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CLARK COUNTY RECORDER
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C1 Date 06/24/2003 Time 10:55:09

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PLUM CREEK SUBDIVISION
TOWN OF CLARKSVILLE, CLARK COUNTY,
INDIANA**

January 2, 2002

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR PLUM CREEK**

STATE OF INDIANA §
 §
TOWN OF CLARKSVILLE §

KNOW BY ALL THESE PRESENT:

This Declaration (herein so called) is executed and hereby made effective as of January 2, 2003 by **FOURSIGHT DEVELOPERS, INC.**

RECITALS:

A. Declarant is the owner of the real property in the Town of Clarksville, Clark County, Indiana described on Exhibit A attached hereto, which Declarant is developing as an addition to the Town of Clarksville, Clark County, Indiana to be known as Plum Creek (the "**Property**").

B. Declarant desires to establish a planned residential community of single family detached homes on the Property and, accordingly, has executed this Declaration to impose the covenants, conditions, restrictions, and easements herein described upon the Property.

C. For the purpose of this document and it's interpretation, singular and plural, male and female, shall be interchangeable.

**ARTICLE 1
ESTABLISHMENT**

Section 1.1 Establishment of Covenants, Conditions and Restrictions. Declarant hereby imposes upon the Property the covenants, conditions, restrictions, liens and easements set forth in this Declaration (the "**Covenants**") for the purposes of establishing a general scheme for development of the Property, enhancing the value of the Lots and Residences (defined below), and establishing restrictions for residential use for the benefit of Declarant and the Owners (defined below). Declarant does not guarantee that all of these purposes will be accomplished through the creation and imposition of the Covenants. The Covenants touch and concern title to the Property, run with the land and shall be binding upon all persons hereafter acquiring any portion of the Property.

Section 1.2 Definitions. The terms set forth below shall have indicated meanings when used in this Declaration; other terms are defined elsewhere herein and shall have the meaning given to them in this Declaration.

"**ARB**" means the architectural review board established pursuant to this Declaration.

Assessments means the Maintenance Assessments and Special Assessments provided for in Article 6.

Association means the Plum Creek Homeowners' Association, Inc., an Indiana corporation, or such other homeowners' association name selected and available at the time of formation and established as provided in this Declaration.

Board means the Board of Directors of the Association.

Builder means any homebuilder constructing the initial Residence upon a Lot in the normal course of conducting its business.

Common Area means those portions of the Property as described in or on the Plat that do not constitute building lots, streets, roads, or rights-of-way. Accordingly, the Common Area means those portions of the Property designated as such, including any parks, open space, shared amenities, entry features, or similar areas. The Common Area also includes: (i) any areas within the Property owned by the Association or any governmental entity, but which are required to be maintained by the Association; (ii) any common landscape, wall, sign, pedestrian access or similar feature reflected on the Plat, designated by the Declarant, or required by the Town or recorded by separate instrument; and (iii) those areas, if any, which are owned by an Owner, but on which are located monuments, signs, fences, landscaping, berms, sidewalks, irrigation systems or other improvements that may be maintained by the Town or the Association. The Common Area shall also include all improvements on or to any portion of any of the areas described in the preceding sentence. Declarant shall at all times have and retain the right, but without obligation whatsoever, to effect redesigns or reconfigurations of the Common Area and to execute any open space declarations applicable to the Common Area which may be permitted in order to reduce property taxes, and to take whatever steps as may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

Declarant means Foursight Developers, Inc. including any affiliate of any Partner thereof and any other person or entity who is designated as a successor Declarant in writing pursuant to the provisions of this Declaration.

Design Guidelines shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to all aspects of construction, placement, location, alteration, maintenance and design of any improvements within the Property, and all amendments, modifications, supplements and interpretations thereof.

HUD means the U.S. Department of Housing and Urban Development.

Lot means any of the individual platted building lots reflected, or to be reflected, on the Plat that are to be used for residential purposes as herein described.

Managing Agent means any Person who has been engaged and designated by the Board to manage the daily affairs and operations of the Association.

“Owner or Lot Owner” means any Person owning fee simple title to any Lot, but excluding any mortgagee or beneficiary under a deed of trust until such time as it acquires legal title to a Lot.

“Person” means any individual, corporation, limited liability company, partnership or other entity of any kind or types whatsoever.

“Phase” means a particular phase developed upon the Property. Declarant may impose, as provided in Section 3.3(d), additional or different restrictions on each Phase. If Declarant annexes additional property into the Property as provided in Section 8.1, it may designate the area annexed as a particular Phase, and may impose, as provided in Section 3.3(d), additional or different restrictions on such area.

“Plat” means (i) initially, the Preliminary Plat, and thereafter the Final Plat, for any Phase of the Property submitted to and approved by the Town, or any other applicable governmental entity; (ii) after recordation thereof, the Final Plat for any Phase of the Property as recorded in the Records of The Town of Clarksville, Clark County, Indiana; and, (iii) any replat of, or amendment to, the foregoing made by Declarant in accordance with this Declaration. The term “Plat” shall also include the final recorded plat of any additional property annexed into the Property pursuant to Section 8.1.

“Residence” means a single family detached residence constructed upon a Lot in conformance with this Declaration.

“Street or Road” means any paved road or right-of-way so established, improved and maintained by the Declarant or Town, including all public streets or roads within and adjoining the Property, that are typically within a fifty (50') foot or sixty (60') foot right-of-way and serves the front of a Lot upon which a Residence is constructed.

“Structure” means any structure (other than a Residence), fence, driveway, landscaping, wall, tennis court, swimming pool, outbuilding, or other improvement of any kind or type.

“Town” means The Town of Clarksville, Clark County, Indiana.

“VA” means the U.S. Department of Veterans Affairs.

“Vehicle” means any vehicle of any kind or type whatsoever, including any automobile, truck, motorcycle, boat, mobile home, motor home, boat trailer, or other kind of trailer.

ARTICLE 2 **USE PROVISIONS**

Section 2.1 Permitted Uses.

