

Plat Cabinet E, p. 120

Secondary Plat of:

# Falcon Creek, Section VI

A Subdivision of part of the West Half of the Southwest Quarter of Section 22, Township 32 North, Range 12 East, Allen County, Indiana.

Developer:  
Falcon Creek, LLC  
10104 Woodland Plaza Cove  
Fort Wayne, Indiana 46825  
(260) 497-7875

Engineer:  
Z. K. Tazian Associates, Inc.  
10104 Woodland Plaza Cove  
Fort Wayne, Indiana 46825  
(260) 497-7875

AUDITORS OFFICE  
Duly attested to before me, Subject  
to final acceptance for filing.

OCT 8 2002

AUDITOR OF ALLEN COUNTY

02 17668  
AUDITORS NUMBER

RECORDED  
10/03/2002 12:54:35  
RECORDED  
PHOTOCOPY J. TAZIAN  
ALLEN COUNTY, IN  
Doc. No. 2002079809  
Receipt No. 9641  
COPY 17.0  
NOF 3.0  
PLAT 40.0  
PLAT 3.0  
Total 69.0

THE UNDERSIGNED, BY VIRTUE OF DOCUMENT NUMBERED 202014240 BEING THE OWNER OF:

Part of the West Half of the Southwest Quarter of Section 22, Township 32 North, Range 12 East, Allen County, Indiana, more particularly described as follows, to wit:

Commencing at the Southwest corner of the Northwest Quarter of the Southwest Quarter of said Section 22, this also being the Southwest corner of Falcon Creek, Section I, the plat of which is recorded in Plat Cabinet "E", page 98 in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 03 minutes 22 seconds East (plat bearing and is used as the basis for the bearings in this description), on and along the West line of said Southwest Quarter and the West line of said Falcon Creek, Section I, being within the right-of-way of Coldwater Road, a distance of 595.13 feet to a point situated 726.15 feet, South 00 degrees 03 minutes 22 seconds West from the Northwest corner of the Southwest Quarter of said Section 22, this point being the Northwest corner of said Falcon Creek, Section I; thence South 89 degrees 38 minutes 00 seconds East, on and along the North line of said Falcon Creek, Section I and parallel to the North line of said Southwest Quarter, a distance of 208.71 feet; thence North 00 degrees 03 minutes 22 seconds East and parallel with the West line of said Southwest Quarter, on and along a West line of said Falcon Creek, Section I, a distance of 50.00 feet; thence South 47 degrees 03 minutes 43 seconds East, on and along a North line of said Falcon Creek, Section I, a distance of 95.00 feet; thence South 85 degrees 40 minutes 11 seconds East, on and along a North line of said Falcon Creek, Section I, a distance of 174.94 feet; thence South 89 degrees 36 minutes 38 seconds East, on and along a North line of said Falcon Creek, Section I, a distance of 136.72 feet to the true point of beginning; thence North 00 degrees 03 minutes 22 seconds East and parallel with the West line of said Southwest Quarter, a distance of 229.77 feet to a point situated 522.0 feet South of the North line of said Southwest Quarter; thence South 89 degrees 38 minutes 00 seconds East and parallel with said North line, a distance of 252.00 feet; thence North 00 degrees 03 minutes 22 seconds East and parallel with said West line, a distance of 2.50 feet; thence South 89 degrees 38 minutes 00 seconds East and parallel with said North line, a distance of 453.00 feet to a point on the East line of the West Half of said Southwest Quarter, said point being situated 519.50 feet South from the Northeast corner of the West Half of said Southwest Quarter; thence South 00 degrees 09 minutes 58 seconds West, on and along said East line, a distance of 343.30 feet to a North corner of said Falcon Creek, Section I; thence Westerly, on and along the North line of said Falcon Creek, Section I on the following courses and distances:

North 89 degrees 50 minutes 02 seconds West, a distance of 55.00 feet;  
thence North 83 degrees 04 minutes 13 seconds West, a distance of 172.24 feet;  
thence South 89 degrees 20 minutes 00 seconds West, a distance of 127.65 feet;  
thence South 87 degrees 09 minutes 50 seconds West, a distance of 35.24 feet;  
thence South 43 degrees 25 minutes 58 seconds West, a distance of 41.57 feet;  
thence South 38 degrees 50 minutes 00 seconds West, a distance of 65.00 feet;  
thence North 53 degrees 32 minutes 02 seconds West, a distance of 130.05 feet;  
thence North 56 degrees 31 minutes 28 seconds West, a distance of 50.00 feet;  
thence North 53 degrees 30 minutes 53 seconds West, a distance of 124.08 feet to the true point of beginning.

containing 5.345 acres of land, subject to all easements of record.

