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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

NATURES GATE

THIS DECLARATION made this 9th day of September, 2002, By NATURES GATE, LLC, an Indiana Limited Liability Company, which entity named in this paragraph is hereinafter referred to as the "Declarant".

W I T N E S S E T H :

WHEREAS, the following facts are true:

A. The Declarant Natures Gate, LLC, an Indiana Limited Liability Company, is the owner in fee simple title of the real estate located in St. Joseph County, Indiana, more particularly described as follows, to-wit:

Lots Numbered One (1) through One Hundred Sixty-nine (169) inclusive as shown on the recorded Plat of Nature's Gate dated August 19, 2002 and recorded August 19, 2002 as Document Number 0244208 in the Office of the Recorder of St. Joseph County, Indiana,

which property above described is herein referred to as the "Property".

B. Declarant by execution of this Declaration declares that all Homesites and lots shall be conveyed subject to the terms and conditions of this Declaration including, but not limited to, the covenants, agreements, easements, restrictions, limitations and charges hereinafter set forth and they shall be considered a part of the conveyance of any Homesite or lot which are a part of the Property without being written therein, which shall run with the land and be binding upon all parties having any right, title or interest in the Property or any part thereof, their respective personal representatives, heirs, successors, grantees and assigns and shall inure to the benefit of and be enforceable by each Owner of any Homesite or lots included in the Property.

NOW, THEREFORE, Declarant hereby makes this Declaration imposing the terms and conditions of this Declaration upon the Property as follows:

1. **Definitions.** The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Articles of Incorporation" means the Articles of Incorporation of the Association. The Articles of Incorporation are incorporated herein by reference.

(b) "Assessments" means all sums lawfully assessed against the Members of the Association or as declared by this Declaration, the Articles or the By-Laws.

(c) "Association" means Natures Gate Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation whose Members shall be Owners of Homesites.

(d) "Board of Directors" means the governing body of the Association elected by the Members in accordance with the By-Laws of the Association.

(e) "By-Laws" shall mean the By-Laws of the Association, as amended from time to time, and shall provide for the election of directors and officers and other governing officials of the Association. The By-Laws are incorporated herein by reference.

(f) "Common Area" means that portion of the property designated as a common area.

(g) "Common Expense" includes, but is not limited to, expenses for administration of the Association, for the upkeep, maintenance, repair, taxes, insurance and other expenses of the Common Area and all other expenses of the Association.

(h) "Declarant" shall mean and refer to Natures Gate, LLC, an Indiana Limited Liability Company, and any successors and assigns of it, other than Owners purchasing lots or Homesites by Deed from Declarant (unless conveyance indicated an intent that the Grantee assumes the rights and obligations of Declarant).

(i) "Dwelling unit" means the structure used as a residential living unit located upon a Homesite including the garage and any appurtenances.

(j) "Entry Ways" means the structures constructed as an entrance to Nature's Gate Subdivision or a part thereof (including signage, but exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island depicted as a designated Block on the Plat and any other traffic islands dividing a roadway or cul-de-sac providing access to Nature's Gate Subdivision or a part thereof, and the landscaped and/or grassy area surrounding such structures.

(k) "Homesite" means any plot of ground designated as a numbered lot (i.e. Lots 1 through 168 inclusive) upon a recorded plat of the property. When Homesite is used, it shall be deemed to include the lot and the dwelling unit, if any, located thereon.

(l) " Institutional Lender" shall mean and refer to any bank, mortgage banker, insurance company, savings and loan association, or other financial institution or pension fund, which is the record owner of a first mortgage loan which encumbers any Homesite.

(m) "Member" means a member of the Association.

(n) "Mortgagee" means the holder of a first mortgage lien on a Homesite.

(o) "Nature's Gate" is the name by which the Property which is the subject of this Declaration shall be known.

(p) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Homesite.

(q) "Plat" means the plat of the Property under date of August 19, 2002 and recorded on August 19, 2002 as Document Number 020244208 in the Office of the Recorder of St. Joseph County, Indiana, and also refers to additional and supplemental plats covering the Property.

(r) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions and all other provisions set forth in this Declaration as the same may from time to time be amended.

(s) "Villa Homesite" means a lot in the Property, the present and future owners of homes on such lots which, for a fee, their lawns will be mowed, their landscaping taken care of, their sidewalks and driveways cleared of snow, all under certain guidelines and standards.

(t) "Villa Homesite Maintained Area" means any portion of the property which the Association shall be required to maintain in accordance with this Declaration. It is also referred to as "Maintained Area".

2. **Declaration**. Declarant hereby expressly declares that the Property shall be held, conveyed, transferred, encumbered, used, sold, leased and occupied in accordance with the provisions of this Declaration. The Owner of any lot subject to these Restrictions by (i) acceptance of Deed conveying title thereto, or the execution of a contract for purchase thereof, whether from Declarant or a subsequent Owner of such lot, or (ii) by the act of occupancy of any lot, shall accept such Deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such Deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant with respect to these Restrictions and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant and the Owners and subsequent Owners of each of the lots affected by these Restrictions to keep, observe, comply and perform such Restrictions and agreement.

3. **Description of the Property**. The Property consists of One Hundred sixty-nine (169) Homesites, Numbered 1 through 169, inclusive, together with the Common Areas. The lots, the Common Areas and the size of the Homesites are designated on the Plat. Homesites Numbered 97 through 122 inclusive and Numbered 123 through 169 inclusive are villa Homesites and individually a Villa Homesite.

