

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE ANDERSON ORCHARD HOMESITES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ANDERSON ORCHARD HOMESITES ("DECLARATION"), made this \_\_\_\_\_ day of \_\_\_\_\_, 1990, by Paul C. Anderson (hereinafter referred to as "Declarant"),

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real estate located in Morgan County, Indiana, and more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, Declarant intends to sell tracts of the Real Estate for residential purposes; and

WHEREAS, Declarant desires that the tracts be subject to certain covenants, conditions and restrictions ("Covenants") in order to insure that the development and use of the various tracts on the Real Estate are harmonious and do not adversely effect the value of the other tracts on the Real Estate;

NOW, THEREFORE, Declarant hereby declares that the Real Estate, as it is now held, and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved is subject to the covenants, conditions and restrictions herein.

All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon parties having or acquiring

any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to benefit of the Declarant and every one of Declarant's successors to the Real Estate or any part or parts thereof.

#### ARTICLE I

##### General Purpose of this Declaration

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other improvements at appropriate locations on the Real Estate to prevent hap-hazard development thereof which may be inharmonious with other improvements on the Real Estate; to preserve and maintain proper set-backs from streets, roadways and adequate free space between structures; and to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate to the benefit of all owners of any portion, parcel, tract or homesite within the Real Estate ("Owners").

#### ARTICLE II

##### General Restrictions

Section 1. Maintenance of the Premises. Owners shall maintain their tracts and improvements situated thereon in a manner so as to prevent the tract or improvements from becoming unsightly. No part of any tract may be used as a dump for garbage or refuse.

Section 2. Residential Purpose. No tract shall be used except for residential purposes. No buildings shall be erected, altered, placed or permitted on any tract other than a dwelling of at least One Thousand Four Hundred (1,400) square feet of living space if single story (exclusive of garages, patios and decks) and not less than One Thousand (1,000) square feet of living area on the ground level (exclusive of garages, patios and decks) if the dwelling is two (2) stories in height.

Section 3. Construction. The exterior of all residences must be constructed of either brick, stone, or brick and/or stone used in conjunction with exterior paneling so long as the paneling does not exceed \_\_\_\_\_% of the first story. Residences constructed of logs may be authorized if approved by the majority if the existing Owners. All structures must be completed within one (1) year from the time construction is started and may not be inhabited before completed.

Section 4. Setbacks. No buildings shall be located nearer than seventy-five (75) feet from the front and back tract boundaries and fifty (50) feet from the side boundaries.

Section 5. Inoperative Vehicles. Owners shall not allow any unlicensed or inoperative vehicle to be permitted upon any tract for a period of more than sixty (60) days, unless kept in a garage or otherwise out-of-sight of other Owners.

Section 6. Nuisances. No noxious, obnoxious, or offensive activity shall be carried on upon any tract, nor shall anything be

done thereon which constitutes an unreasonable annoyance or nuisance to the other Owners as may be determined by a majority of the Owners.

Section 7. Drainage Ditches. No drainage swales, ditches, ravines, water courses, creeks, ponds, or the like shall be altered, dug out, filled in, tiled or otherwise changed without Owner presenting certification from a professional engineer that such action shall not negatively effect any surrounding property Owner. All swales, ditches, ravines, creeks, ponds and the like shall be maintained by the Owner to provide for natural drainage upon the Real Estate to occur. All existing field tiles and underground drains which exist upon the Real Estate shall be perpetuated.

Section 8. Mining Operations. No oil drilling, oil development operation, oil refining, pouring or mining operations of any kind shall be permitted upon any tract nor shall any oil wells, tanks, tunnels, mineral, excavations or shafts be permitted upon any tract. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted.

Section 9. Animals. There should be no pigs, hogs, livestock or poultry allowed upon any tract. There should be no feed lots of any kind allowed upon any tracts. Dogs, cats and other household pets and horses may be kept but shall not be allowed to

roam in wild bands or breed, kept, kenneled or maintained for commercial use.

Section 10. Driveways. All driveways must be paved with \_\_\_\_\_ grade gravel, asphalt or concrete.

Section 11. Fences. All fences shall be kept well maintained for function and appearance purposes. Barbed wire fences are prohibited.