(a) **Lots Limited to Residential Use.** Except as otherwise provided in this Declaration, Lots shall be used only for single family, private residential purposes and activities reasonably related thereto. Additional uses for purposes such as home-based businesses may be permitted on individual lots within the Property, provided such uses

have received prior written approval from the Association, the Declarant, or appropriate governmental authorities.

(b) **Common Area Uses.** The Common Area designated on the Plat shall be used only for recreational and other similar purposes as approved by the Declarant or the Association. The Common Area consisting of a creek, containing flood hazard areas, fencing, signs, utilities and/or easements, or other improvements approved by the Declarant or the Association shall be used only for such purposes or similar purposes as approved by the Declarant or the Association. The median located within the right-of-way of Westmont Drive is also designated as Common Area. All improvements and landscaping within the median shall be approved by the Declarant or the Association and shall be maintained by the Association. No alteration, change, or modification to the size, shape, length, width, or alignment of the median shall be allowed without approval by all agencies of the appropriate governmental authority.

(c) **Sales and Construction Offices and Similar Uses.** Declarant may maintain one or more signs, sales offices, or trailers on Lots for the purpose of facilitating sales of Residences on the Property. Declarant or the ARB may also grant the right to maintain construction trailers on the Lots and to use Lots for signage, sales offices, and similar purposes.

Section 2.2 Prohibited Uses and Activities.

(a) **No Further Subdivision.** No Lot may be further subdivided without the written consent of the Declarant or the ARB. Lots may be combined for the purpose of constructing a single residence on more than one Lot only upon written approval of the Declarant or the ARB. Without regard to any such permitted subdivision or combination, the Lots involved shall continue to be treated as single individual Lots hereunder for all other purposes, including voting in the Association and assessing and collecting Assessments.

(b) **Parking and Vehicle Restrictions.** All operative vehicles shall be parked or stored in the garage or in the driveway on each lot. No vehicles of any kind, including boats, trailers, cars, trucks, motorcycles, campers, and the like shall be permitted in any yard on any lot for any period of time. On-Street parking shall be limited to temporary parking of guests or invitees of Owners during parties, delivery of services, and similar limited (no more than twelve (12) hours) time periods. Trucks with tonnage in excess of one ton and Vehicles with signage or advertising displays shall not be permitted to park overnight on the Streets, driveways, or other areas within the Property. No Vehicle that transports inflammatory or explosive cargo may be parked or stored within the Property. No inoperative or unlicensed vehicles may be parked or stored, in a location other than in an enclosed garage. All work and routine maintenance on vehicles shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks and other Vehicles as necessary in connection with construction of Residences or other Structures on Lots.

(c) **Specific Use Restrictions.** The Property is restricted solely to residential and related uses; accordingly, no industrial, business, commercial, professional, manufacturing, mineral or other similar use shall be permitted on any part of the Property. This Section shall not be construed so as to prohibit the conduct of a reasonable amount of in-home work, such as computer work or similar activities, provided that such work or activity does not involve the parking of vehicles of employees, consultants, or other parties other than the occupants of the Residences in question, and does not involve the delivery or pick-up of any materials or services excepting mail delivery.

(d) **Pet and Animal Restrictions.** Only household pets such as cats and dogs shall be permitted on the Property and then only for personal use and not for any business use such as breeding, kennel operations and the like. No other animals shall be permitted to be maintained upon the Property, including cows, horses, bees, hogs, sheep, goats, poultry, or skunks. No more than four (4) domesticated household pets are permitted in any Residence. All pets shall be kept within an Owner's Lot and shall not be permitted to run free through the Property.

(e) **Outdoor Burning Restrictions.** Outdoor burning of trash, leaves, and other items is prohibited, except during the construction of a structure upon an individual lot when clearing of trees and other vegetation is required to facilitate said construction and only with approval from the appropriate governmental authority. This restriction shall not be construed as prohibiting outdoor cooking on barbecue grills in connection with use of a Residence.

(f) **Trash/Garbage Disposal.** Trash, garbage and other waste shall at all times be kept in clean, well maintained, sanitary containers for regular scheduled pickup for removal of such items. Trash, garbage or other waste shall not be dumped on the ground of any Lot or in any Common Area.

(g) **Occupancy.** Each Lot shall be improved with a maximum of one single family detached Residence. No Person shall occupy or reside in any garage or other outbuilding at any time.

(h) **Projections from Structures.** Window air conditioning units and other similar projections are prohibited. Any projection through the roof of any structure on the Property shall require the prior written approval of the Declarant or the ARB.

(h) **Public Water/Sewer Systems.** Each Residence shall be connected to the public water and sanitary sewer system, as constructed by the Declarant and provided by the Town of Clarksville (Sewer) and Town of Sellersburg (Water), and no private water well or septic system is permitted. Private storm sewer/drainage easements may exist on individual lots for the purpose of collecting, carrying, and discharging surface and subsurface drainage. Such easements are to be kept freely running and unobstructed at all times.

(j) **Changes in Grade.** Except for such changes as are reasonably necessary to facilitate construction of a Residence on a Lot, no Owner shall change the grade of any Lot except in compliance with all applicable laws. After Declarant has developed the Lots, the general grading, slope and drainage plan of a Lot may not be altered, and no dams, berms, channels or swales may be constructed or excavated without the prior written approval of Declarant (or the ARB), the Town (if applicable) and other appropriate agencies having authority to grant such approval.

(k) **Visible Activities - Outdoors.** Outdoor drying of clothes is prohibited. Lawn mowers, tractors, trailers, machines, tools, carts, and other yard equipment shall be stored from view from adjoining Lots and Streets when not in use.

(l) **General Restriction - Nuisances.** In general, no condition shall be allowed to exist on a Lot which, by sight or smell (as determined exclusively by the Declarant or ARB), shall constitute a public or private nuisance or unreasonably disturbs any other Owner in the use and enjoyment of its Lot or the Common Area.

(m) **Natural Gas Tanks.** The placement of above-ground natural gas tanks on any lot is prohibited.

ARTICLE 3
CONSTRUCTION PROVISIONS

Section 3.1 Plan Approval Required. No Residence or Structure shall be constructed within the Property until the plans have been approved in writing by the ARB or Declarant as provided in this Article 3.