4. **Ownership of Common Area.** The Common Area, if any, shall be conveyed to and owned by the Association or be subject to easements used by the Association and shall be held for the use and enjoyment of the Members, all of whom shall have the right of enjoyment in and to the Common Area, which right shall pass with title to every Homesite, subject to the provisions of this Declaration.

5. **Easement for Utilities.** An easement is granted to all public utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities on the Maintained Areas and on the Common Areas. Provided, however, that nothing herein shall permit the installation of utilities of any type or nature except as initially designed and approved by the Declarant on any portion of the Property, by the Association in any Common Area or by the Owner of any Homesite after its conveyance to an Owner. The easement granted herein shall in no way affect any other recorded easements on the Property. An easement is also granted to the Association, its officers, agents and employees and to any management companies selected by the Association to enter, cross over and otherwise utilize any portion of any Maintained Area or any portion of a Homesite in the performance of its duties granted by this Declaration, the By-Laws and Articles of Incorporation.

6. **Association.** In order to provide for the administration, operation and ownership of the Common Areas as may from time to time be vested in the name of the Association, and to provide for the maintenance and repair, replacement, administration and operation of the Maintained Area and for such other functions as may be delegated and designated for it to do, the Association has been formed.

Each Owner shall be a Member of the Association. Each Owner shall become a Member of the Association when a Deed to a Homesite is delivered to the Owner and recorded in the records of the Recorder of St. Joseph County, Indiana, conveying title to a Homesite to an Owner, but membership in the Association shall terminate when such person or persons cease to be an Owner and will be transferred by delivery and recording of a Deed to the Homesite to the new Owner. The Association shall have one (1) class of Members who shall be all Owners of Homesites and the Declarant. Each person holding an interest in any Homesite shall be a Member; provided, however, that each Homesite represented shall have only one (1) vote. No person or entity other than the Declarant and an Owner may be a Member. Upon recordation of a Deed to a Homesite in the office of the Recorder of St. Joseph County, Indiana, membership in the Association shall for all purposes be deemed to have passed to the Grantee in the Deed from the Grantor without any requirement of endorsement or assignment of any Certificate of Membership.

No Member other than this Declarant shall have the right to vote on any matter until the first to occur of the following events: (i) the date upon which the written instrument of turnover of control of the Association by the Declarant is recorded in the records of the Recorder of St. Joseph County, Indiana; (ii) the date the Declarant no longer owns any Homesites; or (iii) December 31, 2015. (The first of the above three events to occur being herein referred to as the Turnover Date.)

The initial Board of Directors shall be as designated in the Articles of Incorporation, or thereafter appointed by the Declarant, and such Directors, notwithstanding any provision in this Declaration or the Articles or the By-Laws to the contrary, shall be the Directors until the Turnover Date or any of them are removed by the Declarant, or the resignation of one or more of them, and in the event of any vacancy or vacancies occurring in the Board of Directors for any reason prior to the Turnover Date, every such vacancy shall be filled by a person appointed by the Declarant, which person or persons shall thereafter be deemed a Member of the Board of Directors. So long as the Declarant owns any Homesite, the Members of the Board of Directors do not need to be Owners residing on the Property.

Within thirty (30) days after the Turnover Date, the Association shall elect a Board of Directors and shall continue to do so annually in accordance with and as prescribed by the By-Laws, and the Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the By-Laws. The Board of Directors shall be the governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association including, but not limited to, the management, maintenance, repair, replacement and upkeep of the Common Areas of the Association and the payment of all expenses pertaining to the Common Areas and the performance of the services as detailed in this Declaration. Services provided by the Association may be provided through the use of employees of Declarant or other persons or entities selected by the Board of Directors.

7. **Right of Board of Directors to Adopt Rules and Regulations.** The Board of Directors may promulgate such additional rules and regulations regarding the functions and duties of the Association. Such rules as are adopted may be amended and superseded by the vote of a majority of the Board of Directors which shall cause copies of such rules to be delivered and mailed promptly to all Owners.

8. **Management Agreement.** The Board of Directors may enter into a management agreement with a manager for the Property for a term not to exceed three (3) years with either party having the right to terminate upon sixty (60) days prior written notice. The Board of Directors may employ Declarant as the manager or any other manager chosen by the Board of Directors. Such management agreement may be renewed by the parties for additional terms of three (3) or less Years.

9. **Real Estate Taxes and Utilities.** Real estate taxes are separately assessed and taxed to each Homesite. Any real estate taxes or other assessments which are chargeable against the Common Areas shall be paid by the Association and treated as a Common Expense. Each Owner shall pay for his own utilities which are separately metered. Any utility charges for the Common Areas shall be paid by the Association and treated as a Common Expense.

10. **Landscaping and Plantings.** The Association shall maintain the landscaping and lawn of each Villa Homesite located in the Villa Homesite Maintained Area on a scheduled basis as determined by the Association. Villa Homesite Owners may plant, install or maintain any flowers, trees, shrubbery or other plant materials on a Villa Homesite only in accordance with the landscaping plan approved by the Architectural Control committee. The Owners shall maintain their own irrigation system on each lot, but the Association shall determine the minimum and maximum intervals, permissible periods and the times of day of irrigation. Water is supplied from each lot's water system. All water utilized in the irrigation system for each Villa Homesite shall be provided by the Owner of that Villa Homesite regardless of whether water from each irrigation system partially irrigates an adjacent Villa Homesite or landscape island within an adjacent cul-de-sac or entrance island. Each Villa Homesite Owner shall be responsible for maintaining at the Villa Homesite Owner's expense all trees located on the Villa Owner's Homesite having a trunk diameter of twelve (12) inches or greater, which maintenance shall include, but not be limited to, pruning and removing of any such trees which are dead or unsightly or having any unsightly, dead or dangerous portions of such trees. Trees having a trunk diameter smaller than twelve (12) inches and planted on a Villa

Owner's Homesite after the construction of the villa type dwelling Unit thereon shall be maintained by the Association. In the event the Association advises a Villa Homesite Owner in writing that replacement or removal of a portion of all of a tree or trees which Villa Homesite Owner is responsible to maintain as necessary, and the Villa Homesite Owner fails to maintain or remove such tree or trees after sixty (60) days prior written notice, (except that notice is waived in cases of emergency), the Association may in its discretion have the tree or trees maintained or removed and charge the cost thereof to the Villa Homesite Owner as an additional common expense.