Section 12. Hunting. No hunting is allowed on any tract within the Real Estate.

### ARTICLE III

#### Easement

Section 1. Creation of Easement. There is hereby established an easement to serve and benefit Declarant's adjoining property to the south of the Real Estate for the purpose of establishing, improving and maintaining a roadway to provide ingress and egress and for utility services to Declarant, his successors and assigns, and additionally to serve and benefit the Real Estate for the purpose of providing utility services only. Said easement to exist as shown and legally described on Exhibit "B" (the "Easement"), and said benefitted adjoining property being legally described on Exhibit "C".

Section 2. Dedication of Easement. It is hereby agreed and understood by the Owners that the Easement may be dedicated to the County as public right-of-way by the Declarant without their

*To Serve Applicant (Adj to South)  
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consent and that they shall agree to and not object to such dedication.

#### ARTICLE IV

##### Miscellaneous

Section 1. Release of Declarant. Owners understand, acknowledge and recognize that the Declarant owns real property adjacent to the Real Estate on which orchards are maintained and that it is necessary for the Declarant to periodically treat and spray the orchards with chemicals and substances which may prove undesirable to the Real Estate or its occupants. It is with this full understanding, acknowledgement and recognition that all Owners hereby agree to take title to any tract within the Real Estate subject to any potential ramifications of said spraying and treatment so long as Declarant's actions are not in violation of any applicable State or Federal statutes, rules or regulations governing such activities, and further hereby release Declarant of any liability, and agree to waive all claims of any nature against the Declarant, which they may possess arising from the Declarant or his agents, successors, and/or assigns spraying or otherwise treating the orchards on Declarant's adjoining real property, described in Exhibit "C".

Section 2. Non-Reversion. Provisions contained herein shall run with the land; however, violations shall not result in forfeiture or reversion of title of any part of the Real Estate.

Section 3. Merger. Declarant intends that the Real Estate be subject to this Declaration and that the Covenants contained herein shall not be merged into the title of Declarant even though Declarant is also the fee simple owner of the Real Estate at the time this Declaration is executed and recorded.

Section 4. Term. The Covenants shall be effective and run with the land for a period of twenty-five (25) years from the date hereof and be automatically extended for each successive ten (10) year period thereafter subject to any amendments made in accordance with this Declaration.

Section 5. Amendments. This Declaration may be amended by the Declarant, in the Declarant's sole discretion so long as Declarant owns more than five (5) acres of the Real Estate, provided such amendments do not have a materially adverse affect upon the rights of any other Owner. These Covenants may be amended with the written consent of the Owners of \_\_\_\_\_ % of the acreage of the Real Estate.

Section 6. Scope of Covenants. Declarant and each Owner of within the Real Estate, by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to have agreed to each and every one of the various terms, covenants, conditions and restrictions contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each owner of each tract. Declarant and each Owner shall be entitled to enforce this Declaration against any other Owner to the full extent

permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to comply with the terms, covenants, conditions and restrictions contained in this Declaration only so long as each such Owner shall have an interest in any part of the Real Estate; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for failure to comply with this declaration which occurred while said Owner had such interest.

Section 8. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association or any Owner to enforce any term, covenant, condition or restriction herein contained, shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other such term, covenant, condition or restriction.

Section 9. Effective Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not effect the validity of the remaining provisions thereof.

Section 10. Deed Clause. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee simple interest in any lot or any portion thereof unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and



agrees to be bound by the Declaration of Covenants, Conditions and Restrictions of the Anderson Orchard Homesites, which is recorded in the office of the Recorder of Morgan County, Indiana",

and properly identifying the instrument number therein. However, the failure to include this clause shall not have any affect on the Declaration or the enforceability thereof against any Owner of any interest in any portion of the real estate.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on the date first written above.

"DECLARANT"

Paul C. Anderson

*Paul C. Anderson*

STATE OF INDIANA            )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990, before me, a Notary Public, personally appeared Paul C. Anderson personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that he executed the same.

Notary Public, \_\_\_\_\_  
Resident of \_\_\_\_\_ County, IN

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

This instrument was prepared by: William M. Waltz, VAN VALER & WILLIAMS, 300 South Madison Avenue, Suite #400, P.O. Box 405, Greenwood, Indiana 46142.