Section 3.2 Establishment of ARB.

(a) **Initial Appointment.** The ARB shall consist of three (3) members; the initial members of the ARB shall be appointed by the Declarant.

(b) **Term and Subsequent Appointments.** The members of the ARB shall serve until they resign or are removed by the party appointing them to the ARB (which the appointing party may do at any time). Subsequent appointments to the ARB shall be made by the Declarant until such time as the Declarant either relinquishes such power by written notice to the Board, or the Declarant no longer owns any Lot; thereafter appointments to and removals from the ARB shall be made by the Board. The ARB or Declarant may engage the services of a third party to review plans and specifications pursuant to this Article.

(c) **Compensation; Fee for Review.** No member of the ARB shall be entitled to compensation for its services. The ARB may impose a reasonable charge for reviewing plans if a third party is engaged to perform such service.

Section 3.3 Approval Process.

(a) **Submission of Plans.** Any party wishing to construct a Residence or any Structure on the Property shall submit a copy of complete plans and specifications therefor to the ARB for its approval prior to commencing construction. Such plans and specifications shall include surveying and engineering information, landscaping description, site plans, and construction drawings showing the location and front, side, and rear elevations of the proposed Residence or Structure and the exterior materials to be used in constructing the same, all in sufficient detail to enable the ARB to evaluate the proposed Structure or Residence. The cover sheet of the plans and drawings being submitted shall contain a calculation of the total square footage of each building façade, less areas covered by windows and doors, and the total area of such facades containing brick or masonry materials. The ARB may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the ARB shall promptly review the same and notify the Person submitting whether it approves the plans or whether it requires changes thereto. Alternately, the ARB may disapprove a set of plans by so noting thereon and returning it to the Person submitting, accompanied by a statement of the reasons for disapproval. No construction shall be commenced on any portion of the Property unless and until the plans for the Residence or Structure in question have been approved in writing by the ARB or Declarant.

(b) **Time for Review/Approval.** The ARB shall approve or disapprove all plans submitted for construction within fifteen (15) days after the date it receives a complete set of plans and specifications therefor; if the ARB fails to specifically approve or

disapprove of any plans within such fifteen (15) day period, then the ARB shall be deemed to have approved the plans submitted.

(c) **Review Standards.** The ARB, in reviewing and approving plans for construction of Structures or Residences, shall use reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with the standards established by this Declaration and the Design Guidelines.

(d) **Design Guidelines/Building Standards.** The Declarant or the ARB may but is not required to, from time to time, establish specific guidelines and building standards to assist Persons in determining the type of Structures and Residences, which may be constructed on the Property. Pursuant to Section 8.1, Declarant may annex additional Property to become a portion of the Property, and may develop the overall Property in various Phases. Declarant may establish differing restrictions, guidelines and building standards for each such Phase of the Property, which may impose more restrictive or less onerous building standards with respect to a particular Phase. The ARB or Declarant may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall supplement this Declaration and are general guides to permitted construction within the Property, but shall not diminish the authority of the ARB and Declarant to approve plans as otherwise herein provided.

(e) **Failure to Obtain Approval.** The construction, repair, replacement, installation, or placement of any Structure or improvement of any type on a Lot without the prior written approval from the ARB shall constitute grounds for the imposition by the ARB or the Association of a fine against the Owner of said Lot not to exceed Five Hundred and No/100 Dollars (\$500.00). A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the lien created in Article 6. The ARB may impose further demands by requiring removal, modification, or demolition of all or a portion of the structure in question.

(f) **Limitation of Liability.** Neither the Declarant, its officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, the Board, or the ARB, including any of its respective members, shall be liable to any Person for any official act of the ARB in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the ARB, neither the Declarant nor the ARB shall be responsible or liable to any Person with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a Residence or Structure related thereto. Neither the Declarant, the Association, the Board nor the ARB shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the ARB or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a Residence or a Structure complies with the terms and conditions contained in this Declaration or the Design Guidelines. Declarant and members of the ARB shall have no liability for decisions made by them regarding the approval or disapproval of plans.

Section 3.4 Specific Construction Provisions.

(a) **Setbacks.** All Residences and other Structures shall be constructed in conformity with the following minimum building setback distances from the property line on each lot:

- (1) Front yard: 30 feet
- (2) Rear yard: 20 feet
- (3) Side yard: 10% of lot width at building line

(b) **Structure Size and Type.** Each Residence shall have the minimum number of square feet of living area, excluding basements, porches, decks, garages, and similar spaces, as follows:

- (1) Single-story: 1,300 square feet
- (2) Multi-story: 1,600 square feet

Each Residence shall be of new construction on each Lot and no mobile homes or manufactured housing shall be permitted on the Property except on a temporary basis in connection with construction or sales activities. This shall not preclude the use of panelized construction methods for residences on the Property.

(c) **Garage Requirements.** Each Residence shall have at least a two-car attached garage constructed as a part thereof.

(d) **Driveway/Culvert Requirements.** All driveways and culverts shall conform to applicable Town and other governmental specifications and regulations, except as provided herein. Each lot shall have a maximum of one (1) driveway for purposes of ingress/egress, the location of which is subject to approval by the Declarant or the ARB. Each driveway shall be a minimum of twelve (12') feet in width, and a maximum of twenty-four (24') feet in width, at its intersection with the edge of the paved surface of the street providing ingress/egress to each lot. Each driveway providing ingress/egress to each lot shall be constructed of concrete.

(e) **Ancillary Structure Provisions.** All ancillary Structures (as described below) shall conform to the requirements of this Section:

(1) **Antennae/Satellite Dishes.** The erection, construction, placement or installation of any television, radio, or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcasts or for any means of communication upon a Lot or upon any improvement thereon is prohibited except as provided for herein. This prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time. The ARB or the Declarant shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. All television antennas and other antennas and aerials shall be located inside the attic of the residence constructed on the Lot, attached to the exterior of the residence so as to not be visible from the street, or located at ground level on the lot so as to not be visible from the street. Amateur radio towers and antennas (whether for reception or transmission) are specifically prohibited. No exterior television, radio or other antenna of any type shall be placed, allowed or maintained upon any Lot, Residence, or Structure without prior written approval and authorization of the ARB.

