

Upstairs-DAT

853

11742

Oct 26 11 34 AM '94

MARY ALICE BANTON
RECORDER OF DEEDS, CLERK
LEBANON, INDIANA 46032

PLASS BK 149 PG 103

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

OF

THE OLD HUNT CLUB ROAD SUBDIVISION

103

INDEX

I. <u>Definitions</u>	1
1.01 Declaration	1
1.02 Developer	1
1.03 Lot	2
1.04 Owner	2
1.05 Driveway	2
1.06 Private Roadway	2
1.07 Lot Development Plans	2
1.08 Subdivision	2
II. <u>Character of Lots</u>	2
2.01 In General	2
2.02 Improvement and Development of Lots	2
2.03 Occupancy of Residential Use of Partially Completed Dwelling House Prohibited	2
III. <u>Developer</u>	3
3.01 Developer	3
3.02 Powers of Developer	3
3.03 Liability of Developer	3
3.04 Inspection	3
3.05 Assignment of Duties	3
IV. <u>Lot Developments</u>	4
4.01 Lot Development	4
4.02 Type, Size and Nature of Construction Permitted	4
4.03 Tree Preservation	4

4.04	Completion of Construction	14
4.05	Storage Tanks	14
4.06	Mailboxes	14
4.07	Driveways	14,15
4.08	Fences, Walls, Hedges or Shrub Plantings	15,16
4.09	Sewage Disposal Systems	16,19
4.10	Ditches and Swales	19
4.11	Ponding and Runoff	19,20
4.12	Direct Digital Television	20
4.13	Subsurface Drains	20,21
4.14	The Old Hunt Club Road Legal Drain ..	21
4.15	Compacted Fill Material On Lots	21,22
4.16	Landscape Easement	22
	<u>Use and Maintenance of Lots</u>	23
5.01	Vehicle Parking	23
5.02	Home Occupations	23
5.03	Signs	23
5.04	Maintenance of Tracts and Improvements	23,24
5.05	Animals	24,25
5.06	Garbage, Trash and Other Refuse	25
5.07	Encroachments	25
5.08	Maintenance of Undeveloped and Unoccupied Lots	25
5.09	Wet Pond	25
5.10	Private Roadways	26,27

V.

4.11	Easement for Utilities and Public and Questi-Public Vehicles for Blocks A B	27,28
5.12	Snow Removal	26
5.13	Landscape Island ~ (Lots 14 and 15) ..	28
5.14	Yard Lighting	28,29
VI.	<u>Easements</u>	29
6.01	Easements	29,30
VII.	<u>General</u>	30
7.01	Waiver of Damages	30
7.02	Enforcement	30,31
7.03	Severability	31
7.04	Non-Liability of Developer	31,32
7.05	Public Liability and Property Damage Insurance	32
7.06	Binding Effect	32
7.07	Duration	32
7.08	Amendments to Declaration	33

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made and entered into this 24th day of October, 1994, by ROYAL RUI PARTNERS, L.P. ("Developer").

WITNESSETH

WHEREAS, Developer is the fee simple title holder of all the lands in Boone County, contained in and fully described on Exhibit "A", attached hereto and made a part hereof (hereinafter the "REAL ESTATE").

WHEREAS, Developer intends to divide the Real Estate into Twenty-Nine (29) tracts (each such tract hereinafter referred to individually as a "Lot" and collectively as "Lots"), more or less, such subdivision known as THE OLD HUNT CLUB ROAD SUBDIVISION.

WHEREAS, Developer desires to sell and convey Lots subject to the imposition of certain mutual and beneficial easements, restrictions, covenants, conditions and charges designed to assure ingress and egress thereto and to protect the value and desirability thereof.

NOW, THEREFORE, Developer hereby declares that each Lot and all Lots shall be held, conveyed, encumbered, leased, rendered, used, occupied and improved subject to the following covenants, conditions and restrictions, which shall run with the Real Estate and be binding on each party having any right, title or interest in any Lot or Lots, and his, her or its heirs, beneficiaries, successors,

107

assigns and personal and legal representatives, and which covenants, conditions and restrictions shall inure to the benefit of the Owners and each and every one of the Owner's successors in title to any Lot or Lots into which the Real Estate is subdivided.

ARTICLE I

Definitions

Section 1.01. Declaration: "Declaration" shall mean this instrument, together with any amendments or changes hereto which are hereafter made and evidenced as herein required.

Section 1.02. Developer: "Developer" shall mean Royal Run Partners, L.P., their successors or assigns in the ownership, development and division of the Real Estate, and/or any person, firm, corporation or other legal entity specifically designated as such as set out in Article III of this Declaration.