Containing a net area, exclusive of street rights-of-way and common areas of 3.645 acres.

does hereby subdivide and plat the same into lots, blocks, streets and easements as shown on the plat to be known as FALCON CREEK, SECTION VI, this 17th day of July, 2002, does hereby dedicate the streets shown to the public use and does hereby subject and impress all of said lots and blocks in said Addition with the restrictions, covenants, limitations and easements attached hereto and made a part hereof by reference.

*Zohrab K. Tazian*  
Zohrab K. Tazian, Managing Partner

STATE OF INDIANA )  
COUNTY OF ALLEN ) ss:

Before me, the undersigned authority, a Notary Public in and for said County and State, this day personally appeared Zohrab K. Tazian, known to me to be the person and Managing Partner whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said FALCON CREEK, LLC, an Indiana Corporation, and that he executed the same as the act of such FALCON CREEK, LLC for the purposes and consideration therein expressed and in the capacity therein stated.

*Erica Sue Stephan*  
Erica Sue Stephan, Notary Public

My Commission Expires: September 21, 2008

## APPROVALS

PLAN COMMISSION  
DATE: *10/16/2001*  
CHARLES J. BODENHAVER, PRESIDENT

VICE PRESIDENT  
*Alan D. Frisinger*

BOARD OF COMMISSIONERS  
DATE: *2.04.2002*

EDWIN J. ROUSSEAU  
*Linda K. Bloom*  
LINDA K. BLOOM  
*Marla J. Irving*  
MARLA J. IRVING

ATTEST:  
*Therese Brown*  
THERESE BROWN, AUDITOR

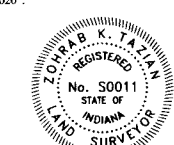
COUNTY SURVEYOR  
DATE: *09/21/02*  
*Alan D. Frisinger*  
ALAN D. FRISINGER, L.S.

ZONING ADMINISTRATOR  
DATE: *10.02.02*  
*Dennis A. Gordon*  
DENNIS A. GORDON, AICP

## CERTIFICATE OF SURVEYOR

I, Zohrab K. Tazian, hereby certify that I am a Land Surveyor lawfully registered to practice in the State of Indiana; that this plat correctly represents a survey completed by me on June 22, 2000; that I have established the lots, blocks, and streets in the foregoing plat in accordance with the true and established boundaries thereof; and that all corners will be marked by steel rebars 24 inches long and 5/8 inches in diameter with plastic caps imprinted "TAZIAN ASSOC.-FIRM NO. 0020".

*Zohrab K. Tazian*  
Zohrab K. Tazian, Indiana Land Surveyor



Scale in feet:  
0 30 60 120  
(1" = 60')  
Date: October 16, 2001  
Revised: Jan. 8, 2002  
Revised: July 17, 2002

## NOTES

- All buried utilities shall allow for the proposed swale grades as shown on the engineering plans.
- U. & S. D. E. denotes utility and surface drainage easement.
- "Side B. L." denotes side building line on corner lots.
- All intersection radii shall be 20' except as shown.
- Boxed elevation is minimum flood protection grade (MSL Datum).

## BLOCK SUMMARY

Block "W" & "X", - Common Area, Storm Water Management and Utility Easmt.

T.B.M. Top operating nut on fire hydrant at the Southwest corner of Lot #31 in Falcon Creek, Section I.  
Elevation = 842.94

Consent for permanent structures issued by the Allen County Drainage Board on September 17, 2002 in accordance with Indiana Code 36-9-27-72, on file at the Allen County Surveyor's Office as Drainage Board Rec. Doc. # 02-181, reference McComb Drain and Falcon Creek, Section VI Storm Sewer Regulated Drain.

This plat lies entirely within a Rule 12 - IAC 865 boundary survey certified by Zohrab K. Tazian, Indiana Land Surveyor, and duly recorded under Document Number 200038523 in the Office of the Recorder of Allen County, Indiana.



**DEDICATION, PROTECTIVE RESTRICTIONS,  
COVENANTS, LIMITATIONS, EASEMENTS AND  
APPROVALS APPENDED TO AS PART OF THE  
DEDICATION AND PLAT OF  
FALCON CREEK SECTION VI**

RECORDED  
10/03/2002 12:54:55  
RECORDER  
PATRICIA J CRICK  
ALLEN COUNTY, IN

Doc. No.	202079809
Receipt No.	30841
COPY	17.00
DCFD	3.00
PLAT	40.00
PLAT	9.00
Total	69.00

THIS DECLARATION, made on the date hereinafter set forth, by FALCON CREEK LLC referred to as "Declarant".