(2) **Fences and Walls.** All fences and walls (excluding retaining walls described in (6) below) shall be at least 3.5 feet (42 inches) in height and shall have a maximum height of 6.0 feet (72 inches), and shall be located only in the rear or side yard of a lot. No fence shall be permitted in the front yard of any lot. No fence or wall may be constructed, repaired, rebuilt, or relocated if it impedes or

obstructs drainage. Prior written approval from the ARB is required for any construction, placement or repair of fences or walls on any Lot.

(3) **Outbuildings.** No outbuilding or detached structure from the primary residence upon any lot shall exceed fifteen feet (15'0") in height, and shall be located in an area upon said lot approved by the Declarant or ARB prior to construction. Each lot shall be permitted a maximum of one (1) such outbuilding or detached structure and the square footage of such structure shall not exceed 10% of the total living area contained in the primary residence upon the same lot.

(4) **Trash, Debris, and Trash Containers.** All trash, debris, and trash containers shall be stored and kept inside the garage or outbuilding on any lot and shall only be visible from the street right-of-way on days when trash collection is scheduled to occur.

(5) **Trees, Hedges, and other Vegetation.** Trees, Hedges, and other Vegetation shall be maintained in such a manner so as not to obstruct any easement or street right-of-way or obstruct the visibility of intersections of any streets. The owner of each lot is obligated and responsible for maintaining its lot in such a manner that trees, hedges, bushes, grass, flowers, and other plant material are kept in a clean and orderly appearance on a regular basis.

(6) **Retaining Walls.** Retaining walls other than those constructed by the Declarant require prior written approval by the ARB to ensure conformity with the requirements contained in the Design Guidelines with respect to location, construction, and materials. Except for those built by Declarant or its affiliates, any retaining walls which generally face a street right-of-way or are either between Residences or along or adjacent to the side or rear property lines of Lots shall be constructed of masonry materials unless the ARB has otherwise provided prior written approval.

(7) **Mailboxes.** The mailbox for each lot shall be of a consistent design with all other lots within the Property and approved by the Declarant or ARB, and United States Postal Service regulations,. Each mailbox constructed shall be located six inches (6") from the edge of pavement of the street and three feet (3') from the edge of the driveway located on each lot.

(8) **Swimming Pool/Recreational Facilities.** A swimming pool, basketball court, or other recreational facilities may be constructed upon any Lot with prior approval of the Declarant or ARB as to the location, drainage, and proper screening of such facility.

(9) **Signs.** Except for signs posted and maintained by the Declarant or ARB, no sign may be placed or maintained upon any Lot or in the Common Area other than signs which advertise a Lot or Residence for sale or rent, identify and show support for a political candidate (political signs) or announce and indicate the involvement of a family member or student in athletics or school programs (spirit signs). No sign for any purpose listed above or otherwise shall exceed eight (8) square feet in size. All advertising and spirit signs shall be subject to review by the Declarant or ARB. Each Owner hereby grants permission to the Declarant or ARB (or its duly authorized agents) to enter upon a Lot or any part of the Property and remove any sign, billboard or advertising structure that does not comply with the above requirements and, in doing so, shall not be subject to any liability to any Person whatsoever for trespass, conversion, or any claim for damages in connection with such removal. The ARB's cost to remove any sign shall be added to the Owner's assessment account, be payable upon demand and secured by the lien created in Article 6.

Section 3.5 Construction Materials. All construction materials shall conform to the following provisions:

(a) **Exterior Materials.** All exterior construction materials for any structure or residence shall be subject to approval by the Declarant at its discretion and shall conform to any and all Town ordinances. Detached structures or outbuildings shall be constructed with exterior materials similar in color, character, and texture to those materials used in constructing the primary residence upon the same lot but masonry is not required.

(b) **Roof Materials.** Minimum 20 year warranty shingle or equivalent is required. All roofing materials must be fireproof and conform to Town requirements, and are subject to ARB approval.

Section 3.6 Height Restrictions. All Structures shall conform to the height restrictions of the Town unless otherwise specified herein.

Section 3.7 Roof Restrictions. All roofs shall have at least a 6:12 pitch on the primary residence and on any outbuildings or detached garages unless otherwise approved by the ARB. Roofs of porches are exempt for this pitch requirement.

Section 3.8 Construction Period and Process.

(a) **Obligation to Construct Residence.** Each Lot Owner, other than Declarant, shall commence construction of a single-family residence upon its Lot within two (2) years of purchasing the Lot from the Declarant unless prior agreement is reached with the Declarant prior to purchase. Lots purchased by contiguous property owners outside the plat of Plum Creek, whose purchase serves to extend their backyard and provide a buffer, are exempt from this provision and are prohibited from reselling their lots until the Declarant has sold the last lot in the plat unless the Declarant grants their prior approval in writing.

(b) **Obligation to Reconvey.** In the event any Lot Owner fails to commence construction of a residence within the time specified, the Declarant may elect to repurchase the Lot and the Lot Owner shall agree to sell the Lot to the Declarant for the same price for which the Lot was originally purchased from the Declarant or Builder. All closing costs, legal fees, and surveys associated with the repurchase of a Lot from a Lot Owner by the Declarant shall be the responsibility of the Lot Owner. Declarant shall not be obligated under any circumstance to repurchase any Lot and its failure to do so shall not be deemed a waiver of the Declarant's rights to repurchase any Lot in the future upon which construction has not commenced within the time specified.

(c) **Obligation to Complete.** Construction of any Residence shall be pursued with all due diligence and, in any event, shall be completed within nine (9) months after commencement. Construction of any other Structure shall be completed within the time periods specified in the plan approval process by the Declarant or ARB.

(d) **Obligation to Maintain.** All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and promptly removed from the Property.

(e) **Landscaping.** All lots shall have the front yard sodded and all other parts of the yard seeded and strawed. All Lots shall be appropriately landscaped, including planting of trees, shrubs, and other plants in conformity with the Design Guidelines and other improvements on the Property.

