DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

ELLER RUN

This Declaration recorded 11-14-1992
Sharon D. Cherry, Recorder, Hamilton County, Indiana

This Declaration is made this 16th day of November, 1992 by Eller Run Development Corporation, an Indiana corporation (the "Developer").

Recitals

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

2. Developer intends to subdivide the Initial Real Estate into residential lots.

3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain rights, privileges, covenants, conditions, restrictions, assessments, charges and liens 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.

4. Developer further desires to create an organization to which shall be delegated and assigned the powers of 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 Real Estate as hereafter recorded in the office of the Recorder of Hamilton County, Indiana and of collecting and disbursing assessments and charges as herein provided.

5. Developer may from time to time subject additional real estate located within the tract adjacent to 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 "Eller Run Real Estate" or the "Real Estate").

6. This First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Eller Run is intended to supersede and replace in full the original Declaration of Covenants, Conditions and Restrictions of Eller Run dated as of October 14, 1992.

NOW, THEREFORE, Developer hereby declares that the Eller Run Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used in, occupied subject to the following provisions, agreements, covenants, conditions, restrictions, assessments, assessments, charges and liens, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Eller Run 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:

1.1 "Association" means the Eller Run Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, and its successors and assigns.
1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Article VI, paragraph 6.1, of this Declaration.

1.3 "Common Areas" means (i) all portions of the Eller Run Real Estate shown on any Plat of a part of the Eller Run 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.

1.4 "Common Expenses" means (i) expenses of and in connection 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, lawns, foliage and landscaping not located on a Lot (unless located on a Drainage, Utility or Sewer Easement or unless located on a Landscape Easement or Landscape Preservation Easement located on a Lot to the extent the Association deems it necessary to maintain such easement), (ii) expenses of and in connection with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance with respect to the Common Areas and (v) all expenses incurred in the administration of the Association.

1.5 "Developer" means Eller Run Development Corporation, an Indiana corporation, and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "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 Residence Unit or Lot within or upon the Eller Run Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.7 "Landscape Easements" means those areas of ground so designated on a Plat or any part of the Eller Run Real Estate.

1.8 "Landscape Preservation Easements" means those areas of ground so designated and located on a Plat of any part of the Eller Run Real Estate.

1.9 "Lake Easements" means those areas of ground so designated on a Plat of any part of the Eller Run Real Estate.

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

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

1.12 "Nonaffiliated Owner" means any Owner other than Developer or any entity related to Developer.

1.13 "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such 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, Residence Unit or any Real Estate in the Eller Run Real Estate."
"Plot" means a duly approved final plat of any part of the Eiler Run Real Estate as hereafter recorded in the office of the Recorder of Hamilton County, Indiana.

"Residence Unit" means any single family home in the subdivision designed for residential occupancy.

"Utility, Drainage or Sewer Reserves" means those areas of ground so designated on a Plat of any part of the Eiler Run Real Estates.

ARTICLE II
APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Eiler Run Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions 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.

The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any builder or any subsequent Owner, of the 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, restrictions, terms and provisions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants for himself, his heirs, personal representatives, successors and assigns, with Developer and the other Owners (a) to observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE III
PROPERTY RIGHTS

3.1 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 Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated upon the Common Areas;

(ii) the right of the Association to fix any Owner or make a special assessment against any Residence Unit or Lot for the event a person permitted to use the Common Areas by the Owner of the Residence Unit violates any rules or regulations of the Association as are such rules and regulations are applied on a reasonable and nondiscriminatory basis;

(iii) the right of the Association to make reasonable regular assessments for use of the Common Areas;

(iv) the right of the association to dedicate or transfer all or any part of the Common Areas or to grant easements 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, provided that the open space shall permanently run with the subdivision and shall not be developed or separated from the cluster subdivision at a later date;
(w) the right of the Association to enforce collection of any fines or regular or special assessments through the imposition of a lien pursuant to paragraph 7.7;

(vi) the rights of Developer as provided in this Declaration and in any Plat of any part of the Eller Run Real Estate;

(vii) the terms and provisions of this Declaration;

(viii) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Eller Run Real Estate; and

(ix) the right of the Association to limit the use of Common Areas in a reasonable nondiscriminatory manner for the common good.