11. Maintenance of Exterior of Dwellings Units. Each Owner of a Homesite shall furnish, perform and be responsible for, at the Owner's expense, the customary repair, improvement, maintenance and decoration of the exterior of his/her Dwelling Unit.

The Association shall provide in the Villa Homesite Maintained Areas maintenance services for the removal of snow from the sidewalks and driveways according to guidelines for snow removal adopted by the Association.

The Association shall not maintain the interiors or exteriors of any structures or buildings, the water supply line, the air conditioning or heating system, the sewer lines or any breaking or cracking of any concrete or asphalt surfaces. The Owner shall replace and repair any portion of the exterior of his/her Dwelling Unit which is damaged or in need of repair or replacement and shall maintain all portions of the Dwelling Unit. Maintenance by an Owner shall include, but is not limited to, replacement and major repair of siding, roofs, gutters, plumbing fixtures, sewer lines, heating and air conditioning systems, driveways, sidewalks, exterior lighting fixtures and other mechanical and electrical systems.

The Association may, at its option, notify any Owner of a need for repair or replacement or any item of maintenance on the exterior of the Dwelling Unit or on any lot and in the event the Owner does not maintain, repair or replace that item within sixty (60) days after such notice is given by the Association, the Association may maintain, repair or replace that item at its expense and charge the costs thereof to the Owner.

Each Villa Homesite shall have an independent sprinkler system with controls for the system outside the dwelling to enable the Association to be certain lawns are properly sprinkled. If the water, for whatever reason, is turned off other than during designated non-sprinkling times, the Association shall have the right to turn the water on.

12. **Owner's Obligation of Interior Maintenance, Repair and Replacement.**

Each Owner shall furnish, perform and be responsible for, at the Owner's expense, the customary repair, improvement, maintenance and decoration of the interior of his/her Dwelling Unit.

13. **Insurance.** Each Owner shall maintain insurance on the Owner's Dwelling Unit and lot. The Association does not provide or pay for any insurance coverage over a lot, Dwelling Unit or contents of the same, such insurance being the Owner's sole responsibility.

14. **Assessments.** Assessments and payment of assessments shall be as follows:

(a) **Annual Accounting.** Annually after the close of each calendar year and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnish each Member a financial statement prepared by the accountant or accounting firm then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding calendar or fiscal year and all income of the Association during the same year.

(b) **Proposed Annual Budget.** Annually, at least ten (10) days before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar or fiscal year estimating the total amount of the Common Expenses for the ensuing year and estimating the total amount of the expenses for the Villa Homesite Maintained Area for the ensuing year and the amount of each Owner's regular assessment and maintenance assessment for that year together with the amount of each Villa Homesite Owner's regular assessment and maintenance assessment for that year, a copy of which shall be provided to each Member at least one (1) week prior to the annual meeting- After the Turnover Date occurs, the annual budget shall be submitted to the Members at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments and Maintenance Assessments and Villa Homesite Maintained Area lot assessments (all hereinafter defined) for the ensuing and regular fiscal year. At the annual meeting of the Members, the budget shall be approved in whole or in part or may be amended in whole or in part by a majority of the votes cast, provided, however, in no event shall the annual meeting be adjourned without or until the annual budget is approved at such meeting.

The annual budget, the Regular Assessment, the Villa Homesite Maintained Area assessment and any Special Assessment shall be established using generally accepted accounting principles applied on a consistent basis. The Association may provide for a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and other anticipated expenses if the Board of Directors and Members of the Association deem the same is appropriate and necessary. Any delay or failure by the Board of Directors to prepare a proposed annual budget and to provide the same to the Members shall not constitute a waiver or release in any manner of the obligations of each Owner to pay the Common Expenses or Villa Homesite Maintained Area Expenses as herein provided. Declarant may, at its option, supplement the annual budget with its funds from time to time, but shall not be required to do so or to pay at any time more than its portion of the Common Area Expense and Villa Homesite Maintained Area Expense based upon the Homesites it owns. Payments to the Association by Declarant in excess of amounts it is required to pay as an Owner shall not obligate Declarant to make any such additional payments.

(c) **Regular Assessments, Maintained Area Assessments and Special Assessments.** After the Turnover Date occurs, the annual budget, as adopted, shall be used to establish the amount of the Regular Assessment for each Homesite and the Regular Assessment for each Villa Homesite based on those expenses for the next fiscal year which are for services provided to each Homesite and each Villa Homesite in the Property.

Prior to the Turnover Date occurring, the amount of all Regular, Villa Homesite Maintained Area and Special Assessments shall be established by the Board of Directors and shall be payable and enforceable as set forth herein. The Regular Assessment for all Homesites and the assessment for the Villa Homesite Maintained Areas shall be based upon a budget prepared by the Board of Directors and provided to each Owner prior to the date the first installment of those assessments that are due to be paid. The annual budget shall contain the proposed Regular Assessment on each Homesite which shall be the same amount for each Homesite whether or not the Homesite has a Dwelling Unit located on it or is otherwise improved. The annual budget shall also contain the proposed Villa Homesite Maintained Area assessment on each Villa Homesite which shall be the same amount for each Villa Homesite, whether or not the Villa Homesite has a Dwelling unit located on it or is otherwise improved.