(f) **Right to Waive or Modify Specific Instruction Provisions.** The Declarant or ARB shall have the right, in its discretion, to grant reasonable waivers of the construction provisions set forth in this Declaration, and any such waiver shall not entitle any other person to a similar waiver.

(g) **Erosion Control.** At the commencement of construction the owner and builder share responsibility are IDEM erosion control compliance. Responsibilities include, but are not limited to, installation and maintenance of silt fencing on the area of the lot where drainage will occur, installation of a gravel driveway base for off street parking and material storage, off street parking only in areas covered with gravel, and dirt removal from streets when sub contractors park in the mud.

Section 3.9 Declarant Rights. So long as Declarant owns any Lot, Declarant may exercise any of the rights of the ARB under this Article 3.

ARTICLE 4 MAINTENANCE PROVISIONS

Section 4.1 Owner's Obligation to Maintain. Each Owner shall maintain its Lot and the Residence and other Structures thereon in a clean and orderly condition. Each Owner shall regularly mow grass and maintain the landscaping on its Lot in good condition at all times. Each Owner shall maintain the exterior of all Residences and Structures in good condition and shall make such repairs and replacements as necessary to maintain good order and the aesthetic harmony of the Property.

Section 4.2 Damaged Improvements. If any Residence or Structure is damaged in any way, the Owner shall immediately repair such damage or, in the case of substantial damage when the Owner does not wish to rebuild, raze the damaged Structure or Residence and remove the same and leave the surface of the Lot in good order.

Section 4.3 Declarant/Association Right to Perform. If any Owner fails to maintain the condition of its Lot, the landscaping thereon, including the prompt removal of deceased trees and shrubs, or the Residence or other Structures thereon as contemplated by this Article 4 and fails to take action to correct such defect within ten (10) days after the Declarant or the Association has furnished written notice thereof to such Owner, then the Owner of such Lot hereby grants permission to the Declarant or Association (or its duly authorized agents) to enter upon such Lot and perform those duties which the Owner failed to perform without liability whatsoever to such Owner or any Person for trespass, conversion, or any claim for damages. The cost of performing such duties shall be added to the Owner's assessment account and shall bear interest at the rate of eighteen percent (18%) per annum (but not in excess of the lawful maximum rate), be payable upon demand, and shall be secured by the lien provided for in Article 6.

Section 4.4 Easement Maintenance. Each Owner grants to the Association, the Board, and the Declarant the right to access, repair, and maintain all facilities and improvements within any easement as recorded on any Plat for the Property. By acquisition of a Lot, each Owner hereby grants, creates and conveys unto the Association,

the other adjacent Owners and the Declarant a perpetual Drainage Easement (herein so called) over, through, under and across the Owner's Lot for the purpose of permitting runoff and/or storm water to drain from other adjacent Lots over, through, under and across the Owner's Lot(s). Without limiting the foregoing, in order to facilitate drainage from the Property subject to the Declaration over, through, under and across the Owner's Lot, each Owner hereby agrees that the Declarant or the Association, as the case may be, shall have the right to enter onto the Owner's Lot at any time to (i) prevent possible interference with the Drainage Easement and to remove possible hazards from the Drainage Easement area, (ii) prevent the construction or placement of any building, structure or other obstruction within the Drainage Easement area which may endanger or interfere with the efficient and convenient use of the Drainage Easement, (iii) grade, improve, construct, reconstruct, repair and perpetually maintain swales within the Drainage Easement area, and (iv) or regrade portions of the Drainage Easement area necessary or appropriate to permit drainage as generally described herein or as approved or required by appropriate governmental authorities. Notwithstanding any of the foregoing rights of the Association or the Developer, each Owner hereby agrees to maintain the Drainage Easement area at such Owner's sole cost and expense. If any structures or other obstructions are constructed, created or placed by any Owner within the Drainage Easement area without the prior written consent of the Association and the Declarant, the Declarant or the Association shall have the right to remove such structure or obstruction at the sole cost of such Owner.

ARTICLE 5

OWNER'S ASSOCIATION

Section 5.1 Establishment. The Association has heretofore been or will hereafter be created as an Indiana corporation. Each Owner of a Lot, excluding builders of spec homes, shall be a member in the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a member of the Association. The term of existence of the Association and other matters pertaining to its operation are set forth in its Articles of Incorporation and the By-Laws. The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as a part of a harmonious, high quality, residential subdivision.

Section 5.2 Voting Power. The Association shall have two classes of voting membership as follows:

(a) **Class A.** The Class A Member shall be all Owners other than Declarant and shall be entitled to one vote for each Lot owned. If more than one person owns an interest in a Lot, they shall combine their vote in such way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant who shall be entitled to fifteen (15) votes for each Lot owned by Declarant. Subject to the conditions set forth in the remainder of this paragraph, the Class B membership shall be converted to Class A membership upon the earlier of (i) the total votes outstanding in the Class A membership equaling the total votes outstanding in the Class B membership, (ii) December 31, 2015, or (iii) the recording in the Records of The Town of Clarksville, Clark County, Indiana of a notice signed by Declarant terminating the Class B membership. In determining the number of Lots owned by Declarant for the purpose of Class B

membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto in accordance with Section 8.1 herein, shall be considered. In the event the Class B membership has previously lapsed as provided in (i) above, but annexation of additional property restores the ratio of Lots owned by Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.

(c) **Board of Directors Election.** The Board shall be elected as provided in the articles and bylaws of the Association. The Board shall act by majority vote as provided in the bylaws.

(d) **Specific Powers of Board.** The Board shall have the following specific powers on behalf of the Association:

- (1) to enforce the provisions of this Declaration;
- (2) to enter into contracts;
- (3) to retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;
- (4) to take such action as necessary to maintain the Common Area in good order and condition;
- (5) to acquire property, services and materials to carry out its duties;
- (6) to purchase insurance covering potential liability for use of the Common Area and for other risks;
- (7) to borrow money for Association purposes;
- (8) to initiate and defend litigation, arbitration and other similar proceedings;
- (9) to promulgate reasonable rules and regulations for access to and use of Common Areas as well as a policy establishing a schedule and procedures by which the Board may assess fines against Owners for violations of the Covenants or the Design Guidelines;
- (10) to establish and collect reasonable fees for the use of any recreational facilities on the Common Area; and
- (11) to establish and collect a reasonable fee for copying and furnishing copies of the Association's governing documents. This function and the authority to collect and receive such fees may be delegated or assigned by the Board to the Association's Managing Agent.

