



# **DAVID BRENTON'S TEAM**

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## **RE/MAX Select, REALTORS**

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The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

**The information is deemed reliable, but not guaranteed.**

# COPY

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

### ROYAL RUN

THIS DECLARATION ("Declaration") is made this \_\_\_\_ day of February, 1998 by Royal Run Partners, L.P., an Indiana limited partnership ("RRP").

#### Recitals

A. RRP is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Initial Real Estate").

B. RRP intends to subdivide the Initial Real Estate into residential lots.

C. Before subdividing the Initial Real Estate, RRP desires to subject the Initial Real Estate to certain covenants, conditions and restrictions for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.

D. RRP further desires to create an organization to which shall be assigned the responsibility for maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Initial Real Estate as hereafter recorded in the office of the Recorder of Boone County, Indiana and of collecting and disbursing assessments and charges as herein provided.

E. RRP may from time to time subject subsequent secondary plats of the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate" or the "Subdivision").

NOW, THEREFORE, RRP hereby declares that the Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following covenants, conditions and restrictions, each of which shall run with the land and be binding upon, and inure to the benefit of, RRP and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

## ARTICLE I

### DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.01 "Association" means the Royal Run Subdivision Association, Inc., an Indiana not-for-profit corporation, which RRP has caused or will hereafter cause to be incorporated, and its successors and assigns.

1.02 "Architectural Review Committee" means the architectural review committee established pursuant to Paragraph 7.01 of this Declaration.

1.03 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common Areas may be located within a public right-of-way.

1.04 "Common Expenses" means (i) expenses associated with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including without limitation expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping located on a Drainage, Utility or Sanitary Sewer Easement or on a Landscape Easement to the extent the Association deems it necessary to maintain such easement, (ii) expenses associated with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sanitary Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance provided for herein, and (v) all expenses incurred in the administration of the Association or the performance of the terms and provisions of this Declaration.

1.05 "Developer" means Royal Run Partners, LP, an Indiana Limited Partnership (RRP) or any successor or assign, whom it designates in one or more written instruments, in recordable form, to have the rights of Developer hereunder.

1.06 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Lot within the Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.07 "Landscape Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

1.08 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Real Estate.

1.09 "Mortgagee" means the holder of a duly recorded first mortgage lien on any Lot or Residence Unit.

1.10 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding for all purposes those persons or entities having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot or Section(s) or part or parts thereof in the Real Estate.

1.11 "Plat" means a duly approved secondary plat of any part of the Real Estate as hereafter recorded in the office of the Recorder of Boone County, Indiana.

1.12 "Residence Unit" means any single family home constructed on any part of the Real Estate.

1.13 "Section" means any parcel of land shown and identified as a "Section" followed by any Arabic numeral on a Plat of any part of the Real Estate.

1.14 "Utility, Drainage, Sanitary Sewer or Water Main Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

## ARTICLE II

### APPLICABILITY

2.01 All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the applicable covenants, conditions and restrictions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

2.02 The Owner of any Residence Unit or the Developer of any Section or Sections (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from RRP, the Developer or their affiliates or any other builder or any other Owner of a Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall

conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions and restrictions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants, for such Owner, such Owner's heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions and restrictions of this Declaration.

### ARTICLE III

#### PROPERTY RIGHTS

3.01 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Lot and related Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas which are in addition to the regular and special assessments described herein;

(ii) the right of the Association to fine any Owner or make a special assessment against any Lot in the event a person permitted to use the Common Areas by the Owner of such Lot violates any rules or regulations of the Association;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Areas or grant easements therein to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer; and

(iv) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate.

3.02 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas subject to the terms of this Declaration and any rules and regulations promulgated by the Association from time to time.

3.03 Conveyance of Common Areas. Developer may at any time and from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association by warranty deed, and such Common Areas so conveyed shall then be the property of the Association; provided, however, that the Common Areas for the Initial Real Estate and any additional lands added to the scheme of this Declaration, respectively, shall be conveyed to the

Association on or before the time that the first Lot within the Initial Real Estate or such additional land, respectively and as the case may be, is conveyed for residential use.

## ARTICLE IV

### EASEMENTS AND STANDARDS

4.01 Public Right Of Way. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.

4.02 Utility, Drainage, Sanitary Sewer and Water Main Easements. There are areas of ground on the Plat marked "Utility Easements, Drainage Easements and Sanitary Sewer Easements", either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage Easements are hereby created and reserved for (i) the use of Developer during the "Development Period" (as such term is defined in the Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Association and Boone County for access to and maintenance, repair and replacement of such drainage system. The Owner of any Lot in the Subdivision subject to a Drainage Easement, including any builder, shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from Boone County and the prior written approval of the Developer. The Sanitary Sewer and Water Main Easements are hereby created and reserved for the use of the utility company and, during the Development Period, Developer for access to and installation, repair, removal, replacement or maintenance of an underground sanitary sewer and potable water delivery system. The delineation of the Utility, Drainage, Sanitary Sewer and Water Main Easement areas on the Plat shall not be deemed to be a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Paragraph 4.02. Except as installed by Developer or installed as provided above, all drainage and utility easements shall remain undisturbed and free from any and all permanent structures, including but not limited to, driveways and other structures that could impair replacement or maintenance of any and all components of the drainage system.