Section 1.03. Lot: "Lot" (also referred to as "tract"), referred to in the plural thereon as "Lots", shall mean any of the Twenty-Nine (29) tracts, more or less, into which the Real Estate is subdivided, the legal description being attached as Exhibit "A", which tracts are to be numbered in sequence as set out in the plat of The Old Hunt Club Road Subdivision recorded in the Office of the Recorder of Boone County, Indiana, in Book Number 8, Page 5657, and any subsequent phases recorded

thereto, as any tract(s) may be enlarged or diminished by Developer in connection with a reconfiguration thereof (in which event each tract shall be defined by the outside boundaries thereof). In no event shall any reconfiguration result in any tract having an area less than the area permitted by applicable zoning laws and in no event shall the Real Estate be divided to permit the construction of more than Twenty-Nine (29) single family residences and related improvements otherwise permitted hereunder. Further, no changes to the exterior boundaries of the plat can be made unless a replat is approved by the Boone County Area Plan Commission.

Section 1.04. Owner: "Owner", referred to in plural as "Owners"; shall mean and refer to the record owner, whether one or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal and legal representatives, of the legal title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. Developer shall also be considered an Owner for purposes of this Declaration for so long as, and to the extent that, Developer owns a Lot or Lots.

Section 1.05. Driveway: "Driveway", referred to in the plural as "Driveways", shall mean that portion of any Lot developed and hard surfaced for the purpose of permitting ingress and egress to and from such Lot from any

109

public road, easement or private roadway. This includes lengthy driveways which serve Lots 25, 18, 10 and 12.

Section 1.06. Private Roadway: "Private Roadway" shall mean and consist of two (2) separate non-dedicated and non-public asphalt roads which provide access to lots in the subdivision as follows:

- i. Private roadway (Block A on plat) - Provides access to Lots 4 and 5
- ii. Private roadway (Block B on plat) - Provides access to Lots 21, 22 and 23

Section 1.07. Lot Development Plans: "Lot Development

Plans" shall mean and consist of the following plans:

- (i) a site plan, prepared by a licensed civil engineer or registered land surveyor approved by Developer, showing existing improvements on a Lot, any proposed alteration of the topography, elevation or natural state of the Lot in connection with the improvement thereof or any construction thereon, and locating thereon all proposed improvements and structures showing finished floor elevations and details relating to drainage; (ii) complete house building and/or accessory structure plans, including structural details, exterior elevations and floor plans; (iii) material plans and specifications; (iv) landscaping plans (with a minimum of five (5) trees of four (4) inches or greater in diameter); (v) all other data or information which Developer may reasonably request.

110

Section 1.08. Subdivision: "subdivision" shall mean the Real Estate as divided into Lots, all as evidenced by a plat thereof recorded herewith in the Office of the Recorder of Boone County, Indiana, Book Number 8, Page 56, 57, identified as the plat of The Old Hunt Club Road Subdivision, and any subsequent plat amendment recorded thereto.

ARTICLE II

Character of Lots

Section 2.01. In General: Every Lot or group of Lots referred to in these covenants shall be used exclusively for single family residential and accessory use purposes.

Section 2.02. Improvement and Development of Lots: No Lot shall be further divided to create any additional tract upon which a single family residence and improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of this Declaration. Not more than one (1) single family dwelling house, together with attached garage and such related accessory structures, horsebarn and recreational facilities as may be permitted by this Declaration shall be constructed, altered, placed or permitted to remain on any Lot referred to by the covenants.

Section 2.03. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited: No dwelling

111

house constructed on a Lot shall be occupied or used for residential purposes for human habitation until it has been substantially completed. The determination of whether a dwelling house has been "substantially completed" shall be made by Developer and the Boone County Building Inspector, and such decision shall be binding on all parties affected thereby.

ARTICLE III

Developer

Section 3.01. Developer: The powers and authorities contained in this Article shall be vested in Developer and the covenants, conditions and restrictions in Article V of this Declaration shall be administered and enforced by Developer, or their designated successors and/or assigns. Developer's administration and enforcement of such covenants, conditions and restrictions shall include, but not be limited to, approval of Lot Development Plans prior to the improvement of any Lot. Neither the exercise of such administration and enforcement duties by Developer, nor the approval of any Lot Development Plans by Developer, shall relieve any Owner of any duty and obligation imposed by this Declaration or compliance with the covenants, conditions or restrictions as the same are recorded in the Office of the Boone County Recorder. In the event that a written approval is not received from Developer within thirty (30) days from the date submittals are made,

112

the failure to issue such written approval shall mean the disapproval thereof. In the event of a disapproval, Developer shall give a short statement of the reason or reasons for such disapproval within ten (10) days following receipt of a written request to do so. Developer reserves the right to unilaterally deny approval of lot development plans if the single family dwelling is inconsistent as to design, size or costs with adjacent lots.