Section 5.3 Officers. The Association will have such officers as are set forth in the bylaws.

Section 5.4 Dissolution. So long as Declarant owns record title to any Lot, the Association shall not be dissolved. Once Declarant is divested of all ownership interest in the Property, the Association may be dissolved upon the written consent of Owners owning at least seventy-five percent (75%) of the Lots. Upon such dissolution, the assets of the Association shall be donated to a nonprofit organization and/or lot owner within the Property as selected by a majority of the Board.

ARTICLE 6 **ASSESSMENTS**

Section 6.1 Power to Establish Assessments. The Association is empowered to establish and collect Assessments as provided in this Article 6 for the purpose of obtaining funds to maintain the Common Area, perform its other duties, and otherwise preserve and further the operation of the Property as a first quality residential subdivision. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for the ARB, the Board and the Association; and satisfying any indemnity obligation under the articles or bylaws. The Board may reject partial payments and demand payment in full of all amounts due and owing the Association. The Board is specifically authorized to establish a policy governing how payments are to be applied.

Section 6.2 Commencement of Assessments.

(a) **Owner other than Declarant.** Upon acquisition of record title to a Lot by the first Owner other than Declarant or a Builder, and unless otherwise provided by separate agreement by and between Declarant and said party, the Assessments shall commence as to each Lot upon its conveyance by Declarant and/or Builder to the first Owner of each Lot.

(b) **Declarant.** Declarant and builders shall not be liable for Assessments for any Lots that it owns. Declarant may, but shall have no obligation to, subsidize the Association from time to time. In the event Declarant decides to subsidize the Association and any shortfall in the operating budget of the Association is due in part to the failure of the Association to collect delinquent Assessments, then the Association shall immediately and vigorously pursue collection of such delinquent Assessments through foreclosure, if necessary, and shall reimburse the Declarant the amounts, if any, so collected.

Section 6.3 Regular Annual Maintenance Assessments.

(a) **Annual Budget.** For each calendar year or a part thereof during the term of this Declaration, the Board shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year in performing its duties. Based upon such budget, the Association shall then assess each Lot an annual fee (the "**Maintenance Assessment**") which shall be paid by each lot owner. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 15 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within thirty (30) days of the date due shall be delinquent and shall thereafter bear interest as provided in Section 6.5(f). As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated.

(b) **Limits on Maintenance Assessments.** The initial Maintenance Assessment for each Lot shall be Fifty Dollars and 00/100 Cents (\$50.00) annually. Thereafter the Board may increase the Maintenance Assessment annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not be increased in any year by an amount in excess of twenty percent (20%) above the previous year's Maintenance Assessment, unless such increase is approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, where a quorum exists.

(c) **Uniform Assessments.** Maintenance Assessments for all Lots shall be uniform.

Section 6.4 Special Assessments. The Association may impose special assessments ("**Special Assessments**") to make capital improvements to the Common Area, to satisfy its indemnity obligations under the articles or bylaws, or for other similar purposes. Any Special Assessment proposed by the Association must be approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, at which a quorum exists. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Assessment, and the time and method of payment thereof. The time for paying any Special Assessment (which may be in installments) shall be as specified in the approved proposal therefor.

Section 6.5 Liability for and Enforcement of Assessments.

(a) **Personal Liability.** Each Owner shall be personally liable for all Assessments imposed during the time it owns a Lot.

(b) **Reservation, Subordination, and Enforcement of Assessment Lien.** Declarant hereby reserves for the benefit of itself and the Association, a lien (the "**Assessment Lien**") against each Lot to secure payment of (1) the Assessments imposed hereunder and (2) payment of any amounts expended by Declarant or the Association in performing a defaulting Owner's obligations as provided for in Section 4.3. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the Assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate to the liens of any valid first lien mortgage or deed of trust encumbering a particular Lot. No sale or transfer shall relieve such Lot from Liability and the Assessment Lien for any Assessments thereafter becoming due.

(c) **Notices of Delinquency or Payment.** The Association, the Association's attorney, the Association's agent or Declarant may file notice of any delinquency in payment of any Assessment in the Records of The Town of Clarksville, Clark County, Indiana. Upon the timely curing of any default for which a notice was recorded by the Association, the Association through its attorney is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Board through its agents may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(d) **Suit to Recover.** The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

(e) **Late Charges and Collection Fees.** If any Assessment or any part thereof remains unpaid after thirty (30) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner

for each month or any part thereof, that any portion of any Assessment remains unpaid. Should any Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Twenty-five and No/100 Dollars (\$25.00) per month. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. A service charge in the amount of Twenty and No/100 Dollars (\$20.00) shall be charged for each check that is returned because of insufficient funds or any other reason. The amount of late charges and service charges may be adjusted, from time to time, by the Board consistent with any changes in the administrative costs to collect unpaid Assessments or the Association's bank charges. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's Assessment account which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments.

(f) **Interest on Past Due Amounts.** All Assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner which are not paid when due shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law.

(g) **Suspension of Right to Use Common Area.** In addition to the other powers herein granted, the Board may suspend the right of Owner to use any of the Common Area during the time that such Owner is delinquent in paying any Assessment.

(h) **Suspension of Voting Rights.** No Owner who is delinquent in paying its Assessments shall have the right to vote as a member of the Association while such delinquency continues; an Owner may cure a delinquency at a meeting to regain the right to vote by paying all outstanding amounts (including interest, fines, and penalties) by cashier's or certified check or other good funds acceptable to the Board.

(i) **Working Capital Contributions.** Upon acquisition of title to a Lot by the first Owner other than Declarant or a Builder, a contribution shall be made by or on behalf of such first Owner to the working capital of the Association in an amount equal to Twenty-five Dollars and 00/100 Cents (\$25.00). This amount is not refundable, shall be in addition to, not in lieu of, the Maintenance Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into escrow and disbursed therefrom to the Association or to the Declarant if the Association is not yet established and shall be used for covering operating and other expenses incurred by the Association pursuant to the terms of this Declaration and the bylaws of the Association.

