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VIGO COUNTY

DECLARATION OF COVENANTS

GOVERNING

BIRCH RUN SUBDIVISION

WHEREAS, the undersigned, Birch Run Development, Inc., hereinafter referred to as Declarant, is the owner of the following described real estate in Vigo County, State of Indiana, more particularly described as follows:

Beginning at a point on the North boundary line of the Northwest Quarter (NW 1/4) North 90° 00' 00" East 1492.7 feet from the Northwest Corner of the Northwest Quarter (NW 1/4) of Section 36, Township 12 North, Range 9 West, Second Principal Meridian, Harrison Civil Township, Vigo County, Indiana; thence continuing North 90° 00' 00" East 155.2 feet along the said North boundary line; thence South 00° 44' 02.5" East 396.00 feet; thence North 88° 28' 36.0" East 110.00 feet; thence South 00° 44' 02.5" East 295.00 feet; thence South 89° 35' 21.2" West 240.39 feet; thence North 40° 30' 41.9" West 130.54 feet; thence South 49° 29' 18.1" West 170.00 feet; thence North 40° 30' 41.9" West 50.00 feet; thence North 49° 29' 18.1" East 56.75 feet; thence North 40° 30' 41.9" West 176.70 feet; thence North 00° 44' 02.5" West 207.51 feet; thence North 90° 00' 00" East 136.68; thence North 00° 48' 08.3" West 72.40 feet; thence North 90° 00' 00" East 154.25 feet; thence North 00° 44' 02.5" West 211.70 feet to the place of beginning. Containing 5.635 acres.

hereinafter specifically described on the Birch Run Subdivision Phase I Plat recorded in Plat Book 32 on Page 27 in the office of the Recorder of Vigo County, Indiana on the 13th day of May, 1998.

WHEREAS, it is the desire of the undersigned that all phases of Birch Run Subdivision, be subject to the certain covenants, restrictions, and easements hereinafter described, each and all of which is and are for the benefit of said property, and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof.

NOW THEREFORE, the Declarant hereby adopts the following covenants, restrictions and easements for all phases of Birch Run Subdivision hereinafter referred to as the Subdivision, as follows:

1. All lots in said Subdivision shall be known and designated as residential lots with no businesses allowed of any type, except as provided herein. Each lot of the Subdivision shall be used only for single family residence purposes.
2. No other structure shall be erected, altered, placed, or permitted to remain on any

residential lot other than a single family dwelling, except one out-building which size shall not exceed twelve (12') feet by ten (10') feet and shall be one story with a maximum height of twelve (12') feet. Storage buildings shall be constructed of wood, color coordinated to match dwelling, and approved by Declarant or its designated representative.

3. All single family dwellings must be at least or exceed 1,100 sq. ft. of living space and two story single family dwellings must be at least or exceed 600 sq. ft. of living space on the first floor.
4. A garage erected on a residential lot must be at least a two car garage and attached to the dwelling.
5. No satellite dishes or other electronic aerials shall be maintained on any lot in this Subdivision, except satellite dishes 24" or less which location shall be approved by Declarant or its designated representative.
6. No structure, including residences, garages, outbuildings and fences, entry ways, gates, landscaping and tree removal and other improvements shall be erected, placed, or altered on any building area in said Subdivision until plans, specifications, and plot plans showing the location of each structure upon such building area removal have been approved in writing by the Declarant or its designated representative, as to conformity and harmony of external design in keeping with high standards of the Subdivision, and as to location of structures with respect to the topography of the ground and the finished ground elevation, by Declarant or its designated representative, or a committee of owners that may be designated by Declarant. Declarant or its designated representative, in keeping with high quality standards of construction and to effect continuity of construction, shall have the right to approve or disapprove in writing the building contractor of each structure. If Declarant or its designated representative shall fail to approve or disapprove the plans within thirty (30) days after such plans have been submitted, no such approval shall be required.
7. Recreation structures, including but not limited to swing sets, play-ground equipment and basketball goals shall be constructed in a manner as to conformity and harmony of external design in keeping with the high standards of the Subdivision. Swimming pools must be in ground and enclosed by privacy fence, and any outbuildings for said pool must match exterior of the dwelling house.

8. All driveways leading from the street driving surface to the garage located on any lot shall be constructed out of concrete.
9. No professional office, business, trade, church or school or other commercial activity of any kind shall be conducted in any building or on any portion of the property covered by these covenants, except as specifically permitted hereby. It is specially declared that Declarant or its designated representative may maintain an office for the sale of lots and other related business purposes.
10. No trailers, mobile homes, shack or temporary residences of any kind shall be erected, altered, placed or permitted on any residential lot either temporarily or permanently. No basement, tent, garage, barn or other out building erected or placed upon any lot shall at any time be used as a residence, or a business either temporarily or permanently. No structure of any type shall ever be moved onto any lot in this subdivision. All structures erected on said lots shall be newly erected thereon. No clothes lines or similar structures be erected or be used on said real estate.
11. No lot or building site shall by sale, transfer, re-subdivided, or other means be so reduced as to contain a lesser area than herein described, however, the owner of two contiguous lots may erect one residence thereon without regard to any restriction with respect to the side line of each of said lots which forms the boundary between said lots.
12. No animals or poultry of any kind, other than those classified as house pet, shall be maintained, reared or harbored on any lot in this Subdivision.
13. No intoxicating liquors or alcoholic beverages of any kind or nature shall be manufactured or sold upon said property.
14. No obnoxious, offensive, deleterious or objectional odors, sounds, lights or activities of any kind or nature shall be permitted to exist, or in any way used or done upon said premises which could be an annoyance or nuisance to the neighborhood.
15. No use shall ever be carried on upon any lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood.
16. No boat, trailer, mobile home, camper of any kind, commercial vehicle, or

inoperative vehicle or the like, shall be kept or parked except within a garage.

