budget of the Association; and,
  - (iii) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.

Section 9.8 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 Westlyn proposed by the Declarant or changes to current phases of Westlyn 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.

Section 9.9 Other Matters Concerning the Association. The Articles of Incorporation as filed with the Indiana Secretary of State and the By-Laws of the Association, both as amended, are incorporated herein by reference.

Section 9.10 Means of Communication. To avoid the costs of paper, postage and handling that would otherwise be incurred when distributing documents or information to Owners by regular mail, and also to be more efficient in transmitting information that Owners can receive even when out of town, the Association will, to the extent possible, make Association matters available online through the Association’s website and/or via email or similar means, including but not limited to:

- (A) Notices of Annual or Special Meetings
- (B) Proxies and Ballots
- (C) Proposed and finalized Annual Budgets
- (D) Nominees for the Board of Directors for an upcoming election
- (E) List of current members of the Board of Directors
- (F) Recorded copy of this Declaration and all amendments thereto
- (G) The By-Laws and Articles of Incorporation and all amendments thereto

- (H) The Design Guidelines
- (I) Architectural Control Request for Change form
- (J) Rules and Regulations adopted by the Board of Directors
- (K) Name of the Association's property management company
- (L) Invoices, statements or coupon booklets for payment of Assessments
- (M) Voting through a secure website or equivalent
- (N) Payment of Assessments through a secure website or equivalent

In lieu of the above, any Owner can choose to receive documents by regular mail by notifying the Association in writing.

Section 9.11. Manner of Voting and Meeting Participation. Voting and meeting participation may be held or performed in any manner set forth in the Act as well as any manner that is not prohibited by the Act, or deemed acceptable by the Courts as a practical way to collect votes and allow Members to participate in Association actions. The Board of Directors shall have discretion to provide for such procedures and to set the terms of use.

Specifically, the Board of Directors shall have the power to authorize voting by the Members through a secure, internet-based online voting system ("electronic voting"). The Board of Directors can adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for Lot Owner notice, voting, signatures, consents and approvals. A verifiable electronic signature satisfies any requirements for signatures on documents. If an Owner either does not have the capability or desire to conduct business electronically, the Association shall make reasonable accommodation, at its expense, for the person to conduct business without the use of electronic or other similar means.

Section 9.12 Right of Action. The Association shall not have the power to institute, pursue, join, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design, construction or repair of a Residence, a Lot or any improvements on a Lot. This Section may not be amended or modified without Declarant's written and acknowledged consent and the consent of Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, both of which must be part of an amendment document filed with the County Recorder.

Section 9.13 Indemnification for Association Operations. THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT AND ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AND DECLARANT'S SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "DECLARANT PARTIES") FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS, IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING) ASSERTED AGAINST ANY OF THE DECLARANT PARTIES OR TO WHICH ANY OF THEM MAY BECOME A PARTY ARISING OUT OF OR RELATED TO THE

MANAGEMENT OR OPERATION OF THE ASSOCIATION, INCLUDING WITHOUT LIMITATION, THE ENFORCMENT OF THE GOVERNING DOCUMENTS, THE COLLECTION OF ASSESSMENTS, AND THE OPERATION, MAINTENANCE AND REPAIR (OR FAILURE TO OPERATE, MAINTAIN OR REPAIR) THE COMMON AREAS.

## **ARTICLE 10 ASSESSMENTS**

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any Builder, 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) Initial Operating/Reserve Fund Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of this 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, the Design Guidelines, the By-Laws, or the Rules and Regulations.

The Assessments above, together with interest, costs, late charges, and reasonable attorneys' fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hendricks County, Indiana. No charge, lien, or assessment shall ever be levied by the Association or individual Lot Owners against the Declarant. The Declarant shall not be liable for paying any Annual Assessments to the Association for any Lots owned by it or its designated successor developer.