ARTICLE 7 COMMON AREA

Section 7.1 Right to Use Common Areas. Each Owner, the members of that Owner's immediate family, and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the Common Area for its intended purposes as herein provided. The Declarant and the Association shall have the right to enter on and use the Common Areas at all times to exercise their rights or (in the case of the Association) perform its duties hereunder.

Section 7.2 Specific Facilities. Specific facilities, if any, to be located in the Common Area shall be determined by Declarant. The Declarant and the Board may promulgate reasonable rules and regulations for use of these facilities.

Section 7.3 Maintenance of Common Areas. The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Areas, utilizing the Assessments for such purposes as herein provided. Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area.

Section 7.4 Risk of Loss - Use of Common Areas. Each Owner shall be individually responsible and assume all risk of loss associated with its use of the Common Area and use by its family members and guests. Neither the Association nor Declarant shall have any liability to any Owner or their family members or guests, or to any other Person, arising out of or in connection with the use, in any manner whatsoever, of the Common Area or any improvements comprising a part thereof from time to time.

Section 7.5 Conveyance of Common Area to Association. Declarant shall convey the Common Area to the Association, free and clear of any liens, claims or encumbrances at such time it is deemed appropriate by Declarant, but not before 25% of all lots in the Property have been sold nor later than 100% of all lots being sold.

ARTICLE 8

SPECIFIC DECLARANT RIGHTS

Section 8.1 Rights to Annex. Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of these Covenants, provided that so long as the Class B membership provided for in Section 5.2(b) exists, any such annexation by Declarant may require the prior approval of HUD or VA. Declarant may exercise such right by recording a supplement to this Declaration in the Records of The Town of Clarksville, Clark County, Indiana subjecting such additional property to the terms and conditions hereof. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to the Covenants. Any document subjecting additional property to the Declaration may also impose additional restrictions not found in this Declaration upon such additional property. Upon the annexation and platting of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder.

Section 8.2 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of Declarant or any member to annex any property to this Declaration and no owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

Section 8.3 Effect of Annexation on Class B Membership. In determining the number of lots owned by Declarant for the purpose of Class B membership status

according to Section 5.2 hereof, the total number of Lots covered by this Declaration, including all Lots annexed thereto, shall be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by Declarant to the number required by Class B membership, such Class B membership shall be reinstated until it expires pursuant to the terms of Section 5.2.

Section 8.4 Specific Declarant Rights to Amend Declaration. Declarant, without joinder of the Board, the Association, or the other Owners may amend this Declaration to correct any errors or to cause the Declaration to be in compliance with any City or other governmental requirement (including any requirements imposed by the Federal Housing Administration, the Veterans Administration, the Department of Housing and Urban Affairs, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association).

Section 8.5 Easement/Access Right. Declarant reserves a general easement over all streets, roads, rights-of-way, and utility, maintenance, landscaping, and other easements in the Property and over the balance of the Common Area for access for the purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to effectuate Declarant's rights hereunder. Such easements and rights shall expire at such time that Declarant no longer owns a Lot.

Section 8.6 Assignment of Declarant Rights. Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in Records of The Town of Clarksville, Clark County, Indiana specifically stating that Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.

Section 8.7 Replatting or Modification of Plat. From time to time, Declarant reserves the right to replat the Property or to amend or modify the Plat in order to assure a harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights so long as it owns any Lot and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting to Declarant's execution of any replat on such Owner's behalf. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights under this Section 8.8 shall expire at such time Declarant no longer owns a Lot.

Section 8.8 Limitation of Declarant Liability. The Declarant shall not be responsible or liable for any deficit in the Association's funds. Declarant may, but is under no obligation to, subsidize any liabilities incurred by the Association and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

Section 8.9 Termination of Declarant's Responsibilities. In consideration of Declarant's deficit funding of the Association, if any, upon the occurrence of any of the following events: (i) conversion of Declarant's Class B membership status to Class A membership status; (ii) completion of any facilities in the Common Area by Declarant; or (iii) assignment of Declarant's rights hereunder pursuant to Section 8.6, then and in such event Declarant shall be fully released, relieved and forever discharged from any further

duty or obligation to the Association or any of its members as Declarant by reason of the terms and conditions of this Declaration including any amendments thereof or supplements thereto, save and except the duties and obligations, if any, of Declarant as a Class A member by reason of Declarant's continued ownership of one or more Lots, but not otherwise. Further, and without regard to whether or not Declarant has been released from obligations and duties to the Association, so long as Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association from further breach of this Section.

ARTICLE 9

MISCELLANEOUS PROVISIONS

Section 9.1 Term and Renewal. These Covenants shall commence on the date hereof and shall continue in effect for a period of thirty (30) years. Thereafter these Covenants shall automatically renew for subsequent periods of ten (10) years each unless the Owners of at least seventy-five percent (75%) of the Lots elect to terminate these Covenants by written instrument recorded in the Records of The Town of Clarksville, Clark County, Indiana.

Section 9.2 Enforcement. The terms, provisions and conditions of this Declaration and the Design Guidelines shall be enforceable by Declarant, the ARB, the Association, and each Owner. The Board shall have the power and authority to impose reasonable fines (which shall not exceed \$500.00 for each separate violation) for violation of this Declaration, the Design Guidelines or any rule or regulation of the Association, which shall constitute a lien upon the Lot of the violating Owner as provided in the Declaration, and to suspend the Owner's right to vote or any Person's right to use of the Common Area. Each day the violation continues to exist shall constitute a separate violation. If any occupant, guest, or invitee of a Lot violates the Declaration, the Design Guidelines or a rule or regulation of the Association and a fine is imposed, the fine shall first be assessed against such occupant, guest, or invitee; provided, however, if such occupant, guest, or invitee does not pay the fine within thirty (30) days after written demand for payment from the Association, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, the Design Guidelines or any rule or regulation of the Association shall not operate as a waiver of the right of the Board to do so thereafter.