Section 3.02. Powers of Developer: No Lot shall be developed and no single family dwelling house, accessory building, driveway or other structure or improvement of any type, kind or character shall be constructed, placed, altered or permitted to remain on any Lot in the subdivision without the prior written approval of Developer. Any required approval shall be requested by an Owner by written application to Developer. Such written application shall be made in the manner and form prescribed from time to time by Developer, and shall be accompanied by two (2) complete sets of Lot Development Plans and such other information as may be reasonably required by Developer. The authority given to Developer hereby is for the purpose of determining whether the proposed improvement and development of a Lot is consistent with the terms and provisions of this Declaration, is consistent with and meets Developer's overall plans for improvement and development of the Real Estate and is compatible and consistent with the development of other Lots. In furtherance of the foregoing purposes,

Developer is hereby given discretion as to matters related to location, building orientation, layout, design, architecture, color schemes and appearance in approving Lot Development Plans. Any house, building or other accessory structure plans included as a part of any application to Developer for required approvals shall set forth the color and composition of all exterior materials proposed to be used and any site plan submitted shall describe and detail all proposed landscaping and include any other material or information which Developer may reasonably require. All plans and drawings representing a part of the Lot Development Plans and any other plans reasonably required to be submitted to Developer shall be drawn to a scale of 1" = 10', or to such other scale as Developer may require. All plans submitted shall be prepared by either a registered land surveyor, engineer or architect unless Developer specifically permits otherwise.

Section 3.03. Liability of Developer: Neither Developer, nor his agents, successors or assigns, shall be responsible in any way for any defects or insufficiencies in any plans, specifications or other materials submitted for review, whether or not approved by Developer, nor for any defects in any work done in accordance therewith. Developer shall not be liable to any person, firm, corporation or other legal entity aggrieved by Developers' exercise of (or failure to exercise) any of his powers as specified in Section 3.03 hereof, and shall have no liability whatsoever

which is claimed or alleged to result, in whole or in part, upon refusal by Developer to approve Lot Development Plans submitted by Developer

Section 3.04. Inspection: Developer shall have the right to go upon any Lot within without being a trespasser to inspect any work being performed thereon to assure compliance with this Declaration and conformity with Lot Development Plans and with any other plans or submittals made to him and upon which any approvals required by this Declaration were based.

Section 3.05. Assignment of Duties: All of the duties, responsibilities and rights held by Developer under this Declaration shall be exercised and administered by Developer in good faith until such time, if any, as they may be assigned by Developer to another of one or more Lots referenced by these covenants or any other legal entity formed as a successor thereto. Any such assignment shall be at the option and sole discretion of Developer and may be made at any time or stage of development. Any assignment by Developer shall be by written instrument duly executed and recorded in the Boone County Recorder's Office. Following any such assignment and recordation, the duties, responsibilities and rights of Developer under this Declaration shall immediately vest in and be performed by the assignee or successor.

115

ARTICLE IV**Lot Development**

Section 4.01. Lot Development: Prior to the development, improvement or alteration of, or the construction on or addition to, a Lot or Lots, the Owner(s) thereof shall first obtain written approval from Developer of the Lot Development Plans as required by Article III of this Declaration. Any improvement, development or alteration of a Lot or Lots, and any construction thereon or addition thereto, shall strictly comply with this Article IV. In the event of a conflict between a set of duly approved Lot Development Plans and the terms and provisions of this Article IV, the terms and provisions of Article IV shall control.

Section 4.02. Type, Size and Nature of Construction

Permitted: No single family dwelling house, garage, driveway, accessory building, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed or altered on any Lot without the prior written approval of Developer or his assigns, respectfully, as required by this Declaration. Such approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

- (a) No structure or building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not

exceeding two and one-half (2 1/2) stories in height, one private attached garage for a minimum of two vehicles, maximum of four, and such other accessory buildings or structures related to swimming pools, tennis courts, horse barns and other recreational facilities, including greenhouses, which are usual and incidental to the use of the Lot for single family residential purposes. Garage doors shall not be parallel to the public road or private roadways, respectively, accessing the dwelling or accessory structures.

(b) The minimum finished floor area of a one story dwelling house constructed on a Lot, exclusive of open porches, attached garages and basement, shall be 3,000 square feet in the case of a one story residence, and in the case of a dwelling house having more than one story, a minimum of 1,600 square feet of the required minimum finished floor area shall be located on the first floor.

(c) No single family dwelling house, garage or accessory structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick, weathered barn siding or the like, or interior design features utilizing other than new

117

- materials, may be approved by Developer. No tent, basement, shack, garage, barn or other structure shall be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required as an accessory structure in connection with the construction of a single family dwelling on a Lot.
- (d) Any accessory buildings (other than greenhouses or outdoor pools with track roofs or canvas dome covers) constructed on a Lot shall have a fiber-glass or asphalt shingle, slate, tile, wood shake roof or non-painted standing seam metal roof and shall be made out of the same materials, or combination thereof, out of which the single family dwelling house on the same Lot is constructed, provided that, structures such as polebarns shall be specifically prohibited unless the conditions of Section 5.05 have been met and the Developer specifically approves the location, design and materials.
- (e) The concrete or block foundation of any single family dwelling house or accessory structure constructed on a Lot shall be covered on the exterior with wood, brick or stone veneer so that no portion of the exterior thereof is left exposed above ground.

118

- (f) Each attached garage shall be designed as a part of the single family dwelling house to which it is connected.
- (g) The roof of each single family dwelling house constructed on a Lot (excluding that portion of the roof covering the attached garage or open or enclosed porch) shall have a pitch of 7 to 12 or greater unless otherwise approved by Developer as a part of Developer's approval of Lot Development Plans.