The Association and/or Declarant are hereby empowered to cause a lien to be filed with the County Recorder against any Lot for the purposes of (1) recovering any funds due for any of the Assessments set forth in this Article 10, or recovering any funds expended by the Declarant or the Association in maintaining any Lot in a neat and attractive condition as contemplated by this Declaration, and (2) recovering any attorneys' fees and related costs and expenses incurred by either the Declarant or the Association in any proceeding initiated pursuant to the collection of the above funds or any proceeding initiated pursuant to this Declaration.

Section 10.2 Annual Budget. The Board of Directors shall prepare an annual budget for the subsequent fiscal year which shall be the basis for the Annual Assessment, which shall provide for the allocation of expenses in such a manner that the obligations imposed by this Declaration can effectively be met.

Section 10.3 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 or a Builder. The obligation to pay the Annual Assessment shall commence for each Lot on the date it is conveyed to an Owner other than the Declarant or a Builder. The Annual Assessment for the calendar year shall be prorated 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>, and such assessment shall be subject to collection and late charges beginning on January 31<sup>st</sup>.
- (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 or reasonably inferred by this Declaration, including, without limitation, the cost of maintaining and repairing Common Areas, as well as the cost of insurance, Refuse Collection and professional property management.

Section 10.4 Initial Operating/Reserve Fund Assessment. Upon the closing of the initial conveyance of each Lot by Declarant to an Owner or a Builder, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as an advance contribution to the Association's operating fund and/or capital reserve fund, an amount of Seven Hundred Fifty Dollars (\$750.00) against such Lot (the "Initial Operating/Reserve Fund Assessment"), which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed to the Association with respect to such Lot. The Declarant reserves the right to increase this amount at any time without the necessity of recording an amendment to this Declaration.

Additional funding of the capital reserve fund may thereafter be charged as part of the Annual Assessments in an amount determined by the Declarant or Board of Directors.

Section 10.5 Special Assessment. In addition to the annual operating assessment, the Board of Directors or Declarant may levy a special assessment for the purpose of 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 or for operating deficits which the Association may from time to time incur, provided, however, that after the Applicable Date such assessment shall require the approval of a majority of the votes that are cast by members of the Association, including both Class A members and Class B members. The votes shall be cast either in proxy or in person at a meeting duly called for such purpose. Written notices for such meetings shall be sent and voting quorums required as set forth in the By-Laws of the

Association. The Declarant shall not be liable for paying any special assessments under this Section 10.5.

Section 10.6 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) unless prohibited by law, for a violation against this Declaration, the Plats or rules and regulations adopted by the Board of Directors 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, or (iii) for any additional costs incurred by the Association as a result of the Owner's actions or omissions, including but not limited to, insurance or administrative costs or fees. 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 10.7 Basis for Assessment.

- (A) Lots Generally. Each Lot owned by a person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.
- (B) Lots Owned by Declarant or Builder. Declarant and any Builder shall not pay the Annual Assessment and Special Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 10.8 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 10.9 Collection. All Assessments, together with interest thereon, late charges, attorneys' fees, and other costs of collection thereof, 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, late charges 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 10.10 Effect of Nonpayment of Assessments; Remedies of the Association. Except for Developer and its designated successors or any Builder, no Owner may exempt himself or herself from paying Annual or Special Assessments or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Except for Developer and its designated successors or any Builder, each Owner shall be personally liable for the payment of all applicable Assessments. 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 Assessments when due,

the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Assessments within fifteen (15) days after such are due, the Board, in its discretion, may:

- (i) Impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board;
- (ii) Suspend such Owner's right to use the Common Areas within the Development; and
- (iii) Suspend such Owner's right to vote if the Owner is more than six (6) months delinquent.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessments without foreclosing or waiving the lien securing the same. In connection with any effort to collect or in any action to recover an Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Lot, not only the delinquent Assessments, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to a managing agent (if any) for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs, expenses, charges and attorney fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

Section 10.11 Certificates. The Association shall, at any time and for a reasonable fee of up to and including \$250.00, furnish a certificate in writing signed by an officer or managing agent of the Association stating that the Assessments on a specific Lot have been paid or that certain Assessments or other charges against said Lot have not been paid, as the case may be. The fee of \$250.00 may be increased by the Board of Directors up to an amount allowed by law.