3.2 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. Such permissive use shall be subject to the By-Laws of the Association and any reasonable nondiscriminatory rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Upon sixty (60) days notice to the Association, Developer may convey all of its right, title, and interest in and to any of the Common Areas to the Association by quitclaim deed, and such Conveyance of Common Areas so conveyed shall then be the property of the Association.

ARTICLE IV
USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating or fishing in or on any lake, pond, creek or stream on the Eller Run Real Estate. 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 Eller Run Real Estate.

4.2 Initial Sale of Units. All initial sales of Residence Units by the Developer or any builder or any affiliate of Developer or any builder shall be to owner-occupants; provided, however, this provision shall not apply to a mortgagee or its successor who acquires the development or a portion thereof through foreclosure or sale in lieu thereof. If any owner-occupant desires to lease his unit, such rental shall be pursuant to a written lease with a minimum term of one year and such lease shall express or provide that the lease shall be subject to all rules and regulations of the Association.

4.3 Use of Common Areas. The Common Areas shall be used only for recreational purposes. The open space created by the developer of the site as a cluster subdivision shall be provided in such a manner that it is preserved in its naturally occurring state for passive recreational activities.

4.4 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision. No direct access is permitted to any Lot from Eller Road or East 106th Street.

4.5 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contained in the Subdivision, including without limitation prohibitions against commercial use, detached accessory buildings and nuisances, restrictions relating to the use of Landscape Easements, Landscape Preservation Easements, Lake Easements, and Utility, Drainage and Sewer Easements; and restrictions relating...
to temporary structures, vehicle parking, signs, mailboxes, garage and refuse disposal, storage tanks, water supply and sewage systems,itches and swales, driveways, antennas and satellite dishes, moulings, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

ARTICLE V
ASSOCIATION

5.1 Membership. Each Owner, automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member of the Association so long as he or she owns the Lot.

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

(a) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the following subparagraph (ii) in which event Developer shall then be a Class A member). Each Class A member shall be entitled to one (1) vote.

(ii) Class B Members. The Class B member shall be the Developer. Each Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership.

5.4 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 determines among themselves. In no event shall more than one person exercise a Lot’s vote under paragraph 5.2. No Lot’s vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association’s Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

5.6 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination penalty, on written notice of ninety (90) days or less.

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

(i) Maintenance of the Common Areas including any and all improvements thereof in good repair 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 Lake Basements or Landscape Basements or Landscape Preservations Basements as the Association desems necessary or appropriate.

(iii) Maintenance, repair and replacement of any private street signs.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association desems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of the Owner, including any builder, of a Lot subject to a Drainage Basement to keep the portion of the drainage system and Drainage Basement on his Lot free from obstructions so that the storm water drainage will be unimpeded.

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

(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 and such other insurances as the Board of Directors deems necessary or advisable.

(vii) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(viii) Assessment and collection from the Owners of the Common Expenses.

(ix) Performing or contracting for such services as management, snow removal, Common Area maintenance, security control, trash removal or other services as the Association deems necessary or advisable.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and the bylaws and covenants.

5.8 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, 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 against any Residence Unit 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.

5.9 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.

5.10 Non-Liability of Directors and Officers. The directors and officers of the association shall not be liable to the Owners or any other person 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.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, executors, administrators and legal representatives (collectively, the "Indemnitees") against any and all costs, claims, demands, losses, damages, costs and expenses incurred by such Indemnitees in connection with the defense of any suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such suit, action 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 or judgment rendered in any suit, action 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 in considering the adjudication in any action, suit or proceeding, Indemnitee, no director or officer shall be deemed to be guilty of gross negligence or willful misconduct in the performance of his or her duties.

5.12 Bond. The Board of Directors of the Association may require the bond and surety of each director of the Association (if any), the treasurer of the Association and such other officers as the Board of Directors may deem necessary to provide indemnity against loss by theft, embezzlement, fraud or similar misconduct, willful misapplication and other acts of theft, fraud or misappropriation. Such bond shall be made payable to the Association and shall be approved by the Board of Directors and the surety shall specifically include protection for any insurance proceeds recoverable for any reason by the Board of Directors. The expense of any such bond shall be a Common Expense.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and there 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 three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the
Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The Board of Directors may at any time after the end of the development period remove any member of the Architectural Review Committee at any time upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of Architectural Review Committee

The Architectural Review Committee shall review and approve the design, color, appearance and location of all residences, buildings, structures or any other improvements placed on any Lot, including any builder, on any Lot and the installation and removal of any Lot, in such a manner as to preserve and enhance the beauty and desirability of the Eller Run Real Estate and to preserve the harmonious relationship among structures and the natural vegetation and topography.