- (h) No house or other structure shall contain aluminum or vinyl siding. Further, no plywood or other sheets of wood with dimensions of four (4) by eight (8) foot may be used for exterior siding.
- (1) No open loop geothermal heat pumps shall be allowed.

Section 4.03. 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 an approved single family dwelling house or accessory building unless the removal thereof is otherwise specifically approved by Developer or any such tree is dead or decayed and dangerous.

119

Section 4.04. Completion of Construction: All construction upon a Lot shall be completed in strict accordance with the Lot Development Plans approved by Developer. 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 a slightly and 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 to provide Port-O-Lets to their workers.

Section 4.05. Storage Tanks: No storage tanks, of any nature, for any use, shall be allowed on the surface or be buried on any lot.

Section 4.06. Mailboxes: Mailboxes installed for mail delivery on a Lot shall be located, and shall be of a type, color and manufacture approved prior to installation by Developer. Such mailboxes shall be installed in a location which is also approved by Developer.

Section 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 or private roadway adjoining the property. 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 or concrete pavers, asphalt, brick or other material acceptable to Developer.

A driveway constructed on any lot to and from the Public Road or private roadway 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 or private roadway 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 or private roadway. No asphalt or concrete driveway shall be placed behind a curb containing these inlet grates.

Section 4.08. Fences, Walls, Hedges or Curb

Plantings: No fence, wall, hedge or other screening shall be erected, placed, altered or permitted to remain on any lot other than as approved (as to location, type, material, design and height) by Developer under Article III of this Declaration. These structures or plantings may be placed within platted drainage and utility easements or within the

right-of-way of a public street, provided that, the same is permitted by Developer and the placement or location has no detrimental effect on drainage or public safety. Further, to the extent an owner is allowed to board horses according to Section 5.05, any fencing must match existing fence as to height, spacing of posts and rails and color. No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscaping Easement except upon express written permission by Developer. Developer may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of Lots 23, 25, 26, 27, 28 and 29.

Section 4.09. Sewage Disposal -~~stems~~:

- a) Installation: Private sewage disposal systems which are installed on Lots shall be installed thereon in strict compliance with the following procedure:
- (i) A detailed On-Site Sewage Disposal System Plan (hereinafter "OSDS Plan") shall be prepared by a registered engineer or land surveyor for review by the Developer illustrating:
- (A) the location of the improvements to be constructed, building lines, lot lines, easements, septic tanks, distribution box or equivalent, and absorption field;

122

- (B) the location, depth, size, direction of flow and gradient of required peripheral subsurface drain tile, proposed grades and the direction of subsurface water flowage on the site; (C) details of construction including depth of septic tank and distribution box, and depth, gradient and size of absorption field; (D) detailed installation specifications, performance data and means of maintenance for any system in lieu of a conventional septic tank and appurtenances; and (E) any other detail reasonably required by Developer.
- (ii) The Owner shall specify the contractor who is to install the sewage disposal system, which contractor must be bonded, experienced and competent in this type of installation.
- (iii) The Owner shall submit the foregoing information, as required, for approval by the Boone County Sanitarian, Boone County Health Department or other similar agency having jurisdiction and for review by the governing zoning authority.
- (iv) The OSDS Plan and supporting documents stamped with the approval of the Sanitarian shall then be fully reviewed by Developer and, if approved, stamped for approval.

123

- (v) The Owner shall cause the system to be installed in accordance with the approved OSDS Plan and specifications and leave the system uncovered for inspection by a registered engineer approved by Developer who shall certify as to compliance with the OSDS Plan and specifications. Before back-filling, the Owner shall advise the Boone County Sanitarian that the construction is ready for inspection and give the Sanitarian a reasonable opportunity to make an inspection.
- (vi) Prior to submission of the OSDS Plan, the Owner shall cause a minimum of two (2) soil analysis tests to be made on his Lot, and the OSDS Plan shall show thereon the location of such tests and the results thereof. The absorption field shall be located in the immediate area of the tests and may not be relocated unless additional tests are conducted and the results submitted to Developer, along with a plan showing the new location of the absorption fields, for review and approval. No downspouts or sump pump drains shall be connected to the peripheral drain tile unless said tile has been oversized to accommodate the additional run-off water from these facilities.

- b) Restrictions on Use of Absorption Field: No Owner of any Lot shall pave over or otherwise obstruct the absorption field located on his Lot without the prior written approval of the Boone County Sanitarian and Developer.
- c) Each Lot shall have the appropriate perimeter drainage tile around the absorption field of the septic system as may be required by the Boone County Sanitarian. Sump pump drains, downspouts and perimeter drains shall not outlet directly to the street, rearyard drainage swales or into the detention basins.

Section 4.10. Ditches and Swales: The Owner of any Lot on which any part of a private drainage tile, the Pedigo Legal Drain, open storm drainage ditch or swale is situated shall keep such portion thereof as may be situated upon his Lot or Lots continuously unobstructed and in good repair. and shall provide for the installation of such culverts upon said Lots as may be reasonably necessary to accomplish the purposes of this subsection, all at each such Owner's own cost and expense.