4.03 Building Location - Front, Back And Side Yard Requirements. Building lines and building setback lines are established on the Plat. No building shall be erected or maintained between said setback lines and the front, rear or side lot line (as the case may be) of a Lot. The

setback lines may vary in depth in excess of the minimum as designated on the Plat. All Lots shall be accessed across and all Residence Units' front exterior shall face Front Building Setback Lines as designated on the Plat.

4.04 Residential Unit Size, Pricing And Other Requirements. No Residence Unit constructed on a Lot in each Section respectively shall have less than the following square feet of total living area for a single-story ranch or two story residence, exclusive of garages, carports and open porches nor be priced less than the follow amounts:

Section Number	Home Type	Minimum - Maximum Square Footage	Minimum Price (1)
Section 1	Ranch	1200-1650 s.f.	\$120,000
	2 Story	1500-1900 s.f.	\$120,000
Section 2	Ranch	1200-1300 s.f.	\$110,000
	2 Story	1350-1850 s.f.	\$110,000
Section 3	Ranch	1200-1650 s.f.	\$120,000
	2 Story	1500-1900 s.f.	\$120,000
Section 4	Ranch	1500-1700 s.f.	\$135,000
	2 Story	1700-2300 s.f.	\$135,000
Section 5	Ranch	1500-1700 s.f.	\$135,000
	2 Story	1700-2300 s.f.	\$135,000
Section 6	Ranch	1500-1700 s.f.	\$135,000
	2 Story	1700-2300 s.f.	\$135,000
Section 7	Ranch	1500-1700 s.f.	\$135,000
	2 Story	1700-2300 s.f.	\$135,000
Section 8	Ranch	1700 & up s.f.	\$155,000
	2 Story	2000 & up s.f.	\$155,000
Section 9	Ranch	1700 & up s.f.	\$155,000
	2 Story	2000 & up s.f.	\$155,000

Each Residence Unit shall include an attached enclosed garage. The maximum height of any structure constructed on a Lot shall be 35 feet.

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(1) The minimum pricing is total cost of finished home to purchaser including Lot and all improvements thereon. The minimum square footage listed in the above exhibit is exclusive of garages and porches.

4.04.1 Changes in Minimum Pricing: The Architectural Review Committee shall determine any changes to Minimum Pricing as established in Section 4.04. Any change to Minimum Pricing shall require the affirmative vote of seven (7) of the nine members of the Architectural Review Committee.

4.05 Tree Preservation: Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of improvements, unless the removal thereof is otherwise specifically approved by Developer or any such tree is dead or decayed and dangerous to human health, safety or welfare.

4.06 Completion of Construction: All construction upon a Lot shall be completed in strict accordance with the Lot development plans approved by Developer or the Architectural Review Committee as required by the Declaration. The exterior of any dwelling house built upon a Lot or combination of Lots shall be completed within eighteen (18) months after the date of commencement of the foundation and the site graded and any areas to be covered with grass shall be seeded or sodded. Each Lot shall be kept and maintained in an orderly manner during the period of construction. All builders will be required to utilize and pay for a thirty (30) cubic yard trash receptacle for each home during the period of construction in order to properly dispose of debris. Every builder or owner shall be required to furnish a Port-O-Let for their workers during construction. However, multiple builders or Owners may combine these facilities.

4.07 Driveways: No Lot shall be permitted to contain more than one driveway and each Lot shall be allowed only one cut onto a public road adjoining the property. No direct access of any type shall be allowed onto Royal Run Boulevard, County Road 650 East or County Road 650 South from any Lot in this Subdivision. The driveway on each Lot shall be cut and stone or gravel placed thereon prior to development or improvement of the Lot to the extent necessary to avoid the transmittal of mud from construction traffic to the public roads. Upon substantial completion of construction, each driveway shall be constructed of either hard mixed aggregate, concrete, asphalt, brick or other materials acceptable to Developer.

A driveway constructed on any Lot to and from the public roads shall be constructed and maintained so as to provide the sole means of ingress and egress to such Lots for vehicular traffic. However, circular drives which provide more than one cut onto a public road may be allowed upon approval of the Developer. Under no conditions shall driveways be constructed over curb inlets of the storm sewer system within the right-of-way of the public road. No asphalt or concrete driveway surface shall be placed behind a curb containing these inlet grates.

4.08 Subsurface Drains: In no situation shall sump pump or down spout drains be outletted directly to the surface of a street. Gravity drainage from down spouts may be drained into ravines at the rear of lots. All floor drains shall drain into the sewage disposal system of the home. In no situation shall sump pumps be outletted into the sanitary sewer system of the home.

4.09 Royal Run Legal Drain: All Lots within the Royal Run Subdivision and other areas as determined by the Boone County Drainage Board are included in the Royal Run Legal Drain. This legal drain shall be established by the Boone County Drainage Board and the Boone County Surveyor to provide a method for future maintenance of the re-routed Pedigo Legal Drain, storm sewers, lakes in the Common Areas, outfall structures and the subsurface tile drains located in the Subdivision and off-site storm sewer drainage located along County Road 650 East and County Road 650 South. Easements have been provided on certain Lots as shown on the Primary Plat in order that contractors employed by the Boone County Surveyor may gain access across Lots in the subdivision to maintain said drainage improvements. Each Lot will be assessed a yearly drainage fee not to exceed \$100.00 per Lot. This fee is billed by the Boone County Treasurer and is payable in the first year at the time of property taxes in May and November. Failure to pay said assessment could result in a Lot and/or Residence Unit being involved in a tax sale for failure to pay delinquent taxes. The Royal Run Legal Drain shall remain under the jurisdiction of the Boone County Drainage Board until such time as annexation or incorporation of the development occurs by any city or town and then only upon the creation of a Stormwater Management Board or a similar such maintenance entity by the city or town.