Section 10.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien or any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article 10. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to the period of time prior to such sale or

transfer. No sale transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE 11 REMEDIES**

Section 11.1 Delay or Failure to Enforce. No delay or failure on the part of the Declarant, the Association, an Owner or any other aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration or of the rules and regulations of the Association shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration or the rules.

Section 11.2 Enforcement in General; Costs and Attorneys' Fees; Indemnification. Subject to the requirements and provisions of the By-Laws concerning "Grievance Resolution Procedures", the Declarant, Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Plats, and any rules and regulations adopted by the Board of Directors of the Association.

If the Declarant, Association, or any Owner is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of this Declaration, the rules and regulations, the limitations, easements and approvals appended to and made a part of the plats of the Development, it shall be entitled to recover from the party against whom the proceeding was brought all of the reasonable attorneys' fees and related costs and expenses it incurred in such proceeding at all tribunal levels.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, any structure or part thereof erected without proper approval or maintained in violation hereof, is hereby reserved to the Declarant, the Association and to the Owners of the Lots in this Development and to their heirs, successors, and assigns.

Notwithstanding the above, no Owner may claim, collect, or recover attorney fees against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of the Declarant, arising from any failure or alleged failure to comply with any provision of this Declaration, or of the Plat Covenants, or of any action taken or omission of any alleged duty or responsibility of any of the above with regard to the planning, development or operation of Westlyn, or the operation of the Association prior to the Applicable Date.

Further, in the event that an action or omission of any Owner, home builder, or other contractor or agent, or any other person coming onto Westlyn (referred to herein as an "Indemnifying Party"), results in a claim against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of any of the above (collectively referred to herein as the "Indemnified Parties") entities results in any suit or claim against any of the Indemnified Parties, the Indemnifying Party shall indemnify and hold the

Indemnified Parties harmless from any action or omission, whether based on contract, tort, or any other claim, theory or basis of recovery, including attorney fees, costs for expert witnesses and consultants, and other costs of litigation; and whether such Indemnifying Party is wholly or partially at fault.

## **ARTICLE 12 EFFECT ON BECOMING AN OWNER**

Section 12.1 The Owner(s) of any Lot, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

## **ARTICLE 13 TITLES AND INTERPRETATION**

Section 13.1 The titles preceding the various sections and subsections 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.

Section 13.2 Controlling Document. If there is any conflict between the provisions of this Declaration and any Plat of a part of the Development, the terms and provisions of this Declaration shall be controlling. If there is any conflict between the provisions of this Declaration and Articles of Incorporation or By-Laws of the Association, the terms and provisions of this Declaration shall be controlling. Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

## **ARTICLE 14 SEVERABILITY**

Section 14.1 Invalidation of any one 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.

## **ARTICLE 15 DECLARANT'S RIGHTS**

Section 15.1 Transfer of Declarant's Rights. 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 Hendricks County, Indiana.

Section 15.2 Construction and Development Activities. Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or any Builders authorized by Declarant may maintain and carry upon portion of the Common Area, and other portions of the Property owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction, sale or leases of Residences including, but not limited to, business offices, signs, model units, and sales and leasing offices and trailers.

Section 15.3 Withdrawal of Property. Declarant may, at any time and from time to time, reduce or withdraw land from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal, this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to file with the County Recorder a notice of withdrawal of land containing the following provisions:

- (a) A cross-reference to this Declaration, which reference will state the Instrument Number where this Declaration is recorded;
- (b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (c) A legal description of the withdrawn land.

Section 15.4 Development by Declarant. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, or the right to direct the size, shape, and composition of the Property, and the right to create and/or designate Lots, Common Area or to subdivide all or any portion of the Property, subject to any limitations imposed on portions of the Property by any applicable Plat. Without limiting the preceding sentence, Declarant reserves the right, at any time and in

Declarant's sole discretion, to (a) plat any unplatted land within the Property, in whole or in part and in phases, (b) replat any platted land within the Property, in whole or in part, and (c) convert residential lots to Common Areas, (d) convert Common Areas to residential lots, (e) impose or remove easements, and (f) effect any other land use or change in land use which is conducive to the completion of the development of the Property or the sale of land owned by Declarant within the Property. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "Development Rights", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions of the Bylaws. These rights may be exercised with respect to any portions of the Property or the Common Area. As each portion of the Property is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such Property.