Section 4.11. Ponding and Runoff: No owner shall cause or permit any pond to be created on any Lot, including without implied limitation, from any swale, ditch, stream or creek located on the Real Estate. Further, owner shall prevent water run-off and the depositing of soil and mud from the lot onto the street or through drainage swales

through the use of silt fences installed during the home building process.

Section 4.12. Direct Digital Television: Receiver
discrete of eighteen (18) inches or less in diameter which attached to the house shall be permitted without prior written consent of Developer. No other antenna dish, tower or other standing antenna structure or device shall be erected, placed or permitted to remain on any Lot without prior written consent of Developer. Developer reserves the right to withhold permission for any reason.

Section 4.13. Subsurface Drains: Specific Lots within the subdivision have been provided access to 5 separate 8 inch plastic drains which are connected to the subsurface storm sewer system or which outlet directly into Royal Run Creek. These drainage tiles are designed to provide an outlet for the flow from perimeter drains around buildings, systems and drainage water from sump pump discharge. If tiles are located in the street right-of-way in front of Lots 16 and 17; at the rear of Lot 11 serving Lots 10-11; within the private street access easement serving Lots 20-24; and within the private street access easement serving Lots 4-6. In no situation shall the discharge from sump pumps or downspouts be outletted directly into the street right-of-way or onto the street surface. Gravity drainage from downspouts may be drained directly by piping into Royal Run but shall not be piped directly into surface swales at the side or rear of lots. The water from

downspouts shall be dispersed onto the lawn area around the home and allowed to flow naturally to crainageways. All floor drains shall drain into the sewage disposal system of the home. In no situation shall sump pumps be outletted into the septic system of the home or in any ravine, swale or open ditch on or adjacent to the subdivision.

Section 4.14. The Old Hunt Club Road Legal Drain: All Lots within The Old Hunt Club Road Subdivision are included in The Old Hunt Club Road Legal Drain. This legal drain has been established by the Boone County Drainage Board and the Boone County Surveyor to provide a method for future maintenance of the retention pond, storm sewers and the subsurface tile drains, including the Pedigo Legal Drain, located in the subdivision. Easements have been provided on certain lots as shown on the recorded plats 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 at the time of property taxes in May and November. Failure to pay said assessment could result in a property being involved in a Tax Sale for failure to pay delinquent taxes.

Section 4.15. 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. The Developer makes no representation, express or implied, as to the suitability of soil conditions for the purpose of foundation construction. The owner of each Lot is solely responsible for determining the suitability of soil conditions prior to the purchase of a Lot and/or the commencement of construction.

Section 4.16. Landscape Easement: "Landscape Easement" (LE) is an area designated and described on the plat along a portion of the common boundary of the subdivision on Lots 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28 and 29. No sheds, barns, tennis courts, swimming pools, improvements or structures of any type are allowed within the designated landscape easements without the express written permission of the Developer. Further, no mature trees as set out in Section 4.03 of this declaration can be moved or cut in the designated setback area excepting those trees which are diseased or dead without express permission of Developer. The Landscape Easement is created not for general access but only for the protection and maintenance of landscaping and therefore is intended for the exclusive use of the Lot owner.

128

ARTICLE VUse and Maintenance of Lots

Section 5.01. Vehicle Parking: No camper motor car truck, trailer boat may be parked or stored overnight or longer on any lot to the public view, except pickups trucks or other vehicles customarily used by the owners of suburban lots which are similar in size to the lots contained herein. Furthermore, no vehicles as set forth above, including automobiles, light trucks or pickups shall be parked or stored on the private roadways or common areas throughout the subdivision.

Section 5.02. Home Occupations: No home occupation shall be conducted or maintained on any lot other than that which is incidental to a business, profession or occupation of the owner or occupant of such lot and which is generally or regularly conducted at another location which is away from such lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any lot advertising a permitted home occupation.

Section 5.03. Signs: 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.

Section 5.04. Maintenance of Trenches and Drainage
The owner of any lot shall at all times maintain the

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:

- (i) Mow such portion of the Lot or Lots upon which grass has been planted at such times as may be reasonably required.
- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition which reasonably tends to detract from or diminish the aesthetic appearance;
- (iv) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly.

Section 5.05. Animals: Only dogs, cats and similar animals generally and customarily recognized as householic pets, not exceeding in the aggregate three (3) in number may be kept or maintained on any Lot as householic 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. In the event that multiple lots are purchased for the expressed purpose of building one single family residence and the total acreage of said lots exceeds six (6) acres or more then, and in that event, said owner shall be allowed to board a maximum of two (2) horses in said property. In the event said owner elects to board horses and use the minimum acreage required, said owner is expressly prohibited and denied the right to build more than one single family residence on the total number of lots.

This covenant provision is strictly enforceable by the Boone County Area Plan Commission, as well as lot owners in the subdivision, including but not limited to, the specific right of the Boone County Area Plan Commission to deny a request for a building or improvement location permit for an owner not otherwise in compliance with this section.