The annual budget shall also include a listing by Homesite of the Regular and Maintained Area Assessment for each Homesite on which a Dwelling Unit has been built based upon the estimated expense of maintenance to be provided by the Association during the next year for each Homesite as set forth in the Declaration.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of the Regular and Maintained Area Assessments against that Owner's Homesite (which Regular Assessment and Maintained Area Assessment and any Special Assessment are herein referred to collectively as the "Assessment"). The Assessment against each Homesite shall be paid by the Owner of that Homesite in advance in equal monthly installments commencing on the first of January of such calendar year and on the first day of each calendar month thereafter through and including the following December 1st. Payment of the monthly installment of the Assessment shall be made to the Association at the address provided by the Association to each Owner. The Assessment for the year shall become a lien on each lot as of January 1st for each calendar year. The above dates of Assessment and payment may be changed by the Board of Directors through rules and regulations or provisions and By-Laws without amending this Declaration, and either the Regular Assessment or Maintenance Assessment or both of them may be made payable in one (1) or any other number of installments rather than in monthly installments.

(d) **Special Assessments.** From time to time, Common Expenses or other expenses of the Association of an unusual or extraordinary nature or not otherwise anticipated or included in the Annual Budget may arise or be deemed necessary to incur by the Board of Directors. In such event, the Board of Directors is authorized to adopt a resolution to make such expenditures and shall have the full right, power and authority to make a special Assessment of equal amount upon each Homesite to pay that expense, without a meeting or approval of Owners, which special Assessment shall become a lien on such Homesite, after approval of such resolution by the Board of Directors at a special or annual meeting called in accordance with the By-Laws. If the Special Assessment deals only with Villa Homesites, then the special Assessment dealing with the Villa Homesite Maintained Area shall become a lien on such Villa Homesites, after approval of such resolution by the Board of Directors at a special or annual meeting called in accordance with the By-Laws.

(e) **Failure of Owner to Pay Assessments.** No Owner may become exempt from paying Assessments and Special Assessments or from contributing towards the Common Area Expenses or any other expense lawfully agreed upon by waiver of the use or enjoyment of the and Common Areas or by abandonment of the Owner's Homesite. Each Owner shall be personally liable for the payment of all Assessments and by accepting delivery of a Deed to a Homesite agrees to this provision and other provisions of this Declaration. When the Owner constitutes more than one person, liability for Assessments shall be joint and several. Assessments or any installments thereof which are not paid when due shall bear interest on a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, the Board of Directors may, in its discretion, declare the entire balance of unpaid Assessments to be due and payable, with interest, and file a written Notice of Lien against the Owner's Homesite in the office of the Recorder of St. Joseph County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest and any costs of collection. Any Member who is delinquent in paying any assessment may not vote on any Association matter during the period such payment is delinquent. In any action to foreclose the lien, the Owner and any occupant of the welling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Homesite and welling unit and the Association shall be entitled to the appointment of a receiver for the purpose of reserving the Homesite and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied towards payment of the Assessment. In any action to recover any Assessments, the Association may also recover its reasonable attorney's fees, title expenses and costs of collection and interest from the date said Assessments became a lien on the Homesite as set forth in this paragraph until paid in full.

(f) **Subordination of Assessment Lien to Mortgage.** Notwithstanding anything contained in this Declaration, the Articles of Incorporation or the By-Laws, any sale or transfer of a Homesite to an Institutional Lender pursuant to a foreclosure of its mortgage or conveyance in lieu thereof or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Assessment as to any installments which became due prior to such sale, transfer or conveyance, provided, however, that the extinguishment of such lien does not relieve the prior Owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Homesite and Dwelling Unit for the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof from liability for any installments of Assessments thereafter becoming due and from the lien therefore. Any unpaid Assessments, the lien of which has been divested as aforesaid and expenses related thereto shall be deemed to be a Common Expense.

(g) **Notice of Unpaid Assessments.** The Association shall, upon the request of an Institutional Lender or purchaser who has a contractual right to purchase a Homesite, furnish a statement setting forth the amount of the unpaid Assessments against the Homesite, which statement shall be binding upon the Association and the Members.

15. **Fences.** No perimeter fencing of any type, including, but not limited to, hedges and other "growing fences", chain link fences, split rail fences or any other kinds of fences are permitted on a Homesite, except as may be approved for a Homesite in advance in writing by the Architectural Control committee.

16. **Leases.** No leases of any Villa Homesite Dwelling Unit may be entered into without the prior approval of the Association and no such lease shall have a duration of longer than one (1) year without the prior written approval of the Association.

17. **Architectural Control Committee.** In order to maintain harmonious structural design, no building or other structure may be erected, constructed, placed, maintained or altered on any Homesite, nor shall the natural topography or drainage of any Homesite be altered, and no landscaping, nor lawn nor shrubbery may be installed, unless and until the construction, plans for the structure, topographical alterations and the landscaping plan have been approved by the Natures Gate Architectural Control Committee. There is hereby created the Natures Gate Architectural Control Committee ("Committee") which shall consist of one (1) person appointed by the Declarant or its successors and assigns who shall serve until he is removed by the Declarant or shall have resigned. It is not necessary that the Committee Member reside in the Property. In the event of a vacancy on the Committee, the Declarant shall appoint a replacement. The Committee shall have the authority to approve all plans and specifications for all Dwelling Units and the Landscaping Plan for each Homesite in the Property. No construction shall be commenced until the Committee shall have issued its written approval. The decision of the Committee shall be entirely within its discretion. The authority of the committee shall expire fifteen (15) years after the date of the recording of the Plat on which the affected Homesite is located.