(1) In general. No residence, building, structure, antenna, fence, deck, wall, patio or other improvement of any kind shall be erected, constructed, placed, or altered upon any Lot and no change shall be made in the exterior color of any residence Unit or accessory building located on any Lot without the written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made 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 such proposed construction or 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 surfaces to be used and any proposed landscaping, together with all other material and information which the Architectural Review Committee may reasonably require. Unless otherwise specified by the Architectural Review Committee, all plans shall be prepared by either a registered land surveyor, engineer or architect. Plans submitted for the Architectural Review Committee shall bear the stamp of signature of the relevant Architectural Review Committee acknowledging the approval thereon. It is contemplated that the Architectural Review Committee will review and grant general approval of the floor plans and exterior styles of the homes expected to be offered and sold in Eller Run by the builder or builders prior to the builder or builders selling any homes in the community. Unless otherwise directed by the Architectural Review Committee, once a builder has received written application for a particular floor plan and exterior style, it shall not be necessary to resubmit to the Architectural Review Committee in order for such builder to build the same floor plan and exterior style on other Lots.

(11) Power of Disapproval. The Architectural Review Committee may refuse to approve any application made to it as required under paragraph 6.2 (1) above (a Requested Change) when:

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

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(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lots or with the adjacent buildings or structures; or

(c) The Requested Change, or any part thereof, 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 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 items and regulations may set forth additional requirements to those set forth in this Declaration or a Plat of any part of the Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

6.3 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within thirty (30) days after all information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed approved. One copy of submitted material shall be returned by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association nor any agent of any of them, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it. Nor shall any defects in any work done in accordance thereto or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its representatives may, but shall not be required to, inspect work being performed to ensure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and any such work not found to be consistent with the approved Requested Change, or not approved, shall be stopped and removed.

ARTICLE VII

ASSESSMENTS

7.1 Purpose of Assessments. The purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and associated facilities for the benefit of the Owners and the residents occupying the Real Estate. (i) for the improvement, maintenance and operation of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, Landscape Easements, Landscape Preservation Easements, Drainage, Utility or Sewer Easements or Lake 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 the purpose of providing repair and replacement of all capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots and Subdivision

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7.2 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, 1993, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Three Hundred, Sixty Dollars ($360.00).

(ii) From and after December 31, 1993, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) above the Regular Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (iii).

(iii) From and after December 31, 1993, 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 two-thirds 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 for such purpose.

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

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purposes 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 to or for any Residence Unit (whether from operations of any other loss) which the Association may from time to time incur, but only with the assent of two-thirds 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 for such purpose.

7.4 No Assessment against Developer During the Development Period. Neither the Developer nor any related entity shall be assessed any portion of any Regular or Special Assessment during the Development Period.

7.5 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, provided that in the case of the conveyance by Developer of a Lot to any Builder, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to the Builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment or 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 due dates for all Assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest (at an excess of six percent (6%) per annum) and late charges on past due installments of assessments. The Association shall, upon demand, and for a reasonable charge, furnish certificates issued by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

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A properly executed certificate of the Association as to the status of assessments on a lot shall be binding upon the Association as of the date of its issuance.

7.6 Failure of Owner to Pay Assessments.

1) No Owner may exempt himself from paying Regular Assessments and Special Assessments 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 periodic installment of an assessment, if applicable) when due, the lien for such assessment (as described in paragraph 7.7 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. Upon the failure of an Owner to make timely payments of any assessment when due, the Board of Directors of the Association may in its discretion accelerate the balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any assignee of the Residence Unit shall be jointly and severally liable for the payment of a reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to recover from the Owner of the Residence Unit or Lot, costs and expenses of such action incurred (including but not limited to attorneys reasonable fees) and interest for the date such assessments were due until paid.

2) Notwithstanding anything contained in this paragraph 7.6, elsewhere in this Declaration, a 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 for taxes at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) in the balance of any unpaid assessments due prior to such sale or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No transfer of a Residence Unit or Lot by the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liabilities (or periodic installments of such assessment, if applicable) thereafter becomes due from the lien thereof.