Section 15.5 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant, its assignees and licensees, including but not limited to Builders designated in writing by Declarant, will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, billboards, other sales devices and banners for the purpose of aiding the sale and leasing of Lots in the Development; (ii) to maintain improvements upon Lots as sales, model, management, leasing, management, business and construction offices; or (iii) to maintain and locate construction trailers and construction tools and equipment within the Property or the Common Area. The construction, placement or maintenance of improvements and signage by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section until twenty-four (24) months after expiration or termination of the Development Period.

## **ARTICLE 16 TERM AND AMENDMENTS TO THIS DECLARATION**

Section 16.1 The foregoing Declaration is to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of recording with the Hendricks County Recorder, at which time said Declaration shall be automatically extended for successive periods of ten (10) years unless changed by vote of a majority of the then Owners of the Lots in whole or in part. The Declarant may amend this Declaration, from time to time, prior to the Applicable Date, without any vote or approval by the Lot Owners. After the Applicable Date, this Declaration may be amended by the approval of the Owners of at least two-thirds (2/3) of the total number of Lots. However, even after the Applicable Date, if the Development Period has not expired, any amendment must be approved in writing by the Declarant unless prohibited by law. Any and all amendments to this Declaration must be filed with the Hendricks County Recorder.

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 until twenty-one (21) years after the death of the last survivor of the now-living descendants of Charles III, King of England.

## **ARTICLE 17 DEVELOPMENT SYSTEMS; BULK RATE CONTRACTS**

Section 17.1 Development Systems. Either the Declarant may provide, or the Declarant may enter into and assign to the Association contracts with other Persons to provide, or the Association through its Board of Directors may provide or enter into contracts with other Persons to provide: telecommunications receiving and distribution systems (e.g., cable television, video entertainment, data/Internet/Intranet services, telephone, and security monitoring) and related components, including associated wiring, lines, antennae, towers, satellite dishes and other infrastructure, equipment, hardware, and software, to serve the Development, including those based on and containing and serving future technology not now known (collectively, “Development Systems”). Such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Development Systems. The Owner of each Residence shall be responsible for ensuring that such Residence is wired to connect to any Development Systems or to receive any Development service. During the Development Period, each contract entered into pursuant to this section must be approved by Declarant.

Section 17.2 Development Services. Either the Declarant may provide, or the Declarant may enter into and assign to the Association contracts with other Persons to provide, or the Association through its Board of Directors may provide or enter into contracts with other Persons to provide services to Owners and their Residences or Lots. By way of example and not limitation, such services might include such things as cable television, telephone, Internet, community technology, utilities, fire protection, security, trash collection, lawn and/or landscape maintenance, pest control, and caretaker services. Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Residence, may result in termination of the services provided to such Residence. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Residence as a Common Expense. The Association may discontinue offering any particular service and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services. During the Development Period, each contract entered into pursuant to this section must be approved by Declarant.

Section 17.3 Bulk Rate Contracts. Any contract to provide Development services and/or Development Systems may be Bulk Rate Contracts. Prior to and during the Development Period, Declarant may enter into and assign to the Association Bulk Rate Contracts with other Persons to provide Development services and/or Development Systems. In addition, Bulk Rate Contracts may be entered into from time to time with any service providers and on such terms and provisions as the Association’s Board of Directors may determine in its sole and absolute discretion, except that during the Development Period, Declarant must approve all Bulk Rate

Contracts. The Association may include the charges and other expenses of any Bulk Rate Contract as a Common Expense of the Association and/or the Association may, at its option, add the charges payable with respect to any Owner or Lot under a Bulk Rate Contract to the assessments charged against such Owner's Lot. In this regard, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by an Owner of any charges due under a Bulk Rate Contract and after the lapse of at least 12 days since such charges were due, the Association may, upon 5 days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available pursuant to applicable law, terminate, in such manner as the Board deems appropriate, any Development service provided at the cost of the Association and not paid for by such Owner (or the resident of such Owner's Lot) directly to the service provider. Such notice will consist of a separate mailing or hand delivery at least 5 days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No Development service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