The exterior design and landscaping plan must have the prior approval of the Declarant before the same may be presented for approval by the Committee and before the Committee may approve the same. The plans must show floor plan, quality of construction, materials, outside colors to be used, harmony of exterior design with existing structures and location with respect to property lines, topography and finish grade elevations and all details regarding landscaping. Two (2) sets of complete plans must be submitted. One (1) will be retained in the Declarant's office and one (1) will be returned to the Owner or the builder. The committee's approval or disapproval as required in this Declaration shall be in writing. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed or maintained upon any Homesite, and no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent. Neither the Declarant, the Committee nor any Member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence or non-feasance arising out of or relating to the approval or disapproval or failure to approve any plan so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Committee agrees, by submission of such plans, that the party making the submission will not bring any action or suit against the Committee or the Declarant to recover any damages or to require the Committee or the Declarant to take, or refrain from taking, any action. All rights of copyright in any plans, specifications or design are waived by the submission to the Committee. Neither the submission of any complete sets of plans to the Declarant's office for review by the Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Homesite Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein. Each Owner agrees that the strict enforcement of this Declaration is necessary to maintain consistent quality in the Property.

18. Land and Use and Building Unit Type and Size.

(a) **General Restrictions.** No Dwelling Unit shall be erected, altered, placed or permitted to remain on any lot other than one (1) single-family dwelling not to exceed two and one-half (2 1/2) stories in height and a private garage for not less than two (2) nor more than three (3) cars; exceptions may be made to this section only if they are approved in writing by the Architectural Control Committee. Entry Way easements are created by the Declarant for the installation, operation and maintenance of the Entry Ways.

(b) **Home Occupations.** No lot or lots located on the Property shall be used for any purpose other than as a single-family residence, except, that a home occupation, defined as follows, may be permitted: any use conducted entirely within the Dwelling Unit 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 Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (i) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; (ii) No commodity sold upon a Homesite; (iii) No person is employed other than a member of the immediate family residing on a Homesite; and (iv) No mechanical or electrical equipment is used, including, but not limited to, the use of welding tools and equipment and the construction of craft type items which are intended to be offered for sale at any location; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, day care center for children and/or adults, including, but not limited to, the operating of a babysitting for hire business being conducted on a Homesite, animal hospital or any form of animal care or treatment such as dog trimming, be construed as a home occupation.

(c) **Dwelling Unit Size, Roof Structure, Pitch, Materials and Colors.** No dwelling shall be permitted on the following described lots with a living floor area of the main structure, exclusive of one (1) story open porches and garages, of less than the following number of square feet for the following types of dwellings, together with the following required hip roof structure, pitch, materials and colors as follows:

Lots 1 - 9 inclusive and Lots 89 - 95 inclusive:
1200 sq. ft. on a ranch
1600 sq. ft. on a 2 story
1600 sq. ft. on 1 1/2 story

Lots 10 - 23 inclusive and Lots 72 - 88 inclusive:
1600 sq. ft. on a ranch
1800 sq. ft. on a 2 story
1800 sq. ft. on 1 1/2 story

Lots 1 through 23 and Lots 72 through 121 inclusive are required to use certain colors of siding pursuant to Architectural Control committee guidelines. All houses and villas must use thirty (30) year architectural shingles.

Villa Homes on Lots 96 through 121 inclusive
1200 sq. ft. on a ranch
1600 sq. ft on 1 1/2 story
No 2 stories allowed
8:12 minimum pitch

19. **Building Location.** No building shall be located on any lot nearer to the right of way line than the minimum building setback lines as shown on the recorded Plat. Each building shall be located no nearer than five (5) feet from any side lot line, but shall have a total combined width for the two side yards of not less than ten (10) feet. No dwelling shall be located closer than twenty-five (25) feet to any rear lot line. For purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed so as to permit any portion of a building on a lot to be located nearer than five (5) feet from any side lot line or ten (10) feet from any building on an adjacent lot, whichever distance is greater.

20. **Easements.**

(a) **General.** There are strips of ground variable in width, as shown on the Plat, and marked "Easement", reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, overland drainage flows, for entrance way signs and subdivision identification, subject at all times to the proper authorities and to the easement herein reserved. No permanent structures shall be erected or maintained upon said easements except as noted in this Declaration and except as authorized by the committee. No changes shall be made in the grading of any lot areas used as drainage swales as initially provided which would alter the flow of overland storm drainage runoff, but Owners of Homesites in this Property shall take their titles subject to the rights of the public utilities. Furthermore, any utility company, in setting utility poles, shall have the right to set anchor poles at any change of direction of their lines. Such anchor poles may be set on any lot outside the easement and not more than ten (10) feet from the rear line of any Homesite. All utility pedestals and transformers shall be erected on or within five (5) feet of the nearest corner lot. The Association and its authorized representatives shall have the right of ingress and egress to and from the lots and Common Areas for the maintenance of any signs naming the subdivision and for lawn maintenance and landscaping and for snow removal.

(b) **Reservation of Easement in Declarant to Drainage Area.** The Declarant reserves to itself, and its successors and assigns, an easement upon, over, across and through each lot abutting a Drainage area as shown on the Plat as is necessary in connection with the managing, maintaining and improving the Drainage area including the dredging of such rain age area until such time as the Declarant conveys said easement to the Association, whereupon, said easement shall be reserved to the Association and its successors and assigns.