7.7 Creation of Lien and Personal Obligation. Each Owner (other than the Developer during the Development Period) of a Residence Unit or Lot by acceptance, for itself and its assigns, of a deed therefor, whether or not such deed is expressed, is deemed to warrant and agree to pay to the Association for the obligation for Regular Assessments for Common Expenses ("Regular Assessments") and Special Assessments for Capital Improvements ("Capital Assessments") and for Operating Costs and Deficits ("Special Assessments"). Such assessments shall be established as hereinafter provided. All such assessments shall be collected as hereinafter provided. All such assessment together with interest until collection and
attorneys reasonable fees, shall be a continuing lien upon the Residence Unit of Lot against which such assessment is made prior to all other liens except only: (i) tax liens on any Residence Unit or 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 reasonable attorney fees, shall also be the personal obligation of the Owner of the Residence Unit at the time such assessment 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 Residence Unit) shall not pass upon the 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 Residence Unit, shall furnish to such Mortgagee or Purchaser a statement setting forth the amount of any Special Assessment or other Charge against the Residence Unit or Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sewer Easement Deemed a Special Assessment. As provided in the Easements relating to the Eller Run Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sewer Easement, including any builder, shall be required to keep the portion of said Drainage, Utility or Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impaired and will not be changed or altered without a permit from the Department of Public Works and prior written approval of the Developer. Also, no structures or improvements, including without limitation driveways, sidewalks, 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 written request, be removed by the Owner at the Owner's own cost and expense. If, within thirty (30) days after the date of Developer's written request, such Owner shall not have commenced and diligently pursued removal of such obstruction, the Association, water upon the cost of such obstruction, structure or improvement to be removed so that the Drainage Utility and Sewer Easement is returned to its original designed condition. In such event, Developer may, on behalf of the Association, enter upon the Lot and remove such obstruction, structure or improvement to recover the full cost of such work from the unpaid Owner. 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 7 in the same manner as any other Special Assessment or Special Assessment may be collected.

ARTICLE VIII

INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance insurance up to the full insurable replacement cost of any improvements owned by the Association, and such insurance shall also include a "broad form" general liability insurance. 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 may be deemed desirable. Such insurance policy shall state the Association as the insured. Under the insurance policy or policies, 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.
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.

8.2 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 deems appropriate from time to time, but in any
event with a minimum combined limit of $1,000,000 per
occurrence. 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 any of the Board’s directors, all persons acting or who may
come to act as agents or employees of any of them, or the owner(s) of
any of the lots, with respect to the Real Estate and the Developers.

8.3 Other Insurance. The Association shall also purchase
and maintain any other insurance required by law to be
maintained by including but not limited to workers compensation and
occupational disability insurance, and such other insurance as the
Board of Directors shall from time to time deem necessary, and
appropriate to the needs of the Community and the
owner(s) and directors’ liability insurance.

8.4 Miscellaneous. The premium for the insurance
described above shall be paid by the Association as part of the
Common Expenses.

ARTICLE IX
MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the
extent such maintenance shall be the responsibility of the
Owner, the duty of the Owner, the Board of Directors
or any other party, to maintain and keep the Lot, including any
improvements, utility or service easements located on the Lot,
any structures for the storage of trash, any or all of which may be
unnecessary and are not kept up to order, in good condition.

9.2 Damage to Common Areas. In the event of damage or
destruction of any part of the Common Areas or any improvements
which the Association is required to maintain, the Association shall
repair or replace the same from the insurance proceeds 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 shall make a Special Assessment against all Owners to
cover the additional cost of repair or replacement not covered by
the insurance proceeds or against such Owners as may be
liable for any damage which may result from any maintenance or
improvement hereunder.

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amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

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

(v) Sale of Real Estate. The resolution adopting or adding to any provision of this Declaration shall be adopted by a vote of not less than ninetieth percent (90%) in the aggregate of all Owners if the proposed amendment is considered and voted on or before December 31, 2012, and not less than sixty-five percent (65%) if the proposed amendment is considered and voted on after December 31, 2012. In any case, however, any such amendment shall require the prior written approval of any Developer as long as Developer or any entity related to Developer owning any lot or not subject to any condition or restriction on the Real Estate. In the event any member of the Board of Directors of the Association is in accordance with the provisions of the foregoing paragraph 10.2.