Section 17.4 Interruptions in Development Systems and Services. Each Owner acknowledges that interruptions in cable television and other Development Systems and services will occur from time to time. Declarant and the Association shall not be liable for, and shall not be obligated to provide any Person with any compensation, or refund, rebate, or offset any applicable fee, as a result of any interruption in Development Systems and services, regardless of whether or not such interruption is caused by reasons within the Association's or the service or system provider's control.

Section 17.5 Declarant and Association Rights Regarding Development Systems and Services. The Declarant reserves for itself during the Development Period and perpetually for the Association a right and easement over all of the Development to install and operate the Development Systems and to serve any portion of the Development. Such reserved right includes, without limitation, the right to select and contract with companies licensed to provide telecommunications, cable television, and other Development Systems and services, and the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service (as defined from time to time by applicable laws, rules, and regulations of any government authority having jurisdiction). Declarant shall also have the right to receive compensation from any provider of Development Systems or services (including without limitation in connection with a Bulk Rate Contract), which compensation may be in consideration for, among other things, Declarant's or its affiliates' development of Development Systems or other portions of the Development or marketing activities.

Section 17.6 Bulk Rate Contract for Cable Television and Internet Services. Declarant, for the benefit of the Association, has contracted for the provision of cable television and Internet

services to all Residences within the Development pursuant to a Bulk Rate Contract with Spectrum Mid-America, LLC. The initial term of such Bulk Rate Contract is five (5) years, but such contract may be renewed and extended by the Association in accordance with the terms of the Governing Documents. The charges and other expenses of such Bulk Rate Contract will be included as a Common Expense of the Association and, therefore, will be paid by each Owner as part of the assessments paid by Owners hereunder. In connection with the Bulk Rate Contract, Declarant may receive compensation from the service provider for granting marketing rights and/or performing marketing activities and/or development work in the Development. No Owner will be required to use any telecommunications services provided under such Bulk Service Contract; however, if an Owner or resident of a Residence elects to use another service provider, there will be no resulting reduction, credit or offset in assessments and/or charges payable to the Association. Additional information regarding such Bulk Rate Contract and the services provided thereunder may be obtained by contacting the Association's community manager.

## **ARTICLE 18 ADDITIONAL COVENANTS AND RESTRICTIONS**

Section 18.1. Additional Restrictions on Pets and Animals. In addition to the provisions of Section 5.13 above titled "Animals, Livestock and Poultry", exotic animals and farm animals are not permitted. Only commonly domesticated animals are allowed such as dogs, cats, birds, hamsters and other small animals that are customarily kept as pets in single family houses.

Section 18.2. Garage Doors. Garage doors must have a raised, embossed panel.

Section 18.3. Exterior Siding. Vinyl siding and aluminum siding are prohibited. All exterior siding must be comprised of masonry (brick and/or stone), wood, Hardie Plank, or other fiber cementitious type material.

Section 18.4. Wind Turbine Systems. Small wind turbine systems are not allowed unless such prohibition is contrary to state or federal law.

Section 18.5. Center Median Maintenance. The center median which is in the northern terminus of Westlyn Drive shall be maintained by the Association and will not be maintained by the Town of Plainfield.

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This Declaration of Covenants, Conditions and Restrictions for Westlyn was made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Pulte Homes of Indiana, LLC, by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF HAMILTON    )

Before me, a notary public, in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ for Pulte Homes of Indiana, LLC, who acknowledged execution of the within and foregoing for and on behalf of said limited liability company.

Witness my hand and notarial seal this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public - Signature

\_\_\_\_\_  
Printed

My Commission Expires: \_\_\_\_\_

Residence County: \_\_\_\_\_

"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." P. Thomas Murray, Jr., Esq.