Section 5.1.1. Garbage, Trash and Other Refuse: The outside piling of garbage or other refuse shall not be permitted on any lot, nor shall any outside accumulation of refuse or trash be permitted on any lot. Each single family dwelling house built shall be equipped with a garbage disposal unit of a type, kind and capacity approved by Developer, and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable.

Section 5.07. Nuisances: No noxious or offensive activity shall be conducted upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner.

Section 5.08. 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.

Section 5.09. Wet Pond: A Wet Pond storage area will be placed on Lots 28 and 29 and shall, after expiration of the Developer's Maintenance Bond, be accepted for maintenance into the Old Hunt Club Legal Drain. The owners of Lots 28 or 29 are prohibited from changing or adversely impacting the grade, location or structure of the Wet Pond. The owners of Lots 28 and 29 shall maintain the bank of the Wet Pond above the pool level as constitute a part of, or abuts his Lot and shall keep that portion of the pond abutting his Lot free from debris and in a clean condition. No dock, pier, wall or other structure may be extended into the pond. The owner of Lots 28 and 29 shall indemnify and hold harmless the Developer and Boone County against all loss or damage to person or property arising from or related to the use of, or access to, the Wet Pond by any person who gains access from, over or across the owner Lot.

Section 5.10. Private Roadways: As previously set out in Section 1.06 of these Declaration of Covenants, Conditions and Restrictions, certain non-dedicated private roadways will be constructed to serve certain lots in the subdivision. These private roadways by definition and the fact that they do not meet county road width standards will remain private, in perpetuity, and will not be accepted into the County roadway system for ownership, maintenance or control. Accordingly, the owners of each of the lots, as hereinafter set out, shall own, as tenants in common, a certain undivided interest in the private roadways lying

appurtenant to their respective lots. Upon transfer of the ownership of any one of the lots as hereinafter set out the aforesaid undivided portion and share of said ownership shall be automatically transferred and conveyed as a part thereof, whether or not such transfer and conveyance is made by specific reference in the deed to the lot so conveyed. As a tenant in common with an undivided interest in the private roadway serving and lying appurtenant to their respective lot, each owner shall be fully responsible, to the extent of his undivided interest, in the future maintenance of said private roadway. The private roadways and their respective undivided interests are as follows:

- i. Private Roadway (Block A on Plat) - Lots 4 and 5
Each own a one-half (1/2) undivided interest in said private roadway.
- ii. Private Roadway (Block B on Plat) - Lots 21, 22 and 23
Each own a one-third (1/3) undivided interest in said private roadway.

Section 5.11. Easement for Utilities and Public and

Quasi-Public Vehicles for Blocks A and B: All public and quasi-public vehicles, including but not limited to, police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, postal employees utility company vehicles and personnel, privately owned delivery vehicles making deliveries to a lot, as well as pedestrian traffic are hereby granted the right to enter

upon and use the private roadways throughout the subdivision in the performance of their duties, for deliveries, for ingress and egress, and for installation, replacement, repair and maintenance of all public utilities, including, but not limited to, water, sewer, gas, telephone and electric.

Section 5.12. Snow Removal: Neither Boone County, nor any agency or department thereof, shall have any responsibility, duty or obligation to remove snow from the private roadways or the driveways located in the subdivision or provide for any maintenance or reconstruction of said private roadways or driveways, such responsibilities, duties and obligations belong solely to the Owners of said private roadways or driveways.

Section 5.13. Landscape Island - (Lots 14 and 15):

The owner of Lots 14 and 15 shall be equally responsible for the maintenance of the Landscape Island located in the cul-de-sac at the end of Hunt Club Road. Accordingly, the owners of Lots 14 and 15 are each granted an undivided one-half (1/2) ownership and maintenance interest in the Landscape Island.

Section 5.14. Yard Lighting: The Owner shall install dusk-to-dawn type yard lighting having a minimum height at least five (5) feet above finishing grade in the front yard of the home between the platted building setback line and the street right-of-way. The type, style and location of

said yard light shall be subject to the approval of Developer.

ARTICLE VI

Easements

Section 6.01. Easements: The strips of ground shown on the survey of lots attached hereto and designated Drainage and Utility Easements ("DE" or "UE") either separately or together, are hereby created for the use (including required ingress and egress necessary as a part thereof) of public utility companies, governmental agencies, police, fire, ambulance and other emergency vehicles, and the Owners of the Lots herein as follows:

"**Drainage Easements**" (D.E.) are created to provide paths and courses for area and local storm drainage, either overlaid or in adequate underground conduit, to serve the needs of this and adjoining ground and/or the public drainage system. No structures, including fences, shall be built on a Drainage Easement which obstructs flow from the area being served, nor shall any changes be made in the finished grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within any such Drainage Easement without the approval of all Federal, State, County or Municipal authorities from whom approval is required by law, or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

"**Utility Easements**" (U.E.) are created for the use of public and private utility companies, not including transportation companies, for the installation, operation and maintenance of mains, ducts, poles, lines and wires necessary to provide utility service to a Lot or Lots, subject to the condition that following any installation or maintenance, the affected area within such Utility Easement shall be returned to the condition existing

Prior thereto at the cost and expense of the party responsible for having such services performed. These areas denominated as private roadways (Blocks A and B) shall be utilizable and treated as a Utility Easement. Further, specific permission is hereby granted to the governmental and quasi-public agencies of police, fire, ambulance and other emergency vehicles to access those lots serviced by the private roadways (Blocks A and B) throughout the subdivision.