Section 9.3 General Easement for Encroachments, Access, Maintenance and Utilities. Each Owner grants to the Association, the Board, the Declarant and the other Owners a general easement for the maintenance of any minor encroachments of Common Area facilities over adjoining Lots and for access to and from each Owner's Lot through driveways, rights of way and easements as reflected on the Plat for the purpose of giving effect to the provisions of these Covenants.

Section 9.4 Amendment of Declaration. These Covenants may be amended by Declarant as provided in Section 8.4. In addition, the Declaration may be amended at any time and in any respect with the approval of Owners owning at least seventy percent (70%) of the Lots; provided, however, that no such amendment shall be effective unless joined in by Declarant until such time as Declarant no longer owns a Lot. In addition, so long as the Class B membership provided for in Section 5.2(b) exists, any amendment of these Covenants may, at Declarant's discretion, require the prior approval of HUD or VA.

Section 9.5 Town Provisions. All construction within the Property shall also comply with all applicable Town ordinances and regulations. If any ordinance or regulation imposed by the Town imposes more demanding, extensive or restrictive requirements than those set forth in this Declaration, such requirements shall govern. No ordinance or regulations adopted by the Town shall lessen the requirements set forth in these Covenants.

Section 9.6 HUD/VA Approval. Should any approval from HUD or VA be required under the terms of this Declaration, Declarant shall forward such request for approval to HUD and/or VA. If neither HUD nor VA notify Declarant of any objection to the request for approval within twenty (20) days of the date such request for approval was forwarded to HUD or VA, then such approval shall be deemed to have been granted.

Section 9.7 Notices. Any notice required to be given to any Owner under the terms of this Declaration shall be deemed to have been properly delivered when deposited with the United States Postal Service, postage prepaid, properly addressed to the addressee. Each Lot Owner's address for purpose of notice hereunder shall be deemed to be the Residence located on its Lot.

Section 9.8 Indemnification. Neither the Declarant, including any of its officers, directors, employees or agents, nor any officer, director or agent of the Association, nor any member of the ARB shall be liable to any Person, Owner or any person claiming by or through any Owner or otherwise for any act or omission in the performance of the duties of such Declarant or officer, director or agent of the Association, or member of the ARB except only if such act or omission should be judicially declared to constitute fraud or intentional willful misconduct. The Association shall and does hereby agree to indemnify the Declarant, including any of its officers, directors, agents or employees, the officers, directors and agents of the Association, and the members of the ARB against all claims, demands, actions and proceedings and all expenses in connection therewith arising from the good faith exercise of their duties pursuant to this Declaration.

Section 9.9 Severability. If any of the terms hereof shall be invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of these Covenants, which shall be in full force and effect.

Section 9.10 Acceptance by Owners of Rights and Obligations. By the recording of a deed or other conveyance transferring all or part of an interest in a Lot subject to this Declaration, the person or entity to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all the provisions of the Declaration, the Design Guidelines, the articles and bylaws of the Association, including any rules or regulations adopted or promulgated by the Association, whether or not mention thereof is made in said deed.

Section 9.11 Arbitration of Disputes Involving Declarant.

(a) ANY AND ALL DISPUTES ARISING HEREUNDER BETWEEN AN OWNER AND DECLARANT, SHALL BE SUBMITTED TO BINDING ARBITRATION AND NOT TO A COURT FOR DETERMINATION. ARBITRATION SHALL COMMENCE AFTER WRITTEN NOTICE IS GIVEN FROM EITHER PARTY TO THE OTHER, SUCH ARBITRATION SHALL BE ACCOMPLISHED EXPEDITIOUSLY IN CLARK COUNTY AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATION SHALL BE CONDUCTED BY THREE (3) ARBITRATORS, ONE OF WHOM SHALL BE APPOINTED BY THE OWNER AND ONE OF WHOM SHALL BE APPOINTED BY DECLARANT. THE THIRD ARBITRATOR SHALL BE APPOINTED BY THE FIRST TWO ARBITRATORS. THE ARBITRATORS SHALL BE SELECTED FROM A LIST OF ARBITRATORS SUBMITTED BY THE AAA. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION SHALL NOT COMMENCE UNTIL THE PARTY REQUESTING IT HAS DEPOSITED ONE THOUSAND FIVE HUNDRED AND NO/100 U. S. DOLLARS (\$1,500.00) WITH THE ARBITRATORS AS A RETAINER FOR THE ARBITRATORS' FEES AND COSTS. THE PARTY REQUESTING ARBITRATION SHALL ADVANCE SUCH SUMS AS ARE REQUIRED FROM TIME TO TIME BY THE ARBITRATORS TO PAY THE ARBITRATORS' FEES AND COSTS, UNTIL THE PREVAILING PARTY IS DETERMINED OR THE PARTIES HAVE AGREED IN WRITING TO AN ALTERNATIVE ALLOCATION OF FEES AND COSTS. EACH PARTY SHALL PAY HIS/HER OWN LEGAL FEES AND COSTS AND ANY OTHER FEES INCURRED IN CONNECTION WITH AN ARBITRATION PROCEEDING WHICH ARISES OUT OF OR RELATES IN ANY WAY TO THIS AGREEMENT PROVIDED, HOWEVER, THAT THE ARBITRATION PANEL SHALL AWARD THE ARBITRATORS' FEES AND COSTS TO THE PREVAILING PARTY IN ITS ARBITRATION JUDGMENT.

(b) **Other Dispute Resolutions.** Notwithstanding Declarant's and Owner's intent to submit any controversy or claim arising out of or relating to this Declaration to arbitration, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this Section, then the parties agree to the following provisions:

(c) **Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OR ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

Executed by Declarant as of the date set forth above.

FOURSIGHT DEVELOPERS, INC.,
An Indiana Corporation

By: DJ Hines
DJ Hines
President

STATE OF INDIANA §
COUNTY OF FLOYD §

BEFORE ME, the undersigned authority, on this day personally appeared DJ Hines, President of Foursight Developers, Inc., an Indiana Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of Foursight Developers, Inc., an Indiana Corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of February, 2003
2002.

Shaun M. Berry
Notary Public, State of Indiana

My Commission Expires: March 28, 2007