*Perry Tump*

WITNESSETH:

WHEREAS, Declarant owns certain property in Fort Wayne, County of Allen, State of Indiana, which is more particularly described as:

Part of the West Half of the Southwest Quarter of Section 22, Township 32 North, Range 12 East, Allen County, Indiana, more particularly described as follows, to wit:

Commencing at the Southwest corner of the Northwest Quarter of the Southwest Quarter of said Section 22, this also being the Southwest corner of Falcon Creek, Section I, the plat of which is recorded in Plat Cabinet "E", page 98 in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 03 minutes 22 seconds East (plat bearing and is used as the basis for the bearings in this description) on and along the West line of said Southwest Quarter and the West line of said Falcon Creek, Section I, being within the right-of-way of Coldwater Road, a distance of 595.13 feet to a point situated 726.15 feet, South 00 degrees 03 minutes 22 seconds West from the Northwest corner of the Southwest Quarter of said Section 22, this point being the Northwest corner of said Falcon Creek, Section I; thence South 89 degrees 38 minutes 00 seconds East, on and along the North line of said Falcon Creek, Section I, and parallel to the North line of said Southwest Quarter, a distance of 208.71 feet; thence North 00 degrees 03 minutes 22 seconds East and parallel with the West line of said Southwest Quarter, on and along a West line of said Falcon Creek, Section I, a distance of 50.00 feet; thence South 47 degrees 03 minutes 43 seconds East, on and along a North line of said Falcon Creek, Section I, a distance of 95.00 feet; thence South 85 degrees 40 minutes 11 seconds East, on and along a North line of said Falcon Creek, Section I, a distance of 174.94 feet; thence South 89 degrees 56 minutes 38 seconds East, on and along a North line of said Falcon Creek, Section I, a distance of 136.72 feet to the **true point of beginning**; thence North 00 degrees 03 minutes 22 seconds East and parallel with the West line of said Southwest Quarter, a distance of 229.77 feet to a point situated 522.0 feet South of the North line of said Southwest Quarter; thence South 89 degrees 38 minutes 00 seconds East and parallel with said North line, a distance of 252.00 feet; thence North 00 degrees 03 minutes 22 seconds East and parallel with said West line, a distance of 2.50 feet; thence South 89 degrees 38 minutes 00 seconds East and parallel with said North line, a distance of 453.00 feet to a point on the East line of the West half of said Southwest Quarter, said point being situated 519.50 feet South from the Northeast corner of the West half of said Southwest Quarter; thence South 00 degrees 09 minutes 58 seconds West, on and along said East line, a distance of 343.30 feet to a North corner of said Falcon Creek, Section I; thence Westerly, on and along the North line of said Falcon Creek, Section I on the following courses and distances:

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thence North 83 degrees 04 minutes 13 seconds West, a distance of 172.24 feet;  
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thence South 43 degrees 25 minutes 58 seconds West, a distance of 41.57 feet;  
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thence North 53 degrees 32 minutes 02 seconds West, a distance of 130.05 feet;  
thence North 56 degrees 31 minutes 28 seconds West, a distance of 50.00 feet;  
thence North 53 degrees 30 minutes 53 seconds West, a distance of 124.08 feet to the true point

of beginning, containing 5.345 acres of land, subject to all easements of record.

RECORDER OF ALLEN COUNTY

OCT 03 2002

Duly entered for taxation  
to final return for the year 2002

02 - 17668  
AUDITORS NUMBER

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

Section 1.1 "Association" shall mean and refer to The Falcon Creek Community Association, Inc., its successors and assigns.

Section 1.2 "Villa Association" shall mean and refer to The Falcon Creek Villa Association, Inc., its successors and assigns.

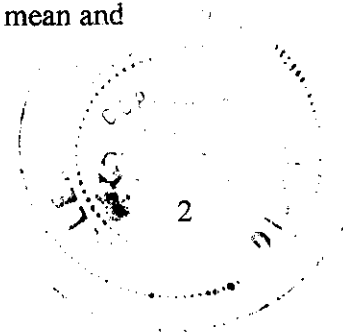
Section 1.3 "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.4 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.5 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. Blocks "V" (the letter) as shown on the face of the plat.

Section 1.6 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. The lots are numbered 37 through 52 inclusive. For the purposes of this plat and the covenants appended thereto, the word "lot" may mean either any of said lots as platted, or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more lots or parts of one or more lots as platted upon which a residence may be erected in accordance with the restrictions hereinabove set out or such further restrictions as may be imposed by any applicable zoning ordinance, PROVIDED, HOWEVER, no tract of land consisting of part of any one lot or parts of more than one lot shall be considered a "lot" unless said tract of land has a width of sixty (60) feet at the established building lines as shown in this plat and said tract of land has a minimum area of at least 7500 square feet.

Section 1.7 "Subdivision". The term "Subdivision" when herein used shall mean and refer to the subdivision known as Falcon Creek, Section I, II, III, IV, V, VI et. seq.



Section 1.8. "Declarant" shall mean and refer to FALCON CREEK, LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 1.9. "Falcon Creek Villas" shall refer to lots 1-52 inclusive of Falcon Creek Subdivision.

Section 1.10. "Swimming Club" shall refer to The Falcon Creek Swimming Club.