(c) **Flowage Easement.** Each lot adjacent to a Drainage area shall be subject to a water flowage easement over and across such lot.

21. **Nuisances.** No noxious or offensive activity shall be carried on upon any Homesite, nor shall anything be done thereon which may become an annoyance or nuisance in the neighborhood.

22. **Prohibited Structures.** No trailer, modular home, manufactured home, pre-built home, basement, tent, shack, garage, barn, outbuilding or any structure of a temporary character shall be moved onto, assembled or constructed on any lot and used at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, a construction trailer used during construction of the residential dwelling on the Homesite may be used on the Homesite at any time. Mobile homes, house trailers, boats, boat trailers, motor homes, camping trailers, recreational vehicles and trailers therefore shall not be parked on any lot for longer than forty-eight (48) hours. No snowmobiles, motorcycles or dune buggies may be parked on any lot for longer than forty-eight (48) hours. No lot shall be used for the storage of old lumber, cars, materials or debris. No vegetable garden shall be planted or erected without the approval of the Architectural Control Committee. No awnings

shall be permitted without the Architectural Control Committee's approval and no hanging of laundry, rugs or other items outside the Dwelling Unit is permitted. No basketball hoops may be installed on a Dwelling unit or Homesite. A permanent basketball hoop is permitted to be installed immediately adjacent to a driveway.

23. **Tennis Courts and Pools**. No tennis courts or above ground pools shall be permitted on the Property. Other swimming pools may be constructed only after prior written approval from the Architectural Control Committee.

24. **Detached Buildings**. The construction and placement of any detached storage or pet shelter structures to be used for the storage of lawn tools, toys, swimming pool apparatus or any other personal property or for the shelter of pets must be of a quality construction and must be maintained in an attractive and neat appearance and blend with the established home and be submitted to the Architectural Control Committee for approval before beginning construction or installation. The Architectural Control Committee shall have the authority to require protective screening around the structures. Approval for the construction of the structure must be obtained from the Architectural Control committee.

25. **Drainage and Retention Lots-Taxes and Insurance**. Each Drainage and Retention lot in this Subdivision, namely; Lots _____ through _____ inclusive, contains a portion of the Drainage and Retention area thereon. The responsibilities of the Natures Gate Homeowners Association, Inc. with respect to the Drainage and Retention area and the Owner of each Drainage and Retention area lot which abuts the Drainage and Retention area shall be to maintain with respect to the Drainage and Retention area in this Subdivision a comprehensive public liability insurance policy having a limit of liability per occurrence and in the aggregate in such amounts as acceptable to the Association, which policy shall state that the Association is the sole insured thereunder.

26. **Driveways and Chimneys**. The materials used in the construction and installation of driveways and chimneys must be submitted to the Architectural Control Committee for approval before beginning construction or installation. The Architectural Control Committee shall have the authority to designate the type of materials for the construction or installation of driveways and chimneys. No stone or cinder driveways shall be permitted. All driveways are to be a minimum of sixteen (16) feet wide and must be constructed of brick or concrete. If constructed of concrete, the driveway shall be at least four (4) inches thick. Circular drives in front of Dwelling Units (if any) may be a minimum of sixteen (16) feet wide.

27. **Signs**. No sign of any kind shall be displayed to the public view on any Homesite except one sign of not more than five (5) square feet advertising the Property for sale, or a sign of any dimension used by a builder to advertise the Property during the construction and sales period. There is reserved to the Declarant, its successors and assigns, the right to construct signs as it desires in order to foster the promotion and effect sales of lots or structures in said development.

28. **Livestock and Poultry**. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Homesite except that dogs and cats may be kept, provided that they are not kept, bred or maintained for any commercial purposes and are not permitted to become a neighborhood nuisance or hazard in any manner.

29. **Garbage and Refuse Disposal**. No Homesite shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and kept indoors except for pickup, and outside placing for pickup shall be no earlier than twelve (12) hours from expected pickup time. No leaves, grass clipping, trash or other rubbish shall be dumped into the Drainage and Retention area.

30. **Completion Date.** Any structure begun must be completed within a period of twelve (12) months from the date of beginning, or thereafter be completely removed. The side, front and rear yards of each Homesite shall be planted with grass seed, sod or ground cover, unless otherwise approved by the Architectural control Committee, within one hundred twenty (120) days after the Dwelling Unit is completed, or the Dwelling Unit is occupied as a home, whichever is earlier. All Villa Homesite lots shall have a sprinkling system, which sprinkling system must be regularly used on the Homesite.

31. **Declarant's Option to Repurchase.** In the event a residential dwelling meeting the requirements of these Restrictions is not completed on any lot within a period of two (2) years from the date on which such lot is conveyed by the Declarant to the purchaser thereof, unless such two (2) year period is extended by a written instrument duly signed by the Declarant, the Declarant shall thereupon have the right during the ensuing twelve (12) month period commencing on the second anniversary date of such conveyance to repurchase such lot from the current owner of such lot, free and clear of all liens and encumbrances except current property taxes which shall be prorated to the date of closing, at the same price at which the Declarant sold such lot to the original purchaser thereof, without payment of interest or any other charges, upon the Declarant serving written notice upon the current owner of such lot of the Declarant's intention to exercise its option and effect such repurchase, notwithstanding whether the current Owner of such lot was also the original purchaser thereof. The closing of such repurchase shall take place in the Declarant's office not later than thirty (30) days from the date of the giving of such written notice to the current owner of such lot, who shall take such actions and execute such documents, including a Warranty Deed to such lot, as the attorneys for the Declarant shall deem reasonably necessary to convey good title to such lot to the Declarant, free and clear of all liens and encumbrances as aforesaid.