The Owners shall take title to the Lots subject to the foregoing easement rights in, along and through the strip of ground properly designated as hereinabove set forth on the Recorded survey of the Lots for the purposes herein stated. Further, "Landscape Easements" (LE) has previously been defined and referenced in Section 4.16.

ARTICLE VII

General

Section 7.01. Waiver of Damages: Neither the Developer, their nominees, representatives or designees, shall be liable for any claim for damages whatsoever arising out of or by reason of any acts taken (or not taken) or things done or performed (or not done or performed) pursuant to any authorities reserved, granted or delegated pursuant to this Declaration.

Section 7.02. Enforcement: The right to enforce the restrictions contained in this Declaration and all covenants and restrictions contained herein including, but not limited to, the right of injunctive relief, or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration, is hereby

given and reserved to Developer and its Owners from time to time of Lots and all parties claiming under them, the Successor County Area Plan Commission, all of whom shall have the right, individually, jointly or severally, to pursue any and all remedies, in law and equity available under applicable Indiana law, without being required to show actual damage or any kind whatsoever, and shall be entitled to recover, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof.

Section 7.03. Severability: The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

Section 7.04. Non-Liability of Developer: Developer shall not have any liability to an Owner or to any person or entity with respect to drainage or over, under or through a Lot. Upon the improvement and development of a Lot, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Lot, and each Owner by the acceptance of a deed to such Lot shall be deemed to and does thereby RELEASE AND FOREVER DISCHARGE Developer from, and shall INDEMNIFY AND HOLD

WARRANTISE Developer against, any and all liability arising out of or in connection with the handling, discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Lot described in such deed.

Section 7.05. Public Liability and Property Damage

Insurance: Each Owner shall obtain and pay for such public liability and property damage insurance as may be desired to provide protection against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property occurring on or about each such Owner's Lot.

Section 7.06. Binding Effect: This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon Developer, each Owner and any person, firm, corporation or other legal entity now or hereafter claiming an interest in any Lot and their or its respective successors or assigns.

Section 7.07. Duration: This Declaration and the restrictions imposed hereby shall run with the Real Estate and shall be binding on all owners and all persons claiming under them for an initial period of twenty-five (25) years from the date of recordation, and shall automatically extend for successive periods of ten (10) years each, unless prior to the expiration of the initial period of any ten (10) year period they are amended or changed.

138

139

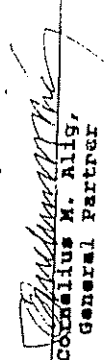
33

BOOK 149 PAGE 121

Section 7.08. Amendments to Declaration: This Declaration may be amended or changed at any time with approval in writing by the owners of at least seventy-five percent (75%) of all lots herein and shall not become binding and effective until the date of recordation in the Office of the Recorder of Boone County, Indiana.

IN WITNESS WHEREOF, the undersigned has caused this Declaration of Covenants, Conditions and Restrictions to be executed on the day and in the Year first above written.

ROYAL RUN PARTNERS, L.P.

BY 
COLCHALIUS M. ALLIS,
General Partner

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public, in and for said County and State, personally appeared ROYAL RUN PARTNERS, L.P. BY CORNELIUS W. ALLIG, GENERAL PARTNER, who after having been duly sworn, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions.

Witness my hand and notarial seal this 24th day of October, 1994.



Paula Jayne Brickley
Notary Public, Paula Jayne Brickley
County of Residence: Boone
5/6/96

My Commission Exp. res: _____
Boone

140

This instrument prepared by Michael J. Andreoli, DONALDSON, ANDREOLI & TRUETT, 1500 West Oak Street, Suite 200 Zionsville, Indiana 46077.

LEGAL DESCRIPTION

Part of the West Half of the Northeast Quarter and Part of the West Half of the Southeast Quarter of Section 10, Township 17 North, Range 2 East Boone County, Indiana, described as follows:

Beginning at the northeast corner of said northeast quarter section; thence on an assumed bearing of South 89 degrees 34 minutes 46 seconds West along the north line thereof a distance of 445.75 feet; thence South 90 degrees 25 minutes 14 seconds East a distance of 330.00 feet; thence South 89 degrees 34 minutes 46 seconds West parallel with the north line of said quarter section a distance of 222.00 feet; thence South 00 degrees 25 minutes 14 seconds East a distance of 110.00 feet; thence South 89 degrees 34 minutes 46 seconds West Parallel with the said north line a distance of 222.00 feet; a distance of 440.00 feet to the said north line; thence South 89 degrees 34 minutes 46 seconds West along said north line a distance of 421.81 feet to the northwest corner of the northeast quarter of said northeast quarter section; thence South 00 degrees 09 minutes 57 seconds West along the west line of said quarter-quarter section a distance of 1320.51 feet to the northwest corner of the southeast quarter of said northeast quarter; thence continuing South 00 degrees 09 minutes 57 seconds West along the west line of the southeast quarter of said northeast quarter a distance of 1320.51 feet to the northeast corner of the northeast quarter of the southeast quarter of Section 10; thence South 00 degrees 05 minutes 05 seconds West along the west line of the northeast quarter of the southeast quarter of the northeast quarter of said southeast quarter section a distance of 73.45 feet; thence South 75 degrees 06 minutes 51 seconds East a distance of 284.56 feet to a point on the southerly line of the tract of land described in Deed Record 144, Page 148; thence South 74 degrees 28 minutes 37 seconds East a distance of 1.48 feet; thence North 76 degrees 06 minutes 25 seconds East a distance of 326.97 feet to a point on the aforesaid southerly line of the tract of land described in Deed Record 144, Page 148; thence South 76 degrees 14 minutes 03 seconds West along said southerly line a distance of 124.36 feet to the southwest corner of the tract of land described in Deed Record 217, Page 701; thence the following six courses along the westerly and northerly lines of said tract, North 07 degrees 52 minutes 10 seconds West a distance of 573.17 feet; thence North 09 degrees 13 minutes 24 seconds East a distance of 17.91 feet; thence South 85 degrees 50 minutes 56 seconds East a

EXHIBIT "A"

141

BOOK 149

distance of 230.61 feet; thence South 02 degrees 40 minutes 45 seconds East a distance of 100.82 feet; thence South 61 degrees 52 minutes 02 seconds East a distance of 13.29 feet; thence South 89 degrees 04 minutes 29 seconds East a distance of 886.03 feet to a point on the east line of the southeast quarter of said northeast quarter distant 981.34 feet south of the northeast corner thereof; thence North 00 degrees 00 minutes 49 seconds West along said east line a distance of 981.34 feet to the southeast corner of the northeast quarter of said northeast quarter; thence continuing North 00 degrees 00 minutes 49 seconds West along the east line of the northeast quarter of said northeast quarter a distance of 1316.70 feet to the Beginning Point. Containing 69.763 acres, more or less.

142

9907799 06/18/1999 11:18A 1 of 13
Maryln J. Smith, Boone County Recorder

**AMENDMENTS TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE OLD HUNT CLUB ROAD SUBDIVISION**

Comes now the undersigned, comprising the Owners of at least seventy-five percent (75%) of all Lots in the Old Hunt Club Road Subdivision, and hereby adopt and execute certain Amendments to Declaration of Covenants, Conditions and Restrictions for the Old Hunt Club Road Subdivision, as the same are recorded in the Office of the Recorder of Boone County in Lebanon, Indiana, Instrument Number 11742, in Miscellaneous Book 149, Pages 103-142, inclusive, as follows:

1. Section 2.02 Improvement and Development of Lots: shall be amended by adding the following language:

In addition to a single-family dwelling and related accessory structures, horse barns and recreational facilities, a separate guest house or separate carriage house may be permitted on a Lot with the express written permission of developer, provided that, the Owner shall be required to execute and record separate Deed Restrictions and Commitments which shall contain the following language:

- (a) The above described real estate shall not be subdivided in any way so to sell, transfer or assign less than the entire acreage of the subject property.
- (b) That in the event it would become necessary to lease or rent the above property and dwellings contained thereon, said dwellings (guest house or carriage house and main single-family residence) shall be leased or rented to a common tenant and in no event shall the guest house or carriage house be leased or subleased independent from the single-family dwelling.

For the purpose of the Covenants, Conditions and Restrictions of the Old Hunt Club Road Subdivision, a guest house or carriage house may be attached or unattached to the single-family dwelling. A guest house may include a first floor garage and other independent living space such as a bedroom, bath and kitchen facility located in the basement, first floor or second floor. A carriage house shall have a garage or other accessory or recreational use on the first floor and independent living space such as a bedroom, bath or kitchen facility located on the second floor. For the purpose of the architectural standards set out in Article 4 Lot Development of the Declaration of Covenants, guest house or carriage house shall be treated the same as an accessory building or structure.

9907799 06/18/1999 11:18A 2 of 13
Maryln J. Smith, Boone County Recorder

2. Section 4.02 Type, Size and Nature of Construction Permitted; shall be amended so that the first sentence shall now read as follows:

No single-family dwelling house, guest house, carriage house, garage, driveway, accessory building, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed, or altered on any Lot without the prior written approval of the developer or his assigns, respectively, as required by this Declaration.

3. Section 4.02 (a) and (d) Type, Size and Nature of Construction Permitted; shall be amended by adding the following language:

- (a) In addition, a guest house or carriage house, as set out in Section 2.02 of the Declaration, shall be permitted, upon express written permission of the developer, provided that the total number of garages for all structures located on the Lot shall not exceed the number six (6). The architectural requirements for the construction materials for a guest house or carriage house shall comply with the requirements set out in Section 4.02 (d) of this Declaration.
- (d) A polebarn is defined as a prefabricated windowless metal building with uninsulated exterior metal walls and roof.