## **ARTICLE II PROPERTY RIGHTS**

Section 2.1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the Common Area shall be accessed only through public rights of way, streets and walks as shown on the recorded plat;

(b) the, right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) the right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his/her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2.2. Delegation of Use. Any owner may delegate, in accordance with the "By-Laws, his/her right of enjoyment to the Common Area and facilities to the members of his/her family, his/her tenants, or contract purchasers who reside on the property.

## **ARTICLE III DUTIES OF ASSOCIATION AND VILLA ASSOCIATION**

Section 3.1. Duties of Association. The Association shall have responsibility and authority for reasonable maintenance and repair of the common areas in the Subdivision, including streets, walking easements, dams, culverts, and all community facilities therein. Such responsibility shall include but not be limited to: the cutting of grass and weeds, including grass and weeds located on vacant lots (excluding villa lots); the removal of snow and ice; the maintenance of signage (excluding the two "Villas of Falcon Creek" signs), and the installation, maintenance and

operation of street lights.

The Association may make contracts to carry out its responsibilities and shall have the power to pay taxes and other charges on the land and other property owned by it from time to time. Records shall be kept by the Secretary of the Association of all action taken by the Association, all contracts entered into, and all expenses incurred.

Section 3.2. Duties of Villa Association. The Villa Association shall have responsibility and authority for reasonable maintenance and repair of the lawns of the Villa lots and the removal of snow from villa driveways. Such responsibility shall include but not be limited to: the cutting of grass and weeds, including grass and weeds located on vacant villa lots; the removal of snow and ice from driveways; and the maintenance of the two "Villas of Falcon Creek" signs (if declarant chooses to install them).

The Villa Association may make contracts to carry out its responsibilities and shall have the power to pay taxes and other charges on the land and other property owned by it from time to time. Records shall be kept by the Secretary of the Villa Association of all action taken by the Villa Association, all contracts entered into, and all expenses incurred.

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS**

Section 4.1. Membership. Every owner of a lot which is subject to assessment shall be a member of both the Association and the Villa Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 4.2. Voting Rights. The Association shall have two classes of voting membership:

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

Class B. The Class B member(s) shall be the Declarant who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when title to all Lots owned within the properties has been conveyed by  
DECLARANT to others;

or

(b) on December 31, 2006.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless expressly assumed by them.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas and any improvements situated thereon.

Section 5.3. Maintenance of Approved Facilities. Each Class A member agrees to pay to the Association the annual assessment chargeable to each lot. The annual assessment shall be used for the following purposes, including but not limited to:

- (1) payment of taxes and insurance in connection therewith;
- (2) repair, replacement and making additions thereto;
- (3) costs, including but not limited to, labor, equipment, and materials required for the management, supervision, maintenance and repair of such facilities;
- (4) and, for such other community purposes as the Association may properly determine.

The Association shall be obligated to maintain, repair and/or replace, if necessary, the storm water drainage system and any future storm water detention basin together with its outlet and water level control structures, as filed with the Allen County Plan Commission in conjunction with this subdivision, approval of which has been granted for the use and benefit of this section of this subdivision, and of further sections of FALCON CREEK, the cost of which shall be borne by all of the owners and subsequent owners of lots in any and all of the sections of the FALCON CREEK subdivision.

The owner of any lot in FALCON CREEK SECTION VI, and/or the Allen County Drainage Board, or its successor agency, shall have the right to order the Association to carry out its obligation to maintain, repair, or replace the storm water drainage system and any future storm

water detention system improvements as provided above, and to assess the owners of all lots in this section and further sections of FALCON CREEK the cost thereof.

Section 5.4. Maximum Annual Association Assessment. Until December 31, 2002, the maximum annual assessment of The Falcon Creek Community Association shall be two hundred dollars (\$200.00) per Lot.

(a) From and after January 1, 2003, and each year thereafter, the Board of Directors of the Association, at each annual meeting thereafter, shall set the amount of the annual assessment for the following year for each lot, taking into consideration the current maintenance costs and future needs of the Association.

(b) The annual assessment shall never be less than one hundred dollars (\$100.00).

Section 5.5. Maximum Monthly Villa Association Assessment. Until December 31, 2002, the maximum monthly assessment shall be seventy-five dollars (\$75.00) per Lot payable in four quarterly installments of \$225.00.

(a) From and after January 1, 2003, and each year thereafter, the Board of Directors of the Villa Association, at each annual meeting thereafter, shall set the amount of the monthly assessment for the following year for each lot, taking into consideration the current maintenance costs and future needs of the Villa Association.

(a) The annual assessment shall never be less than six hundred dollars (\$600.00).

Section 5.6. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association and/or Villa Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided however, that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5.7. Notice and Quorum for Any, Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 5.8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual or monthly basis, as the Board of Directors determines.