4.10 Compacted Fill Material On Lots: Lots may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. Consult the development engineer prior to construction on any Lot.

4.11 Sidewalks: Concrete sidewalks shall be installed on all Lots. When any proposed Section within the Royal Run Subdivision contains more than two Lots per acre of land platted into Lots, sidewalks shall be provided as shown on the Plat. The sidewalks shall be at least 4'-0" wide and 4" thick, underlaid with adequate granular material, sloped 1/4" per foot toward the street and be located per the construction plans, but in any event, no closer than 1'-0" to the street. It shall be the responsibility of the Lot Owner or the Developer on each Lot requiring sidewalks to complete the sidewalk prior to issuance of a Certificate of Occupancy on the new home by the local building inspector. Handicapped ramps shall be provided on those Lots as detailed by the Royal Run Section construction plans.

## ARTICLE V

### USE AND MAINTENANCE

5.01 Residential Unit Use. All Lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on any Lot, and no business may be conducted on any part thereof. No building shall be erected, placed or permitted to remain on any Lot other than one detached single-family residence not to exceed two stories in height. No variance shall be sought to the Boone County zoning laws seeking to allow construction of a multi-family use building, as such use is strictly prohibited.

5.02 Lakes. There shall be no swimming, skating, boating, fishing in or on or other recreational use of any lake, pond, creek, ditch or stream on the Real Estate. Nor shall any structure be placed in, on or over said lakes without the express written consent of the Association, RRP or the Developers. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

5.03 Use of Common Areas. Subject to Paragraph 3.1 above, the Common Areas shall be used only for recreational purposes and other purposes permitted or sanctioned by the Association.

5.04 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision. No direct access is permitted to any Lot via Royal Run Boulevard, County Road 650 South, County Road 650 East or across a Common Area. All Lots shall be accessed across and all Residence Units' front exterior shall face Front Building Setback Lines as designated on the Plat.

5.05 Signs: Subject to Paragraph 14.02, no sign of any kind shall be displayed to public view on any Lot except that one two-sided sign (not exceeding five (5) square feet per side) may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise during construction.

5.06 Maintenance of Lots and Improvements. The Owner of any Lot and any Developer or builder during the construction process shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, each such Owner shall:

- (a) Mow such portion of the Lot or Lots including any Drainage, Utility, Sanitary Sewer or Water Main Easements located on the Lot upon which grass has been planted at such times as may be reasonably required.

- (b) Remove all debris or rubbish from the Lot and keep them free of weeds, trash or construction debris and otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot;
- (c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance;
- (d) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly;
- (e) Prevent or clean the migration or erosion of any soils onto roads or drainage easements from any Lot and to the extent the cleanup of any soils becomes an expense of the Association, the Owner shall reimburse the Association; and
- (f) Keep front and side yards free from statuary ornamentation unless approved by the Architectural Review Committee.

5.07 Right of Association to Maintain Lots. If the Owner of any Lot fails to maintain the Lot in a manner reasonably satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, following notice in writing to such Owner of an intention to do so unless reasonable maintenance as detailed in such notice is performed and the expiration of twenty (20) days thereafter without such maintenance being done, to enter upon said Lot and clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a Special Assessment against such Lot and the Owner thereof, whether or not a builder or Developer, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the offending Owner for any damage which may result from any maintenance work performed hereunder.

5.08 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association owns or is required to maintain hereunder, including without limitation any Subdivision improvement, such as fences or columns erected by the Developer in right-of-way areas, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or

maintain the Common Areas and other improvements if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, subcontractor, employee, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any other improvements maintained by the Association pursuant to this Paragraph 5.08, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall constitute a Special Assessment against such Owner, whether or not a builder, and its Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

5.09 Animals: Only dogs, cats and similar animals generally and customarily recognized as household pets, not exceeding in the aggregate three (3) in number, may be kept or maintained on any Lot as household pets. All animals kept or maintained on any Lot in this Subdivision shall be kept reasonably confined so as not to become an annoyance or nuisance. No animal shall be kept or maintained on a Lot for commercial purposes or primarily for breeding purposes. All animals shall be leashed by Owner when the animal is within any Common Area. Owners are responsible for the cleanup of any animal fecal matter or other droppings ("Animal Matter") deposited in any Common Area by their animals and failure to remove any Animal Matter from a Common Area shall subject the Owner to a fine not to exceed \$50.00 per occurrence as determined by the Association.

5.10 Garbage And Refuse Disposal. Trash and refuse disposal will be on an individual basis, Lot by Lot. The Subdivision shall not contain dumpsters or other forms of general or common trash accumulation except to facilitate development and house construction. No Lot shall be used or maintained as a dumping ground for trash, nor shall any accumulation of refuse or trash be permitted on any Lot. Rubbish, garbage and other waste shall be kept in sanitary containers of a type, kind and capacity to be determined by the Developer. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view and shall be maintained so as to be environmentally acceptable. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or Common Area. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse on any Lot or Common Area in the Subdivision. Weekly trash, refuse and recycling haulers shall be selected by the Association so to coordinate pickup. Payment to the haulers will be made directly by the homeowner.