32. **Fuel Storage Tanks.** All oil or fuel storage tanks must be installed underground or concealed within the main structure of the dwelling, basement or attached garage located on the Property and meet all applicable requirements of the Indiana Department of Environmental Management and the United States Environmental Protection Agency.

33. **Lot Division.** There shall be no subdivision or sale of any Homesite by an Owner for the purpose of building an additional dwelling or otherwise dividing any lot.

34. **Lighting.** The Architectural Control Committee shall determine whether a dusk-to-dawn gas or electric light of the type approved by the Architectural Control committee shall be installed by the builder or lot Owner thereof on a Homesite. The Architectural Control Committee shall determine the placement of the light. If electric, such post lights shall be equipped with automatic operators (electric eye) to provide light from sundown to dawn.

35. **Utilities and Television Antennas.** All public utility services, either in the streets or on any lots, including, but not limited to, electric, gas and telephone service, and cable television, shall be located underground, and shall not be visible. No outside above-ground television, satellite dish exceeding twenty (20) inches in diameter, A.M., F.M. or short wave radio antennas of any type, unless properly hidden from view at the discretion of the Architectural Control Committee, shall be erected or maintained on any Homesites or structures in this Property. All street or lot lighting shall be situated on posts with no lines visible. To ensure the enforcement of this Restriction, the Declarant, for itself, its successors and assigns, does hereby agree:

(a) to prohibit the erection and use of overhead wires, poles and other facilities of any kind, including, but not limited to, those associated with electrical, television, cable or telephone service, either electrically or by telephone from poles and overhead wires around the perimeter of the subdivision or development. Nothing herein shall be construed to prohibit

street lighting or ornamental yard lights if serviced by underground wire or cable;

(b) to require that the Owner of any building erected on the Property install an electric service entrance of sufficient capacity to meet present and future requirements of the occupants in accordance with engineering standards of the electric utility company;

(c) to require Owner to assume all landscaping responsibility and restoration of paved or planted areas made necessary by maintenance, replacement or expansion of underground service facilities;

(d) to require accessibility to all strips in which underground service is located for operation, maintenance or replacement of facilities; and

(e) to require that the Owner of any building erected on the property must pay any cost differential for underground service laterals.

36. **Fires.** No fire for vegetation, trash burning or otherwise shall be permitted to burn upon any lot, street, sidewalk or roadway in this Property.

37. **Drainage.** In the event storm water drainage from any lot or lots in the Property flow across another lot, provisions shall be made by the Owner of such lot to permit such drainage to continue, without restriction or reduction, across the downstream lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided in the Plat. The elevation of a lot shall not be changed so as to affect materially the surface elevation or grade of surrounding lots, perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street right of ways. These drains shall be connected whenever feasible into a subsurface drainage tile. 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.

38. **Entrance Way Areas.** The Natures Gate Homeowners Association, Inc. shall be responsible for the maintenance of the grass, tree, shrubs and other plantings located in the traffic islands located in the Entry Ways. Grass, trees, shrubs or other plantings located in the traffic island on an Entry Way shall be neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Natures Gate or apart thereof. All entrance signs located on an Entry Way shall be maintained by the Association at all times in good and sightly condition appropriate to a first class residential subdivision. Unless the Board of Directors of the Association determines that all or some of the Entry Ways should be maintained by the Association and the maintenance costs thereof assessed as a general assessment, the Owner of each lot upon which an entrance way signage easement is located shall, at his/her expense, keep the grass, trees, shrubs and other plantings located in such area neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first class residential subdivision and, if such Owner fails to do so, the Association may undertake such maintenance and assess the maintenance costs thereof either as a special assessment against such lot or as a general assessment against all lots in the subdivision.

39. **Amendment of Covenants.** It is expressly provided that the Declarant, its successors or assigns shall have the exclusive right for a period of five (5) years from the date of the recording of this Plat to amend any or all of the Restrictions or Covenants herein contained. Such amendment(s) shall be evidenced by the recording of a written Amendment signed and recorded in the office of the Recorder of St. Joseph County and shall become effective upon such recording. This shall include the right to waive any part of the Restrictions or conditions as to any particular lot. After five (5) years from the date of the recording of this Plat, these Restrictions and limitations may be amended at any time by the recording

of such amendment executed by the Owners of the fee title of not less than Seventy-five (75%) percent of the lots in the Property.

40. **Duration of Covenants.** These covenants and restrictions shall run with the land and be binding on all parties and all persons claiming under them until January 1, 2019, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of the then Owners of the fee title of not less than seventy-five (75%) percent of the Homesites covered by these covenants or restrictions, it is agreed to change such covenants or restrictions in whole or in part.

41. **Separability of Covenants.** Invalidation of any one of the covenants or restrictions by judgment of a court of competent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these covenants and restrictions shall remain in full force and effect.

42. **Enforcement of Covenants.** The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law of any structure, is hereby vested in the Declarant, in each Owner of a lot in the Property and in Natures Gate Homeowner's Association, Inc., its successors and assigns. These covenants and restrictions may be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons vested with the title to any of the lots hereinbefore described, the Natures Gate Homeowners Association, Inc., its successors and assigns, or the Declarant to proceed either in law or in equity, against such person or persons violating or attempting to violate any such covenants, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that the Association should employ counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including, but not limited to, reasonable attorney's fees, expense of removing or altering any dwelling or lot which violates this Declaration and any other related expense shall be paid by the Owner of such dwelling or lot against whom such enforcement action is brought, and the Natures Gate Homeowners Association, Inc. or the Declarant, as the case may be, shall have a lien upon such lot or lots to secure such lot Owner's payment of such costs, which lien may be enforced in the same manner as provided in this Declaration for other assessments.