Section 5.9. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence upon the date of execution of documents transferring title of any lot to its owner or from the date of execution of any land contract for the purchase of any lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount annual assessment against each Lot at least thirty (30) days advance of each annual assessment period. Written notice of the annual assessment dates shall be established by the Board of Directors. The Association and/or Villa Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association and/or Villa Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association and/or Villa Association as to the status of assessments on a lot is binding upon the Association and/or Villa Association as of the date of its issuance.

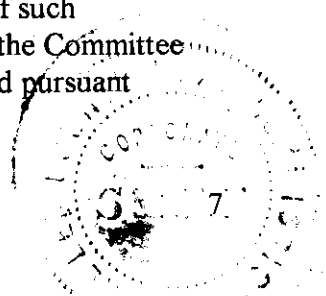
Section 5.10. Effect of Nonpayment of Assessments: Remedies of the Association or Villa Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the prevailing prime lending rate plus one percent per annum. The Association or Villa Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his or her Lot.

Section 5.11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VI ARCHITECTURAL CONTROL**

The lots are numbered 37 through 52, inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are hereby expressly dedicated to public use and for their usual and intended purpose.

Section 6.1. Architectural Control Committee. The Architectural Control Committee shall be composed of three members appointed by the Declarant. The majority of such Committee may designate a representative to act for it. Neither the members of the Committee nor its representative shall be entitled to any compensation for services performed pursuant





hereto. Declarant may, by an instrument recorded in the Allen County Recorder's Office, transfer the functions of the Committee to the Villa Association whereupon the functions of the Committee shall be performed by the Villa Association.

Section 6.2. Construction Plan Approval. The Committee shall approve or disapprove construction plans and specifications and locations of structures as provided in this Article. The Committee's approval or disapproval shall be in writing and sent by regular mail to the owners of record or their representative. If the Committee, or its designated representative, fails to approve or disapprove them as required by these provisions within thirty (30) days after the plans and specifications and plot plan have been submitted to it, and if no suit to enjoin the construction is commenced prior to the completion thereof, approval will not be required and the applicable provisions thereof shall be deemed to have been fully complied with.

Section 6.3. Use. All lots shall be used for single-family residential purposes, but domestic servants employed by a resident owner may also reside in the dwelling. No more than one single-family dwelling shall be constructed or maintained on a lot. Before any lot or tract may be used or occupied, such user or occupier shall first obtain an Improvement Location Permit and Certificate of Occupancy from the Allen County Plan Commission.

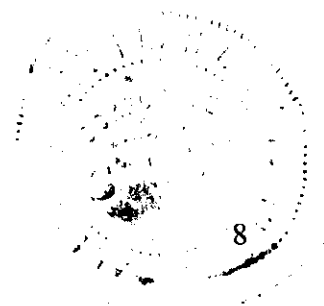
Section 6.4. Number of Buildings Allowed/Temporary Structures. No buildings shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height. Each dwelling shall include not less than a two car garage, which shall be built as part of said structure and attached thereto. No structure of a temporary character, trailer, basement, tent, shack, garage or other out building shall be used or maintained on any lot at any time as a residence, either temporarily or permanently, nor shall any building be moved into or upon any lot for such purpose.

Section 6.5. Minimum Floor Areas. No dwelling shall be permitted unless it meets or exceeds the following minimum floor areas in square feet, exclusive of open porches, breezeways, or garages, as follows:

Lots 37-52 inclusive:

One story	1300
1 ½ story	1500
2 story - total aggregate	1700

Section 6.6. Building Location. No building shall be located on any lot nearer to the front lot line or nearer to the side street than the minimum building setback lines shown on the recorded plat. In any event, no building on lots 37 through 46 shall be located nearer than 5 feet on each side lot line and no building on lots 47 through 52 shall be located nearer than 7 feet on each side lot line. No dwelling shall be located on any interior lot nearer to the rear lot line than shown on the table below:



Lots numbered	Minimum Rear Building Setback
38-42	15'
37,43-52	25'

**Section 6.7. Building Materials.** All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos shingle siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building on any lot, and no roll roofing of any description or character shall be used on the roof of the dwelling house or attached garage of any of said lots.

**Section 6.8. Exterior Finish.** There must be a minimum of seventy-five (75) square feet of brick, stone or wood on the front elevation unless specifically approved otherwise by the Architectural Control Committee.

**Section 6.9. Subdivision of Lots.** No lot may be subdivided, except that a lot may be divided into two parts where each part is under common ownership and use with an entire, contiguous lot, in which case the part and the entire lot with which it is contiguous shall be treated as one building site. Any further subdivision of lots shall be first approved by the Allen County Plan Commission, or its successor agency. However, no dwelling shall be erected or placed on any lot having a width of less than sixty (60) feet at the minimum setback line, nor shall any dwelling be erected or placed on any lot having an area of less than 7,500 square feet.

**Section 6.10. Construction Plan Approval.** No building shall be erected, placed or altered on any lot until construction plans showing floor plans and elevations, have been approved by the Architectural Control Committee as to quality of workmanship and materials, and harmony of external design with existing structures.