5.11 Nuisances: No noxious or offensive activity shall be conducted upon any Lot or Common Area, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner.

5.12 Maintenance of Undeveloped and Unoccupied Lots: Owners of undeveloped or unoccupied Lots shall at all times keep and maintain such Lots in an orderly manner, causing weeds and other growths to be reasonably cut and shall prevent the accumulation of rubbish and debris thereon.

5.13 Drainage Retention Basins: Wet retention areas encompass parts of the Common Areas. The Association, Developers and Owners are specifically prohibited from changing the contour or in any way changing or modifying the retention areas so to lessen their effectiveness or make them unworkable. Specifically, no docks, piers or structures of any type shall be constructed or placed on or in the wet retention areas.

5.14 Water and Sewer Utility Systems. In the present or future conduct of its business in any area of land on any Plat contiguous to residential land marked "Utility Area, " the Utility Area shall contain facilities for the operation of a sewer and water utility by the utility company. No Owner or Developer shall object to, remonstrate against, seek or bring suit to enjoin, abate, deter, lessen, avoid, remove, severe, or in any other manner whatsoever interfere with any construction, operation, maintenance, use, alteration, demolition, removal, sale, transfer or assignment of any facility utilized, owned, leased or controlled by the utility company in the conduct of its business in the Utility Area or in the Utility and Sanitary Sewer and Water Main Easement granted above in Paragraph 4.02. No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field or similar method of sewage disposal shall be located or constructed on any Lot.

5.15 Water and Sewer Availability Fees. Provided water and sanitary sewer service are adjacent to any Lot, and in the event that the Developer has not connected a Residence Unit to the sewer or water main in accordance with the absorption schedule for development of Residence Units agreed to, by, and among the Developer, Boone County Utilities, LLC, and RRP, then the Developer shall pay to the water and sewer utility provider, a monthly fee for the availability of water and/or sanitary sewer service. The amount of the availability fee for water service shall be \$25.00 per month and the amount of the availability fee for sewer service shall be \$40.00 per month and said fees shall be payable in arrears on the first of every month following the availability of water and/or sewer service to the Owner or Developer's Lot or Lots. The availability fee for water and/or sewer service shall be in lieu of any monthly user fee payable to the utility company and shall be paid until such time as water and/or sanitary sewer service are connected physically to the Residence Unit. The charges for availability fees for water and sewer service are subject to change from time to time pursuant to notice issued by the utility company.

5.16 Common Areas. No tent, camper, motor home, bus, truck, trailer, boat, moped, motorcycle, go-cart, dune buggy, snowmobile or other recreational vehicle of any kind may be driven across, stored or parked on any Common Area unless in an area designated for such

activity by the Association. No swimming, snorkeling, scuba diving, fishing, skating, skiing, boating, sailing or other recreational activity is allowed on any body of water in the Common Areas. No motorized vehicle is allowed on any trail within the Common Areas. No roller skating, ice skating or skate boards may be utilized on any tennis or basketball court. No tree climbing in or tree houses may be erected on any tree within the Common Area.

5.17 Accessory And Temporary Buildings. No trailers, shacks, outhouses or storage sheds or tool sheds shall be erected or situated on any Lot in the Subdivision, except that used by the Developer or by a builder during the development of the Subdivision or construction of a residential building on the Real Estate, which temporary construction structures shall be removed upon completion of construction of the Subdivision or building, as the case may be.

5.18 Temporary Residence. No trailer, camper, motor home, truck, van, shack, tent, boat, bus, recreational vehicle, basement or garage may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

5.19 Vehicle Parking. No camper, motor home, bus, truck, trailer, boat, snowmobile or other recreational vehicle of any kind may be stored on any Lot in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair on a Lot unless such repairs are done in the garage. Disabled vehicles shall not be allowed to remain in open public view.

5.20 Mailboxes. No individual mailboxes at curb or on the residence unit shall be allowed, permitted or needed in the subdivision as a centralized common post office, with individual boxes, shall be utilized by all homeowners in the subdivision.

5.21 Storage Tanks. No gas, oil or other storage tanks shall be installed on any Lot.

5.22 Ditches And Swales. All Owners, including builders, shall keep unobstructed and in good maintenance and repair all open storm water drainage ditches, culverts and swales which may be located on their respective Lots, all at Owners' expense.

5.23 Antenna And Satellite Dishes. Outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that (i) the diameter of the satellite dish shall be no more than twenty-four inches (24"); (ii) only one (1) satellite dish shall be attached to the residence unit on each Lot; and (iii) the Architectural Review Committee shall have first determined that the satellite dish is appropriately placed and properly screened in order to preserve property values and maintain a harmonious and compatible relationship among Residence Units in the Subdivision. No antennas of any other configuration shall be permitted.

5.24 Awnings. No metal, fiberglass, canvas or similar type material awnings shall be permitted in the Subdivision, except that a builder may utilize a canvas or similar type material awning on its model home sales center in the Subdivision.