43. **Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration, the Articles of Incorporation or the By-Laws shall be deemed to have been properly sent and given when mailed by United States mail, postage prepaid, by certified mail, return receipt requested, postage prepaid, to any Owner at the address of the lot and to the Declarant at the address of Declarant's resident agent.

44. Effective Date. These Restrictions and Covenants shall be deemed to be attached to and shall be considered a part of the Plat of Natures Gate and shall become effective upon their recording in the Office of the Recorder of St. Joseph County, Indiana.

NATURES GATE, LLC
By Lance J. Cleland, Member
Lance J. Cleland, Member
By Larry Cleland, Member
Larry Cleland, Member

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said County and State, this 9th day of September, 2002, personally appeared Lance J. Cleland and Larry Cleland, being all of the Members of Natures Gate, LLC, an Indiana Limited Liability Company, who acknowledged the execution of the above and foregoing instrument for and on behalf of said entity as their voluntary act and deed.

WITNESS my hand and Notarial Seal.

Edward W. Hardig
Edward W. Hardig, Notary Public
Residing in St. Joseph County, IN

My Commission Expires:
September 28, 2006

This instrument prepared by: Edward W. Hardig
 Attorney at Law
 205 West Jefferson Blvd, Ste 502
 South Bend, IN 46601-1887.

**DECLARATION OF FIRST AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS
OF NATURE'S GATE**

THIS DECLARATION of amendment is made this 26th day of July, 2004, by NATURE'S GATE, LLC, an Indiana Limited Liability Company, which entity is hereinafter referred to as the "Declarant".

W I T N E S S E T H :

WHEREAS, a document entitled "Declaration of Covenants and Restrictions of Nature's Gate" dated September 9, 2002, was made by Nature's Gate, LLC, an Indiana Liability Company, and recorded September 13, 2002, as Document No. 0249242 in the Office of the Recorder of St. Joseph County, Indiana, which Declaration is sometimes referred to as the "Declaration", and

WHEREAS, pursuant to paragraph 39 of the Declaration, Declarant has the right to amend the Covenants therein contained in said Declaration; and

WHEREAS, Declarant desires to amend said Declaration by adding a new Section 17. A. so that within the retention easement area of Lot Number Eighteen (18) as shown on the recorded plat of Nature's Gate Section One, no building or other structure is erected, constructed, placed, or maintained and no trees nor shrubbery installed within said designated retention easement area.

NOW, the undersigned Declarant declares that said Declaration of covenants and restrictions of Nature's Gate dated September 10, 2002, and recorded September 13, 2002, as Document No. 0249242 in the Office of the Recorder of St. Joseph County, Indiana, be and it is hereby amended in the following respects:

I. That paragraph 17.A. be added to the Declaration, which paragraph 17.A. reads as follows:

17. Prohibited Improvements Within Retention Easement.

A. No building or other structure may be erected, constructed, placed or maintained nor shall any tree nor shrubbery be planted or installed within the retention easement area described as follows:

A parcel of land being a part of the North Half of Section 25, Township 38 North, Range 1 East, Warren Township, St. Joseph County, Indiana, and being more particularly described, as follows:

Beginning at the Northwest corner of Lot 1.8 as the same is shown and designated on the plat of Nature's Gate Section One, the same being recorded as Instrument Number 0244208 in the Office of the Recorder of St. Joseph County, Indiana; thence South 89°02'22" East, along the North line of said Lot 18, a distance of 70.00 feet; thence South 22°25'51" West, along the Easterly line of a retention Easement shown on said plat of Nature's Gate Section One, a distance of 79.23 feet to a point on the South line of said Lot 18; thence North 89°02'22" West, along said South line, a distance of 54.75 feet to the Southwest corner of said Lot 18; thence North 11°31'12" East along the Westerly line of said Lot 18, a distance of 75.00 feet to the place of beginning.

Subject to any other easements, covenants or restrictions of record.

All other covenants and restrictions not in conflict herewith as contained in the original Declaration shall remain in full force and effect as previously adopted.

This First Amendment to the Declaration shall be considered a part of the plat of Nature's Gate Subdivision recorded August 19, 2002, as Document No. 0244208 in the Office of the Recorder of St. Joseph County, Indiana, and shall become effective upon its recording in the Office of the Recorder of St. Joseph County, Indiana.

IN WITNESS WHEREOF, Nature's Gate, LLC, an Indiana Liability Company, as caused this instrument to be executed on the day, month and year first above written by its Members pursuant to a resolution duly and unanimously adopted by its Members.

NATURE'S GATE, LLC

By Lance J. Cleveland, Member
Lance J. Cleveland, Member

By Larry Cleveland, Member
Larry Cleveland, Member

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said County and State, this 26th day of July, 2004, personally appeared Lance J. Cleland and Larry Cleland, being all of the Members of Nature's Gate, LLC, an Indiana Limited Liability Company, who acknowledged the execution of the above and foregoing instrument for and on behalf of said entity, Nature's Gate, and pursuant to its authority, as their voluntary act and deed.

WITNESS my hand and Notarial Seal.

Linda M. Leblang
Signature of Notary Public
Linda M. Leblang
Typed/Printed Name of Notary Public
A Resident of St. Joseph County, Indiana

My Commission Expires:
April 5, 2009

This instrument is the work of Edward W. Hardig, Attorney at Law, 131 S. Taylor Street, South Bend, IN 46601