(v) Mortgages. 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 1003.7(b) of Part V, Chapter 6, of the Federal Housing Administration's Guide, or any similar provision of any other guidelines published in lieu of or in substitution for the Federal Housing Administration's Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac and Fannie Mae Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-five percent (65%) of the Mortgagee on whose mortgage 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 paragraph 10.2.

Any Mortgagee which has been duly notified of the nature and purpose of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof were present at the meeting in which such amendment is to be considered or if the Mortgagee does not send its written objection to such amendment prior to such meeting. In the event that a mortgagee does not receive such written objection to such proposed amendment within thirty (30) days of the date such notice was mailed and if such notice does not contain a notice of the time limitation contained in the mortgagee's note, all Mortgagee shall notify all Mortgagee whose interests have been made known to the Board of Directors of the Association to be such time which is not of a material nature by the Federal National Mortgagee Association under Section 1003.7(b) of Part V, Chapter 6, of the Federal Housing Administration's Guide, or any similar provision of any other guidelines published in lieu of or in substitution for the Federal Housing Administration's Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac and Fannie Mae Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-five percent (65%) of the Mortgagee who have given prior notice of their mortgage interests to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

11.2 By the Developer. The Developer hereby reserves the right, so long as Developer or any entity related to the Real Estate, to make any amendments to this declaration, without the approval of any other person or entity, for any purpose necessary or appropriate by the Developer, including without limitation: to comply with the requirements of any regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgagee

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Association, the Government, National Mortgage Association, the 
Federal Home Loan Mortgage Corporation, the Department of Housing 
and Urban Development, the Veterans Administration, any other 
governmental agency or to induce any of such agencies to make, 
direct clerical or 
typographical errors in this document, or any 
acceptable or supplement hereto; provided that in no event shall 
adverse effect on the rights of any mortgage or which 
substantially impairs the rights granted by this Declaration to any 
Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration shall be 
executed by developer and the right to amend 
this Declaration without any further consent or approval, and 
otherwise by the President or Vice President and 
Secretary of the Association; provided that any amendment 
requiring the consent of developer shall remain 
valid. All amendments shall be recorded in the office of 
the Recorder of Hamilton County, Indiana, and no amendment shall 
become effective until so recorded.

ARTICLE XII

MISCELLANEOUS

12.1 Right of Enforcement. Violation of any violation of any of the covenants, conditions or restrictions 
mentioned in this Declaration or in a Plat of any part of the 
Elliott 1 in Real Estate shall be enforceable by the 
Heirs of Basalt County, Indiana, or making covenants 
shall be construed as an action by developer, the Association, any 
Owner, and every interest or any entity or entities claiming under, 
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, in the discretion 
of the court, injunctive relief against any such violation or 
threatening to violate any covenant, declaration or 
restrictions and the recovery of 
the costs and expenses reasonably incurred by any party 
successfully enforcing such covenants and restrictions. Provided, 
however, that neither developer, any Owner nor the Association 
shall be liable for damages of any kind to any person or party 
for failing to enforce any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on 
the part of any party to invoke any available remedy with respect to any 
vioation of this Declaration or in a Plat of any part of the 
Real Estate shall be held to be a waiver by that 
party (or an estoppel of that party to any 
claim) to enforce the Declaration or to claim 
such violation or violations.

12.3 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 and shall be binding on all persons and entities at any time having any 
right, title or interest in the Real Estate for any part thereof, and on all persons claiming under them, until 
December 31, 2012, and thereafter shall continue 
until terminated or modified by vote of the 
Owners at any time thereafter, provided, however, that no termina- 
tion of this Declaration shall affect any interest hereby 
created and reserved unless all owners 
etitle to the beneficial use of such interest shall consent thereto.

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

12.5 Title. The underline title preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be read as an aid to the construction of any provisions of this Declaration. Whenever a singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

12.6 Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

12.7 Annexation. Additional land adjacent to the Initial Real Estate may be annexed by Developer to the Initial Real Estate by execution and recording in the office of the Recorder of Hamilton County, Indiana of a supplemental declaration by Developer, and such action shall require no approvals or action of the Owners.