17. The design and location of all mailboxes shall be approved by Declarant prior to their installation. All mailboxes will be of the same design.
18. The exterior of any structure once started is to be completed within a period not to exceed twelve (12) months from the date of commencement of construction. This provision to include exterior site work and planting and seeding of a lawn. During this period of construction the contractors and subcontractors shall keep the building site free of litter and debris.
19. Oil drilling, oil development operations, refining, mining operations of any kind, or quarrying shall not be permitted upon or in any of the building sites in the tract described herein, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the building sites covered by these covenants.
20. The residents of the lots covered by these Covenants shall not discharge firearms on the property nor carry out any target practice or other sport which involves the discharge of firearms of any type.
21. The Declarant will approve the height, width and construction of all fences. No fence will be placed in the front of the residence. No chain link or similar fencing shall be approved.
22. Maintenance of the surface of any right-of-way for a street from the edge of its hard surface to the property line of a lot shall be the responsibility of the owner of the lot whose property line abuts said street right-of-way.
23. Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or that may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements on such lot shall be continuously maintained by the owner or owners of such lot, except for improvements for maintenance of which a public authority or utility company is responsible.
24. The Declarant or its duly designated representative may, at their option, cause to

be formed Birch Run Home Owners Association. Each lot owner shall have one vote in decisions relative to the Association. Each owner of a lot in all phases of the Subdivision will be a member of the Birch Run Home Owners Association and shall be subject to rules, regulations and assessments adopted and approved by the Birch Run Home Owners Association.

25. If the parties hereto, or any of them, or their heirs, successors, assigns, or representatives shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said tract, his representative or assigns, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent him or them from so doing and to recover damages, reasonable attorney fees, and other dues for such violation, including all costs of said prosecution.
26. The owners of all lots in all phases of Birch Run Subdivision agree to indemnify the Declarant for any liabilities or damages of any kind or nature whatsoever resulting from or in any way attributable to the discharge or cause to be discharged any storm water, ground water, roof runoff, (down spouts from gutters, or roofing tiles), subsurface drainage, (basement foundation drains), cooling water or unpolluted industrial process waters of any sanitary sewer.
27. Declarant shall not be liable to any person, firm or corporation who may be the owner of any lot in said Subdivision, or otherwise, for any action taken by them under the provisions of this instrument, nor shall said Declarant be liable to any such person, firm or corporation for failure or refusal to do any act or thing which they may be authorized to do under the provisions of this instrument. Each and every subsequent owner of any and all of said lots in said Subdivision by acceptance of a deed therefore, shall be deemed to have waived and released for himself, his heirs, administrators, executors, successors and assigns any rights he may have, or might acquire subsequently, to maintain any action at law or otherwise against Declarant for any action taken or any failure or refusal to take any action under and pursuant to the provisions of this instrument.
28. These covenants are to run with the land and shall be binding as to all parties and all persons claiming under them until May 1, 2008, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owners of the building areas covered by these covenants is it agreed to change said covenants which shall remain in full force

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and effect. However, Declarant shall have the right to amend these Covenants with consent of a majority of lot owners of all phases of Birch Run Subdivision and with consent of the Board of Directors of the Birch Run Home Owners Association, if applicable, until December 31, 2000.

- 29. Invalidations of any one of these covenants or any part thereof by judgment of court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant, Birch Run Development, Inc., has caused the Declaration of Covenants Governing Birch Run Subdivision to be executed this 12th day of August, 1998.

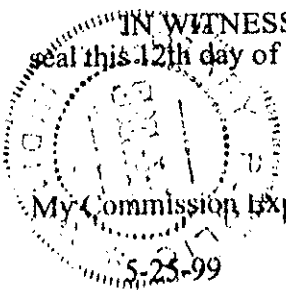
BIRCH RUN DEVELOPMENT, INC.

BY [Signature]
Jon R. Mutchner, President

STATE OF INDIANA, COUNTY OF VIGO, SS:

Before me, a Notary Public in and for said County and State, personally appeared the within named Jon R. Mutchner, President of Birch Run Development, Inc., hereby acknowledged the execution of said Declaration of Covenants Governing Birch Run Subdivision to be his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 12th day of August, 1998.



[Signature]
Lisa I. Holmes, Notary Public

County of Residence:

Vigo

This instrument prepared by Richard J. Shagley, Attorney at Law, 500 Ohio Street, P.O. Box 8448, Terre Haute, Indiana 47808-8448.

RECORDED FOR RECORD
AT _____ O'CLOCK _____ M
RECORD 209 PAGE 998

[Signature]