5.25 Fencing. No fence shall be erected on or along any Lot line, nor on any Lot, the purposes or result of which will be to obstruct reasonable vision, light or air. All fences shall be kept in good repair and erected so as to enclose the property and decorate the same without unreasonable hindrance or obstruction to any other property. Any fencing permitted to be used in the Subdivision (unless installed by Developer) must be wooden or black vinyl coated chain link and shall not be higher than five (5) feet. Uncoated chain link fencing is prohibited. No fencing shall extend forward of the furthest back corner of the residence. All fencing style, color, location and height shall be generally consistent within the Subdivision and shall be subject to prior written approval of the Architectural Review Committee. No fences are allowed in easements and if erected, are erected at Owner's risk as such fences may be partially or completely torn down by others if said fences interfere with the installation, operation, and/or maintenance of the facilities for which the easement has been reserved.

5.26 Swimming Pools And Sports Courts. No above-ground swimming pools shall be permitted in the Subdivision. No hard surfaced sports courts of any kind shall be permitted on any Lot except Parcel A, Common Area or as otherwise approved by the Architectural Review Committee.

5.27 Solar Panels. No solar heat panels shall be permitted on roofs of any structures in the Subdivision. All such panels shall be enclosed within fenced areas and shall be concealed from the view of neighboring Lots, Common Areas and the streets.

5.28 Outside Lighting. Except as otherwise approved by the Developer in connection with a builder's model home sales center, all outside lighting contained in or with respect to the Subdivision shall be of an ornamental nature compatible with the architecture of the project and shall provide for projection of light so as not to create a glare, distraction or nuisance to other property owners in the vicinity of or adjacent to the project.

5.29 Site Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street 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 points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

5.30 Incorporation. No Owner or Developer shall object to, remonstrate against, seek or bring suit to enjoin, abate, deter or in any other manner whatsoever interfere with incorporation or organization of the Real Estate into a city or town under Indiana law.

5.31 Residence Units Security Systems. Developer shall install in each Residence Unit in the Subdivision an electronic monitored security and fire detection system for use by Lot Owner.

5.32 House Numbers. Each resident unit shall attach a house number fully observable from its front street. Number shall be placed in a common location on the resident unit, depending whether said unit is side or front loaded in relation to its front street. Numbers shall be made of metal with a black or brass finish, the style and size to be approved by The Architectural Review Committee and to be consistent within each neighborhood.

## ARTICLE VI

### ASSOCIATION

6.01 Membership. Each Owner shall automatically become a member of the Association and shall remain a member of the Association so long as Owner owns a Lot.

6.02 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than a Developer (unless Class B membership has been converted to Class A membership as provided in the immediately following subparagraph). Each Class A member shall be entitled to one (1) vote per Lot owned.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and be converted to Class A membership upon the Applicable Date (as defined in Section 6.03 below).

6.03 Applicable Date. The term "Applicable Date" shall mean when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or the expiration of the Development Period, whichever shall first occur.

6.04 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in

such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote and no Lot's vote shall be split.

6.05 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as set forth in the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association. The Board of Directors shall be comprised of one owner from each Section and the members in each Section shall elect only one member to the Board of Directors by majority vote. The initial Board of Directors shall consist of a minimum of three (3) members.

6.06 Responsibilities of the Association. The responsibilities of the Association shall include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Landscape Easements as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of any entrance street light and any private signs on public streets which may be shown on any Plat of a part of the Real Estate as Common Area.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association subject to the rights and duties of Boone County for maintenance thereof. Nothing herein shall relieve or replace the obligation of each Owner of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on such Lot free from obstructions so that the storm water drainage will be unimpeded.

(v) Maintenance of lake water so as not to create stagnant or polluted waters affecting the health and welfare of the community.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration.

(vii) Assessment and collection from the Owners and payment of all Common Expenses as more specifically set out in Article VIII.

(viii) Performing or contracting for property or Association management, snow removal, Common Area maintenance, trash removal or other services as the Association deems necessary or advisable.

(ix) Enforcing the rules and regulations of the Association and the requirements of this Declaration and any applicable zoning or other recorded covenants, in each case, as the Association deems necessary or advisable.

6.07 Powers of the Association. The Association may adopt, amend or rescind reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, in each case as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges or fines against any Owner or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

6.08 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer, except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

6.09 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

6.10 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof or to enforce the indemnity rights contemplated hereby except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any such action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful

misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any accountant, attorney or other person or firm employed or retained by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend any meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this section 6.10.

## ARTICLE VII

### ARCHITECTURAL REVIEW COMMITTEE

7.01 Creation. There shall be, and hereby is, created and established an Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of at a minimum, the developer and, at a maximum, a total of nine (9) members appointed, from time to time, by the Board of Directors and who shall be subject to removal by the Board of Directors at any time with or without cause. During the Development Period each member of the Board of Directors shall have the right to appoint or re-appoint one member to the Architectural Review Committee.

After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of nine (9) persons appointed, from time to time, by the majority vote of the Board of Directors of the Association. The nine persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots and may, but need not be members of the Board of Directors. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee upon a majority vote by the members of the Board of Directors.

7.02 Purposes and Powers of Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, structures or any other improvements placed or modified by any person on any Lot and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, in

such a manner as to preserve the value and desirability of the Real Estate and the harmonious relationship among Residence Units and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, walkway, fence, deck, pool, tennis court, basketball goal, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or modified, changed or altered on any Lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise permitted by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application (a "Requested Change") made to it when:

(a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration applicable to any part of the Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent Residence Units or related improvements; or

(c) The Requested Change in the opinion of the Architectural Review Committee would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) Rules and Regulations. The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations or building policies or procedures as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of Requested Changes.