**Section 6.11. Improvements.** Before any house or building on any platted lot or tract in this subdivision shall be used and occupied as a dwelling or as otherwise provided in the subdivision restrictions above, the Declarant or any subsequent developing owner of said platted lot or tract shall install all improvements serving said platted lot or tract as provided in said plans and specifications for this addition filed with the Allen County Plan Commission.

**Section 6.12. Driveways.** All driveways shall be hard-surfaced. All driveways from the street to the garage shall be poured concrete and not less than sixteen (16) feet in width. Any driveway constructed within the boundary lines of any lot prior to the existence of sidewalks shall be so constructed that the elevation thereof at a point one (1) foot outside of the lot boundary line shall be four (4) inches above the grade elevation of the established curb adjacent to such lot. It shall at this point have installed a one-half inch bituminous expansion joint, and then proceed at a gradient of one-fourth inch per foot to a point of five (5) feet outside the lot boundary line at which point another one-half inch bituminous expansion joint shall be installed. The remaining distance shall have a gradient of one-half inch per foot.

**Section 6.13. Clotheslines.** No rope, wire or other device shall be installed on the

exterior of any dwelling for the purpose of air drying linens or wearing apparel.

**Section 6.14. Sight Lines.** No fence, wall, hedge or shrub planting which obstructs the sight line at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**Section 6.15. Sidewalks.** Plans and specifications for this Subdivision on file with the Allen County Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of all Lots. Installation of said sidewalks shall be the obligation of the owner of any such lot, exclusive of the Declarant, and shall be completed in accordance with said plans and specifications, and prior to the issuance of a Certificate of Occupancy for any such lot, and the cost of said installation shall be a lien against any such lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Occupancy be issued to Declarant, said individual or corporation shall be considered an owner for the purposes of the enforcement of this covenant.

**Section 6.16. Landscaping.** Each lot must contain a minimum of ten (10) well-developed live shrubs as part of its original landscaping. Declarant, at Declarant's sole cost, reserves the right to plant one tree per lot in the street right-of-way between sidewalk and each lot. The future maintenance of trees after planting will be the responsibility of the Association.

## **ARTICLE VII UTILITIES**

**Section 7.1. Platted Utility Easements** All lots in the Subdivision shall be subject to the easements indicated upon the recorded plat, which may be used, subject to the following provisions for the installation, construction, maintenance, operation, servicing, repair, removal and replacement of (i) poles, wires and conduits, and the necessary and proper attachments in connection therewith, for the transmission of electricity for light, power, telephone, radio and television and other purposes, (ii) surface and storm water sewers and drains, (iii) sanitary sewers, (iv) pipe lines for supplying gas, water and heat, and (v) for any other municipal, public or quasi-public utility. Any municipal, public or quasi-public utility engaged in supplying one or more of the above utility services shall have the right to enter upon the strips of land subject to said easements for any purpose for which said easements may be used. All structures, shrubbery, trees, and other installations located within said easements shall be subject to the paramount right of each such utility to use said easements as provided herein and the removal of any obstruction by any utility shall in no way obligate the utility in damages or to restore the obstruction.

Section 7.2. Utility Easements in Streets. Utility easements in all platted streets are reserved for use, subject to the provisions of Section 7.4 below, by municipal, public and quasi-public utilities and by Declarant, and their successors and assigns, for the installation, construction, maintenance, operation, servicing, repair, removal and replacement of any utility, subject to reasonable regulation by any governmental body having jurisdiction of the streets and subject to the obligation of any such utility which installs a line in any street to repair and return the pavement of such street to at least as good as condition as existed prior to such work.

Section 7.3. Utility Service Entrances. All utility service entrances running from any utility plant within a platted easement or a street to any structure on a lot shall be located underground, except for such housing, pedestals, or other facilities as may be appropriate or necessary for connection, servicing and maintenance of such utility service entrance. Such housings, pedestals and other facilities shall be constructed and maintained at as low a height and in as inconspicuous a manner as is practicable. Each owner shall, at the time of the installation of any such service entrance, furnish to the utility, for its records, a drawing or other description accurately showing the location underground for the service entrance from the easement or street to the owner's structure. Each utility having a plant in any easement or street shall have control over the installation of all connections to its plant for service entrances serving lots. Each such installation shall be left open for inspection and approval by the utility.

Section 7.4. Prohibition of Overhead Utility Facilities. All utility wires, cables, conduits, pipes and other facilities within the Subdivision shall be located underground within the utility easements provided hereby, except that:

(a) Poles and overhead facilities may be used to the extent reasonably necessary at those places where distribution facilities enter and leave the Subdivision, and;

(b) Housing, pedestals and other facilities may be above the surface of the ground to the extent permitted by Section 7.3 above and to the extent otherwise necessary for installation and operation of the utility service, but shall be constructed and maintained at as low a height and in as inconspicuous a manner as is practicable.