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59<sup>th</sup> Street, Suite B, Indianapolis, IN 46216.  
Tele: (317) 536-2565.

Exhibit A

Legal Description

WESTLYN

Part of the Southwest Quarter of Section 33, Township 15 North, Range 1 East and the Northwest and Southwest Quarters of Section 4, Township 14 North, Range 1 East of the Second Principal Meridian, in Hendricks County, Indiana described as follows:

BEGINNING at the southeast corner of the west half of the southwest quarter of said Section 4; thence South 88 degrees 39 minutes 39 seconds West along the south line of said west half 724.35 feet to the southwest corner of the land of Robert & Leanne Craig recorded as Instrument Number 201523513 in the Office of the Recorder of Hendricks County (the following four (4) calls follow along the west and south lines of said land of Robert & Leanne Craig); 1) thence North 01 degree 04 minutes 06 seconds West 312.72 feet; 2) thence South 88 degrees 39 minutes 39 seconds West 309.04 feet; 3) thence North 01 degree 02 minutes 32 seconds West 412.28 feet; 4) thence South 88 degrees 37 minutes 34 seconds West 315.76 feet to the west line of the southwest quarter of said Section 4; thence North 01 degree 01 minute 50 seconds West along said west line 1,939.22 feet to the northwest corner of said southwest quarter; thence North 01 degree 02 minutes 01 second West along the west line of the northwest quarter of said Section 4 a distance 1,334.72 feet to the southwest corner of the north half of said northwest quarter; thence North 01 degree 03 minutes 08 seconds West along the west line of said northwest quarter 1,384.85 feet to the northwest corner of said northwest quarter; thence South 88 degrees 28 minutes 16 seconds West along the south line of the southwest quarter of said Section 33 a distance of 22.69 feet to the southwest corner of said southwest quarter; thence North 00 degrees 33 minutes 31 seconds West along the west line of said southwest quarter 768.62 feet to Line "AL" per Indiana State Highway Commission Plans for F.A. Project No. 15 Sec. B (3) (1940); thence North 65 degrees 48 minutes 29 seconds East along said Line "AL" 474.45 feet to the northwest corner of the land of Kevin & Kara Trivett recorded as Instrument Number 202225722 in said recorder's office (the following four (4) calls follow along the west, south and east lines of said land of Kevin & Kara Trivett); 1) thence South 13 degrees 12 minutes 33 seconds East 466.11 feet; 2) thence South 16 degrees 15 minutes 55 seconds East 511.69 feet; 3) thence North 88 degrees 28 minutes 16 seconds East 85.56 feet; 4) thence North 01 degree 10 minutes 02 seconds West 1,083.67 feet to said line "AL"; thence North 65 degrees 48 minutes 29 seconds East along said Line "AL" 385.41 feet; to the centerline of a creek (the following fifty three (53) calls follow along said centerline); 1) thence South 00 degrees 58 minutes 49 seconds East 228.11 feet; 2) thence South 25 degrees 01 minute 06 seconds East 142.98 feet; 3) thence South 19 degrees 50 minutes 15 seconds East 195.51 feet; 4) thence South 38 degrees 03 minutes 23 seconds East 83.08 feet; 5) thence South 12 degrees 39 minutes 27 seconds West 87.17 feet; 6) thence South 54 degrees 26 minutes 15 seconds East 61.54 feet; 7) thence South 20 degrees 54 minutes 04 seconds East 62.30 feet; 8) thence South 41 degrees 15 minutes 18 seconds West 71.67 feet; 9) thence South 71 degrees 45 minutes 26 seconds East 29.48 feet; 10) thence South 14 degrees 40 minutes 59 seconds East 53.04 feet; 11) thence South 46 degrees 14 minutes 18 seconds West 89.44 feet; 12) thence South 27 degrees 43 minutes 32 seconds East 59.39 feet; 13) thence South 19 degrees 45 minutes 20 seconds East 123.27 feet; 14) thence South 43 degrees 01 minute 46 seconds East 40.18 feet; 15) thence South 82 degrees 12 minutes 53 seconds East 75.77 feet; 16) thence South 14 degrees 33 minutes 19 seconds West