7.03 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within forty-five (45) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

7.04 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association, the Developer nor any agent or member of any of the foregoing, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.

7.05 Inspection. The Architectural Review Committee or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VII and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

## ARTICLE VIII

### ASSESSMENTS

8.01 Purpose of Assessments. Each Owner of a Lot by acceptance for itself and related entities 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 for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments"), (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"), and fines against any Residence Unit for violation of these Declarations ("Fines"). Such assessments and fines shall be established, shall commence upon such dates and shall be collected as herein provided. The general purpose of Regular and Special Assessments and Fines is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following specific purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, Landscape Easements, Drainage, Utility or Sanitary Sewer Easements and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots within the Subdivision.

8.02 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the "Maximum Regular Assessment" as follows:

(i) Until December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Three Hundred Dollars (\$300.00).

(ii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) per year above the Regular Assessment for the previous calendar year without a vote of the members of the Association.

(iii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called and held for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

8.03 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called and held for such purpose.

8.04 Fines. In addition to Regular Assessments and Special Assessments, the Board of Directors of the Association may levy or assess Fines upon any Residence Unit, for the purpose of enforcing these Declarations which the Board of Directors may from time to time determine appropriate, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called and held for such purpose. In no event shall a Fine for any single violation which is neither continuing nor reoccurring be in excess of the actual costs

incurred by the Association in enforcement of the covenant or restriction or a minimum fine of fifty dollars (\$50.00), whichever is greater.

8.05 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner by a Developer, provided that, in the case of the conveyance by Developer of a Lot to any builder in the Subdivision not related to Developer, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to such builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment and any schedule of Fines for covenant violations at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The installment periods and due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of any assessments and Fines.

8.06 Failure of Owner to Pay Assessments or Fines.

(i) No Owner may exempt himself from paying Regular Assessments, Special Assessments or Fines due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment or fine when due, the lien for such Assessment or Fine (as described in section 8.07 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. In any action to foreclose the lien for any assessment or fine, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association on the first day of each month of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments and fines. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment or fine without foreclosing or waiving the lien securing the same. In any action to recover an assessment or fine, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to attorneys fees) and interest from the date such assessments or fines were due until paid.

(ii) Notwithstanding anything contained in this section 8.06 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments or fine which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments or fines thereafter becoming due or from the lien therefor.

8.07 Creation of Lien and Personal Obligation. All Regular Assessments, Special Assessments and Fines, together with interest, costs of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment or fine became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

8.08 Expense Incurred to Clear Drainage, Utility or Sanitary Sewer and Water Main Easement Deemed a Special Assessment. As provided in the Plat Covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sanitary Sewer and Water Main Easement including any Developer or builder, shall be required to keep the portion of said Drainage, Utility or Sanitary Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Association. Also, no structures or improvements, including without limitation decks, patios, pools, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's or the Association's written request, be promptly removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of such written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer or the Association may enter upon the Lot and cause such obstruction, structure or improvement to be removed so that the Drainage, Utility or Sanitary Sewer or Water Main Easement is returned to its original designed condition.

In such event, Developer or the Association shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a Special Assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 8 in the same manner as any Regular Assessment or Special Assessment may be collected.

## ARTICLE IX

### INSURANCE

9.01 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if practicable, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

9.02 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

9.03 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

9.04 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as Common Expenses.

## ARTICLE X

### MORTGAGES

10.01 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of any Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.02 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot may notify the Secretary of the Association by certified mail (return receipt requested) of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary as herein provided, no notice to any Mortgagee shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.03 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become liens against any Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee with respect to any Lot may make the payment on behalf of the Association.

## ARTICLE XI

### IMPROVEMENTS AND INSTALLATIONS.

#### 11.01 GENERAL

11.01.01 Subdivision improvements shall be designed, furnished and installed in accordance with requirements herein and other applicable criteria. Whenever requirements of any other governmental unit are higher or more restrictive than these Commitments, those requirements shall control any application for plat approval.

11.01.02 Prior to secondary approval of a plat and any construction in a subdivision, the subdivider shall submit copies of the erosion control plan and construction drawings for street drainage facilities and all other required improvements to the Board of Commissioners at least thirty days before construction begins. Construction drawings for the sanitary sewer system shall also be submitted to the utility service provider and upon said utilities written approval, be forwarded to the Boone County Board of Health, Indiana Board of Health, Indiana Department of Environmental Management and such other state agencies as may be appropriate, at least 60 days before construction begins.

11.01.03 Inspection of construction of all required improvements shall be under the direction of the Board of Commissioners. The subdivider shall sign an Agreement for Inspection and Testing Services with the County, as described by the Boone County Planning Department which shall carry fees reasonable and proper to reimburse the County for costs incurred in inspection and testing.

## 11.02 SANITARY SEWAGE DISPOSAL

A sanitary system shall be designed and constructed by the subdivider to provide adequate sewage service for all Lots in a proposed subdivision. A subdivision plat shall not be considered for final approval until improvement plans for a sewage system by one of the following methods have been submitted to the County and the utility providers for review:

11.02.01 In all subdivisions or Sections, a permanent sanitary sewer collection system, including all pipes and manholes, shall be provided and said system shall be connected to new or existing public or private sewage systems in accord with plans and specifications thereof and the subdivider must furnish the written approval of the sewer utility provider of said plans and specifications to the County and utility providers.