Section 7.5. Street Easements. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to all public utility companies, the proprietors of the land herein platted and their respective successors and assigns, to install, lay, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintain and repair of said streets.

Section 7.6. Completion of Utilities Before Occupation. All street, drainage and utility improvements serving a lot which are required by the plans and specifications filed by the Declarant with the Allen County Plan Commission shall be installed by the Declarant or any subsequent developing owner before any dwelling house on that lot in the Subdivision is used or occupied.

## **ARTICLE VIII GENERAL PROVISIONS**

Section 8.1. Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.

Section 8.2. Signage. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one foot square, one sign of not more than five square feet, advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 8.3. Antennae. No radio or television antenna with more than ten (10) square feet of grid area, or 36 inches in diameter, or which attains a height in excess of six (6) feet above the highest point of the roof shall be attached to any dwelling house. No free standing radio or television antenna including dish-like fixtures for the reception of satellite transmission shall be permitted on any lot.

Section 8.4. Fencing. Fences of any kind are not permitted unless approved in writing by the Architectural Control Committee.

Section 8.5. Pools. Pools are not permitted on any lot.

Section 8.6. Oil. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 8.7. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. An outside kennel may house only one animal unless approval is obtained from the Association for more than one such pet. In no event shall a dog be allowed to bark constantly or to any extent that it will create a nuisance to any other owner or owners in the Subdivision.

Section 8.8. Refuse Disposal/Recycling. No lot shall be used or maintained as a dumping ground or storage/holding place for rubbish, trash, garbage, recyclable materials or other refuse or debris and the same shall not be kept except in sanitary containers while awaiting removal from the premises. No incinerators or outside incinerators shall be kept or allowed on any lot. All other equipment for storage or disposal of such material shall be kept in a clean and sanitary condition and shall either be located within the dwelling or garage or underground or shall be fully screened from public view by an appropriate fence or screen.

Section 8.9. Fuel Tanks. All fuel and oil storage tanks shall be concealed within the main

structure of the dwelling house, its basement or attached garage.

Section 8.10. Burning of Materials. The burning of papers, grass, and other materials shall not be allowed except in receptacles approved by the Association. Either the Developer or the Association may order discontinuance of all burning during such times as it reasonably believes that such burning would be hazardous to lot owners and/or their property because of weather conditions or other reasons.

Section 8.11. Sewage and Water Supply Systems. No individual water supply, system or individual sewage disposal system shall be installed, maintained or used on any lot in this subdivision. Sewers on lots in said Subdivision shall be connected to the sanitary sewage system according to the plans and specifications of the Declarant.

Section 8.12. Hunting, Shooting, or Trapping. No hunting, shooting or trapping shall be allowed in the Subdivision except by the written consent of the Association which shall allow the same for the sole purpose of protecting and preserving the Common Area or to prohibit any such animal from becoming a nuisance. Provided, however, that trapping of animals may be attempted for purposes of pest and rodent control, at the direction of the Board of Directors.

Section 8.13. Recreational Vehicles No all-terrain vehicle, snowmobile, motorcycle, moped, or any other motorized vehicle shall be operated in any area of the Subdivision except for the lawful operation of licensed motor vehicles within the streets and except such as are necessary in connection with utility uses. No motorized water craft or vehicle shall be permitted on the lake.

Section 8.14. Storing of Equipment. No boat, motor home, camping or other trailer, or other equipment or machinery of any kind shall be allowed on any lot unless stored inside the garage attached to the home dwelling. No truck other than a light pick-up or panel type shall be in plain view on the premises.

Section 8.15. Storm Water Runoff. No rain and storm water run off or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the sanitary sewage system, which shall be a separate sewer system from the storm water and surface water run off sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned storm water and surface water run off sewer system.

Section 8.16. Surface Drainage Easements. Surface drainage easements and common areas used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 8.17. Yard Light. Each dwelling shall install a yard light at a location within the front twenty (20) feet of the lot. The yard light must be of a design and construction as approved by the Architectural Control Committee. Owner shall insure at Owner's expense that the yard light is illuminated at all times other than daylight hours.

Section 8.18. Outdoor Lighting. No outdoor light source shall be located more than 12 feet above ground level. All outdoor lighting sources in excess of 1,500 lumens shall be installed so that direct rays therefrom are confined to the lot upon which the source is located. No outdoor light source shall exceed 4,500 lumens. All outdoor light sources located within 25 feet of each other shall be deemed to be one light source for the purposes of this paragraph. A light source shall be deemed to be outdoor unless it is located within a completely enclosed building. The provisions of the second sentence of this paragraph shall not apply to street lighting installed by Developer or the Association.

Section 8.19. Grass and Weeds. The owner of any lot within the subdivision, including a vacant lot, shall be required to maintain the lot and to keep weeds and grass trimmed to a height acceptable to the Architectural Control Committee. Further, if a lot owner fails to comply, the Association shall have the right to hire the work to be performed and to charge the costs to the lot owner. The Association shall then have the right to file and hold a lien against the property if the outstanding costs remain unpaid for a period of more than 60 days, the amount of the lien to include costs, filing fees, and attorney fees.