12.8 Government Financing Entities: Approval. If there is Class B membership in the Association and if there is financing provided for any of the Elk Run Real Estate by the Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, and any of these entities requires that their consent be obtained prior to amending this Declaration or dedicating the Common Areas subject to this Declaration, then while the Class B membership is in effect the Developer and the Association must obtain the consent of such entity. If there is Elk Run Real Estate is financed by any of such entities, then the Developer and the Association may amend this Declaration or dedicate any Common Areas without obtaining the consent of the above referenced entities.

XIII

DEVELOPER'S RESERVES

13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all of the Real Estate (subject to the limitations hereinafter provided in this paragraph 13.1) for the use of Developer and its representatives, agents, employees, contractors and affiliates, during the Development Period, for the purpose of constructing, dedicating the access license created by this paragraph shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access access access rights only in the extent reasonably necessary and appropriate.

13.2 Signs. Developer shall have the right to the signs of any size during the Development Period and shall not be subject to the Plat limitations with respect to signs during the Development Period. The Developer shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.
13.3 Rules, Offices and Model Homes: 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 Hamilton County, Indiana, Developer, any unit, related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Keller Run 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 Keller Run Real Estate and the sale of lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices and sales offices.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

By: KELLER RUN DEVELOPMENT CORPORATION

[Signature]

Christopher R. White
Authorized Signatory
STATE OF INDIANA
COUNTY OF MARION

Before me, a Notary Public, in and for the State of Indiana, personally appeared Christopher R. White, an Authorized Signatory for Eller Run Development Corporation, an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Eller Run.

WITNESSETH my hand and Notarial Seal this 5th day of November, 1992.

Notary Public
Printed

My Commission Expires: April 21, 1996
County of Residence: Marion

This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 9250 Ravenstick Road, Suite 290, Indianapolis, Indiana 46240. (317) 259-6217.
EXHIBIT "A"
CREASEE RUN
SECTION I

A part of the Northeast Quarter of Section 10, Township 17 North, Range 4 East of the Second Principal Meridian, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Northwest corner of said Northeast Quarter; thence North 89°15'25" East, (assumed bearing) along the Nth line of said Northeast Quarter a distance of 849.34 feet; thence South 00°44'35" East a distance of 243.50 feet; thence North 89°15'25", East parallel with said North line a distance of 25.00 feet; thence South 00°44'35" East a distance of 125.00 feet; thence South 11°20'53" West a distance of 83.08 feet; thence South 78°30'07" East a distance of 119.39 feet; thence South 72°52'25" East a distance of 57.77 feet; thence South 22°19'25" West a distance of 120.00 feet, said point being on a curve concave to the Southwest having a radius of 369.00 feet; thence Southwesterly along said curve through a central angle of 03°02'59" on the distance of 19.64 feet, said arc being subtended by a chord bearing South 66°13'06" East a distance of 15.64 feet to the point of reversal of curvature of a curve concave to the Northeast having a radius of 147.00 feet; thence Southwesterly along said curve through a central angle of 11°31'36" an arc distance of 29.57 feet, said arc being subtended by a chord bearing South 70°27'25" East a distance of 29.32 feet; thence South 13°40'47" West a distance of 170.00 feet; thence South 85°10'47" East a distance of 98.74 feet; thence North 88°33'09" East a distance of 57.55 feet; thence South 01°26'31" East a distance of 67.41 feet; thence South 38°37'09" West a distance of 47.02 feet; thence South 27°30'55" East a distance of 155.00 feet, said point being on a curve concave to the Northwest having a radius of 260.00 feet; thence Northwesterly along said curve through a central angle of 02°26'17" an arc distance of 11.21 feet, said arc being subtended by a chord bearing North 61°15'00" East a distance of 11.21 feet; thence South 29°36'05" East a distance of 128.58 feet; thence South 35°37'09" West a distance of 61.00 feet to the Southeast corner of the Northwest Quarter of the Northeast Quarter of said Section 10; thence South 89°22'36" West along the South line of said Northeast Quarter a distance of 208.75 feet; thence South 89°22'36" West parallel with the South line of the Northwest Quarter of said Northeast Quarter a distance of 415.50 feet to the West line of said Northeast Quarter, thence North 00°00'22" West along said West line a distance of 1,111.20 feet to the Point of Beginning. Containing 30.988 Acres (1,353,887 Square Feet) more or less, and subject to all easements and rights—of—way of record.