## 11.03 WATER SYSTEM

A water distribution system shall be provided by the subdivider to provide adequate water service for all lots in the proposed subdivision. A subdivision plat shall not be considered for final approval until improvement plans for a water system by one of the following methods have been submitted to the County for review:

11.03.01 A permanent water distribution system including pipes, fire hydrants, valves and other appurtenances shall be provided, and said distribution system shall be connected with an approved public or private water system in accord with plans and specifications thereof and the subdivider must furnish the written approval of the water utility provider of said plans and specifications to the County.

11.03.02 If the area proposed to be platted is not so located with regard to adequate public or group water supply systems, before any structure is occupied, an individual water supply system for such lot shall be constructed and installed in accord with plans and specifications therefor. Lakes, ponds, and cisterns are not considered adequate private water systems. All private water and sewage disposal systems shall be installed in compliance with Indiana Department of Health requirements.

#### 11.04 UTILITIES

A subdivision Plat shall not be considered for final approval until plans for the utilities have been submitted to the County for approval.

#### 11.05 MONUMENTS AND MARKERS

11.05.01 All Section corners and Quarter Section corners shall be monumented and perpetuated.

11.05.02 Legal descriptions of subdivisions shall be referenced to two (2) known section corners.

11.05.03 One permanent monument in each section of a subdivision shall be installed by the subdivider to establish elevation control and shall have the following characteristics:

- a. Be 4" x 4" x 48" concrete, with the top flush with grade.
- b. Contain the elevation based upon U.S.G.S. datum to the nearest one-hundredth of a foot.
- c. Be installed prior to the acceptance of the maintenance bond on that section.
- d. Have its location and elevation filed with the County Surveyor prior to acceptance of the maintenance bond on that section.

- 11.05.04 Permanent markers shall be Extendible markers (Harrison or approved equal) 30" in length, and with precise point marked in cap, to be installed at:
- a. The intersection of all street center lines with in a proposed plat.
  - b. The beginning and ending of all curves in street center lines.
  - c. On all outside boundary corners and angle points of a preliminary plat, and be set in 4" x 4" x 48" concrete.
- 11.05.05 All front lot corners shall be marked with steel rods at least 5/8" in diameter and 30" in length and in addition, a survey pin shall be imbedded in the top edge of curbing at any point where a lot line intersects with a curb to be taken into the public domain, however, this is not required upon initial development, but rather said markers shall be in place in order to receive an Occupancy Permit. All other markers shall be installed prior to the release of a performance bond or surety and an affidavit signed by the developer and/or his engineer acknowledging that the markers were in fact installed, which shall be submitted with the maintenance bond.
- 11.05.06 All U.S., state, or county or other official benchmarks, monuments or triangulation stations in or adjacent to the property shall be preserved in precise position.

#### 11.06 COST OF PUBLIC IMPROVEMENTS

All required public improvements shall be made by the subdivider at their expense without reimbursement, unless sharing of expenses is agreed upon by the County.

#### 11.07 MAINTENANCE OF PUBLIC IMPROVEMENTS

The subdivider shall be required to maintain all public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks until acceptance of said public improvements by Boone County.

#### 11.08 WAIVER OF REQUIRED PUBLIC IMPROVEMENTS

The Boone County Area Plan Commission may defer or waive at the time of primary approval, subject to the appropriate conditions, the provision of any or all such public improvements as in its judgment, are not requisite in the interest of the public health, safety, and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities.

#### 11.09 ISSUANCE OF BUILDING PERMITS

No building permit shall be issued for the last twenty-five percent of lots in a final sub-division plat or section thereof, or if twenty five percent be less than two, for the last two lots of a subdivision or section thereof, until all required public improvements with the exception of sidewalks have been fully completed and accepted for maintenance by Boone County.

#### 11.10 RIGHT TO FARM LAW

The residential use and Zoning Classifications of the Real Estate shall be subject to the Right To Farm Law (IC 34-1-52-4) and with the recognition that agricultural uses permeate the area.

#### 11.11 CONSTRUCTION PLANS FOR SUBDIVISIONS.

11.11.01 General Construction plans shall be prepared for all required improvements. Plans shall be drawn at a scale of no more than one inch equals fifty feet, and map sheets shall be of the same size as the primary plat. The following shall be shown:

- a. Profiles showing existing and proposed elevations along center lines of all streets. Where a proposed street intersects an existing street or streets, the elevation along the center line of the existing street or streets within one hundred feet of the intersection, shall be shown. Approximate radii of all curves, lengths of tangents, and central angles on all streets.
- b. The Boone County Area Plan Commission may require, where steep slopes exist, that cross-sections of all proposed streets at one-hundred foot stations shall be shown.
- c. Plan and profiles showing the locations and typical cross-section of street pavements including curbs and gutters, sidewalks, drainage easements, servitude, rights-of-ways, manholes, and catch basins; the locations of street

trees, street lighting standards, and street signs; the location, size, and invert elevations of existing and proposed sanitary sewers, storm water drains, and fire hydrants, showing connection to any existing or proposed utility systems; and exact location and size of all water, gas, or other under-ground utilities or structures.