Section 8.20. Play Equipment. No play equipment including swing sets, trampolines, basketball goals and the like will be permitted on any lot unless approved in writing by the Falcon Creek Community Association, Inc. Architectural Control Committee.

Section 8.21. Concrete and Asphalt Play Areas. No concrete or asphalt area other than driveways, porches, patios and stoops shall be permitted on any lot. This includes areas to play basketball and other sports.

Section 8.22. Flood Protection Grades. In order to minimize potential damage from surface water, flood protection grades are hereby established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of the lowest point of entry at which water may enter the structure. The flood protection grades shall be Mean Sea Level Datum and shall be as follows:

Lots numbered:	37-42	841.3 feet
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The foregoing Flood Protection Grades are also shown, boxed on the face of the plat.

## **ARTICLE IX MISCELLANEOUS**

Section 9.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Dedication. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.3. Compliance with Zoning Laws. Before any lot may be used and occupied such user or occupier shall first obtain from the applicable governmental authority such improvement location and/or occupancy permits as may be required by applicable zoning or other ordinances.

Section 9.4. Duration. The covenants and restrictions herein contained shall run with the land, and be effective for a period of 25 years from the date of recording hereof and thereafter shall be automatically extended for successive periods of ten (10) years each; provided, however, that nothing contained in this Section shall limit or alter in any way whatsoever any right, statutory or otherwise, to vacate the plat or any portion thereof.

Section 9.5. Amendment. These protective covenants, restrictions, and limitations (but not the public utility easements) may be changed or abolished, in whole or in part and at any time as follows:

(a) The introductory provisions of these covenants and the provisions of Article II, Article VI and Article VIII, Section 8.15 and Section 8.16 may be changed by the written agreement of all of the owners of all of the lots in this Section of the Subdivision, and;

(b) The provisions of all of the other paragraphs may be changed by the written agreement of at least eighty-five percent (85%) of all of the owners of lots 37-52 inclusive of Falcon Creek subdivision at the time the alteration or amendment of said restrictions is made, provided, however, DECLARANT and their successors or assigns shall have the exclusive right of five (5) years from the date of recording of the plat for Falcon Creek Section VI to amend any of the covenants and restrictions, subject in each case to such approval of governmental authorities as may be required by law at any time. The provisions of any such amendment shall become effective upon the recording of a copy of the agreement making such amendment in the Office of the Recorder of Allen County, Indiana. The term "owners" shall be a person, firm or corporation in whose name the fee simple title appears of record in the Office of the Recorder of the Allen County, Indiana. Any and all amendments or alterations to these restrictions and covenants shall be made subject to the prior approval of the Allen County Plan Commission.



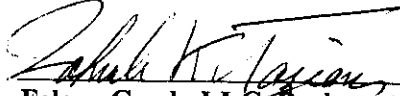
Section 9.6. Annexation. Additional residential properties may be annexed by Declarant and made subject to this Declaration. Said additional properties may be developed for villas and/or single family residences. Said annexation may be perfected without the consent of the Owners, subject to any approval required by the Allen County Plan Commission.

Section 9.7. Investigation and Compliance. The Declarant and the officers of the Association shall have the right of access to all lots at all reasonable times and in a reasonable manner to investigate and determine compliance with the provisions of these covenants.

Section 9.8. No Waiver. The failure of any interested party to enforce the provisions of these covenants shall not constitute a waiver of the right to enforce them on another occasion and no delay in enforcement shall constitute a waiver of the right of enforcement so long as a violation continues.

Further, the owners expressly acknowledge that they have no right of reversion in the event any one of these covenants is violated by a subsequent owner.


IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and this 8<sup>th</sup> day of July, 2002.

  
Falcon Creek, LLC, Declarant  
By: Zohrab Tazian, Partner

Before me, the undersigned Notary Public in Allen County, State of Indiana personally appeared Zohrab K. Tazian and acknowledged the execution of the foregoing to be their free and voluntary act and deed for the uses and purposes mentioned therein, this 8<sup>th</sup> day of July, 2002.

My Commission Expires:

9-21-08

  
Erica Sue Stephan, Notary Public  
Resident of Allen County, Indiana

This is to certify that the foregoing document has been reviewed by the Allen County Plan Commission. As presented the content of the restrictions contained in said document conforms to the requirements of the Allen County Zoning and Subdivision Control Ordinances and the document is now eligible for recording. This certificate does not extend to the form or validity of the document.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

ALLEN COUNTY PLAN COMMISSION

By: \_\_\_\_\_  
Dennis A. Gordon, AICP  
Executive Director

This instrument prepared by Ara Z. Tazian  
Z. K. Tazian Associates, Inc.