59.75 feet; 17) thence South 66 degrees 20 minutes 50 seconds West 27.07 feet; 18) thence South 06 degrees 11 minutes 48 seconds West 70.42 feet; 19) thence South 73 degrees 22 minutes 11 seconds West 33.98 feet; 20) thence North 40 degrees 18 minutes 07 seconds West 58.02 feet; 21) thence South 40 degrees 57 minutes 52 seconds West 58.62 feet; 22) thence South 18 degrees 23 minutes 02 seconds East 40.84 feet; 23) thence South 84 degrees 19 minutes 00 seconds East 23.86 feet; 24) thence South 29 degrees 30 minutes 57 seconds East 37.75 feet; 25) thence South 37 degrees 58 minutes 29 seconds East 149.02 feet; 26) thence North 69 degrees 46 minutes 10 seconds East 54.09 feet; 27) thence South 23 degrees 09 minutes 13 seconds East 106.42 feet; 28) thence North 67 degrees 59 minutes 41 seconds East 31.36 feet; 29) thence South 04 degrees 57 minutes 50 seconds West 64.19 feet; 30) thence North 82 degrees 31 minutes 20 seconds West 96.14 feet; 31) thence South 19 degrees 55 minutes 36 seconds East 66.50 feet; 32) thence South 27 degrees 59 minutes 15 seconds West 45.22 feet; 33) thence South 30 degrees 43 minutes 44 seconds East 40.86 feet; 34) thence North 70 degrees 42 minutes 15 seconds East 66.12 feet; 35) thence South 26 degrees 58 minutes 14 seconds West 35.06 feet; 36) thence South 02 degrees 02 minutes 50 seconds East 44.64 feet; 37) thence South 52 degrees 50 minutes 03 seconds West 48.59 feet; 38) thence South 43 degrees 33 minutes 47 seconds East 62.85 feet; 39) thence South 21 degrees 06 minutes 36 seconds West 70.14 feet; 40) thence South 40 degrees 11 minutes 25 seconds West 55.27 feet; 41) thence South 84 degrees 46 minutes 47 seconds East 147.57 feet; 42) thence South 17 degrees 54 minutes 44 seconds East 65.58 feet; 43) thence South 40 degrees 54 minutes 00 seconds West 65.96 feet; 44) thence South 47 degrees 00 minutes 28 seconds East 83.86 feet; 45) thence South 82 degrees 52 minutes 38 seconds East 71.58 feet; 46) thence South 25 degrees 47 minutes 15 seconds East 62.37 feet; 47) thence South 23 degrees 20 minutes 02 seconds West 105.72 feet; 48) thence South 55 degrees 27 minutes 59 seconds West 79.97 feet; 49) thence South 26 degrees 12 minutes 41 seconds West 58.70 feet; 50) thence South 18 degrees 21 minutes 44 seconds East 57.62 feet; 51) thence South 77 degrees 42 minutes 05 seconds East 120.47 feet; 52) thence South 32 degrees 39 minutes 08 seconds East 56.58 feet; 53) thence South 10 degrees 12 minutes 31 seconds West 39.68 feet to the north line of the north half of the northwest quarter of said Section 4; thence South 88 degrees 55 minutes 09 seconds West along said north line 3.79 feet to the northeast corner of the land of DKDS Investments, LLC recorded as Instrument Number 201923551 in the Office of the Recorder of Hendricks County (the following four (4) calls follow along the east line of said land of DKDS Investments, LLC); 1) thence South 06 degrees 29 minutes 22 seconds East 1,335.06 feet; 2) thence South 88 degrees 44 minutes 40 seconds West 175.36 feet; 3) thence South 00 degrees 11 minutes 46 seconds East 1,308.96 feet; 4) thence South 05 degrees 25 minutes 33 seconds West 1,362.35 feet to the south line of the southwest quarter of said Section 4; thence South 88 degrees 39 minutes 39 seconds West along said south line 139.91 feet to the POINT OF BEGINNING, containing 217.014 acres, more or less.