d. Location, size elevation, and other appropriate description of any existing facilities or utilities, including, but not limited to, existing streets, sewers, drains, water mains, easements, water bodies, streams, flood plains, and other pertinent features such as swamps, railroad, buildings, features noted on the Official Map or Comprehensive Plan, at the point of connections to proposed facilities and utilities within the subdivision and each tree with a diameter of eight inches or more, measured four feet above ground level. The water elevations of adjoining lakes or streams at the date of the survey, and the approximate high- and low-water elevations of such lakes or streams. All elevations shall be referred to the United States Coast and Geodetic Survey datum plane. If the subdivision borders a lake, river or stream, the distances and bearings of a meander line established not less than twenty feet back from the ordinary high-water mark of such waterways.

e. Topography at the same scale as the sketch plan with a contour interval of two feet, referred to sea-level datum. All datum's provided shall be latest applicable United States Coast and Geodetic Survey datum and should be so noted on the plan.

f. All specifications and references required by the County's construction standards and specifications, including a site-grading plan for the entire subdivision.

g. Notation of approval as follows:

Owner \_\_\_\_\_

Date \_\_\_\_\_

Commission Date \_\_\_\_\_

President \_\_\_\_\_

h. Title, name, address, and signature of the professional engineer and/or surveyor, and date, including revision dates.

- i. All subdivision plats containing lands identified elsewhere by Ordinance as flood prone areas shall have the elevation of the 100 year flood plain.

## ARTICLE XII

### AMENDMENTS

12.01 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than eighty percent (80%) in the aggregate of all votes entitled to be cast by all Owners if the proposed amendment is considered and voted upon on or before twenty (20) years after the date hereof, and not less than fifty-one percent (51%) of such votes if the proposed amendment is considered and voted on after twenty (20) years from the date hereof. In any case, provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit within the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner provided the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing sub-section 10.2. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication or mortgaging of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions. Each such amendment shall be evidenced by a written instrument, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Boone County, Indiana. No amendment which adversely affects the rights of a public utility or the Utility company shall be effective with respect to such public utility without its written consent thereto.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing section 12.2.

12.02 Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days after the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

12.03 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Paragraph 12.01 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Paragraph 12.01 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Boone County, Indiana, and no amendment shall become effective until so recorded.

### ARTICLE XIII

#### MISCELLANEOUS

13.01 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Boone County, Indiana, shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such

covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

13.02 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Association and the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

13.03 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land comprising the Real Estate and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2017, and thereafter shall continue automatically until terminated or modified by vote as set out in Article 12.01; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

13.04 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

13.05 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

13.06 Annexation. Additional land adjacent to the Real Estate may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation by Developer in the Office of the Recorder of Boone County, Indiana, of a supplemental declaration, and such action shall require no approvals or other action of the Owners.

DEVELOPER'S RIGHTS

14.01 Access Rights and Dirt Balance. RRP hereby declares, creates and reserves an access license over and across all of the Real Estate for the use of Developer and its representatives, agents, designees, contractors and affiliates during the Development Period for the purposes of construction of any and all improvements to the Real Estate including but not limited to master drainage, dirt balance, all road improvements and utility installation. Said access right includes the right to remove and deposit soil for an appropriate balance of soil within and

across all Subdivision Sections. Notwithstanding the foregoing, the area of the access license created by this section 14.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or the foundation of a building properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate and such parties shall, to the extent reasonably practicable, repair any damage or destruction caused by reason of such parties' exercise of this access license. Said access license shall extinguish as to the right of Developer to access any Section if and to the extent Master Development Improvements and Section Development Improvements are completed thereon. For purposes of this Section 14.1, Master Development Improvements and Section Development Improvements shall mean the infrastructure and amenities which will serve the Subdivision, including but not limited to the site development for major collector roads, two collector road entrances, berming, storm sewers, utility lines, detention or retention ponds, common area amenities and recreation facilities, design and construction of Section roads, Section entrances, storm sewers, water lines, sanitary sewer lines and all other related improvements.

14.02 Signs. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to any covenant or restriction with respect to signs during the Development Period, however, use of signs, during the Development Period and after Development completion during home sales, including the location of placement, style and number of Developer directional signs, shall be subject to review and approval by the Architectural Review Committee. The Developer and its designees shall also have the right to construct or change any building, improvement or landscaping on the Real Estate at any time during the Development Period, however any such change shall be subject to the approval of the Architectural Review Committee.

14.03 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Boone County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Architectural Review Committee,

during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer, or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

IN WITNESS WHEREOF, the undersigned, the general partner of Royal Run Partners, L.P., as the owner of the Real Estate, has hereunto caused its name to be subscribed this \_\_\_\_\_ day of February, 1998.

PROPERTY OWNER:

Royal Run Partners, L.P., By:

\_\_\_\_\_  
Cornelius M. Alig, General Partner

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for the above captioned County and State, did personally appear Cornelius M. Alig, the General Partner of Royal Run Partners, L.P., and acknowledged the execution of the foregoing Declaration of Covenants, Conditions And Restrictions this \_\_\_\_\_ day of February, 1998.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

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

My County of Residence:  
  
\_\_\_\_\_

This instrument was prepared by and return recorded instrument to: Michael J. Andreoli, DONALDSON, ANDREOLI & TRUITT, 1393 West Oak Street, Zionsville, Indiana 46077.