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RALPH C. STEMLER  
RECORDER OF CLARK CO.

**RESTRICTIVE COVENANTS FOR  
ELK POINTE SUBDIVISION SECTION/UNIT 3**

The undersigned, Elk Pointe Developers, Inc., an Indiana corporation, acting by and through its duly authorized officers and Martha J. Paynter, being the sole owner of all lots in Elk Pointe Subdivision Section/Unit 3 ("Elk Pointe"), as the same appears of record in the office of the Recorder of Clark County, Indiana, in Plat Book 10, at Page 60, does hereby impose the following restrictions upon each lot within the plat of Elk Pointe, and said restriction are hereby declared to be covenants running with the land, for the mutual benefit of all persons and corporation who may now or hereafter have any vested interest, legal or equitable, in any lot within Elk Pointe.

1. *Definitions.*

A. "Association" shall mean and refer to the Elk Pointe Homeowner's Association.

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

C. "Properties" shall mean and refer to the designated numbered lots as shown on the plat of Elk Pointe.

D. "Common Area" shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Areas are to be owned by the Association. The Common Areas are designated as Area "A" and Area "B" as shown on the plat of Elk Pointe, recorded in Plat Book 9, page 64.

E. "Lots" shall mean and refer to each plot of land shown upon the recorded subdivision plat with the exception of the Common Areas.

F. "Members" shall mean and refer to every person or entity who holds membership in the Association.

G. "Declarant/Developer" shall mean Elk Pointe Developers, Inc.

2. *Land Use.* No lot or portion thereof shall be used except for residential purposes, and commercial activities of any

nature will not be permitted, except that any lots or portion thereof may be dedicated by the owners thereof as a public street.

3. *Building Type and Size.* All lots in Elk Pointe shall be subject to the following restrictions: No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half (2½) stories in height, and only private attached garages for not more than three (3) cars. The ground floor of the main structure, exclusive of porches and garages, shall not be less than 1700 square feet for a dwelling of one story, and a total square footage of at least 1950 for a dwelling of more than one (1) story, both as measured at the outer line of the foundation. No detached storage buildings, satellite disk/dish, or any other structures, temporary or otherwise, may be built on any lot except facilities servicing an in-ground swimming pool, and these must meet the approval of Declarant/Developer or upon completion of all sections of Elk Pointe, the approval of the Association.

4. *Building Location.* No building shall be located on any lot nearer to the front lot line or nearer to the side street line than thirty (30) feet or as shown on the recorded plat. No building shall be located nearer than ten percent (10%) of the front feet of a rectangular lot or eight (8) feet on any irregular lot shape, to an interior lot line. No dwelling shall be located on any lot further than five (5) feet behind the building line. For the purposes of these covenants, all adjoining lots or portions thereof used as a site for the construction of a single residence shall be considered one (1) lot, so that these restrictions relative to side lot lines shall mean the side lines of any one or more lots or portion of any lot or lots used as a single residential building site. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided however, that this exception shall not be construed to permit any portion of a building to encroach upon another lot. In no event shall any buildings be erected in violation of yard requirements or any zoning ordinance in effect at the time of construction thereof. The minimum lot size shall be as shown on the recorded plat.

5. *Signs, House Numbers and Mail Boxes.* No billboard, signboard or sign of any kind shall be displayed to the public view on any lot except on professional sign or not more than one (1) square foot, or one sign of not more than five (5) square feet advertising the property for sale or rent; except advertising signs of builders and materialmen erected during the course of construction and which signs shall be removed immediately after the completion of the construction work. All

homes shall display a house number in an appropriately placed position; and all homes having a mailbox shall maintain said mailbox in the same state of repair as that of the dwelling, and if lettered, be lettered in professional manner or have attached thereto an appropriate name plate.

6. *Gardens and Animals.* Vegetable gardens for private use shall be permitted only adjacent to the rear of a dwelling and may extend no more than twenty-five (25) feet from the rear and not beyond the sides of the structure. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except household pets, may be kept provided that they are not kept, bred, or maintained for commercial purposes, and provided further that they shall not be or become an annoyance or nuisance to the neighborhood, and shall not exceed a reasonable number.

7. *All Clotheslines, Equipment, Garbage Cans, Service Yards, Wood Piles or Storage Piles.* These shall be kept from the view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

8. *Nuisances.* No noxious or offensive trade or activity shall be carried on or within said tract nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood.

9. *Drainage, Driveway Culverts and Construction.* No driveway or other obstruction shall be constructed or permitted to remain between any lot and any road which shall restrict the drainage along such roadway. All delivery of material to each lot having a house under construction must be over the area of the curb where the driveway will be constructed and not upon other portions of the lot. Within one (1) year after completion of construction of a residence, all driveways must be paved solidly of concrete or asphalt and shall be properly maintained. Public sidewalks must be constructed of poured concrete and according to specifications within the subject plat, or the City of Jeffersonville whichever is most restrictive, along the entire front of the property, and maintained by the owners of the individual lots therein.

10. *Building Use and Temporary Structures.* No building built on any of said lots of Elk Pointe shall be used for any purpose except a residence, and each residence shall be for one family only. No trailer, tent, shack, garage, basement, or other building or structure of a temporary character may be used as a residence, either temporarily or permanently. No disabled autos nor any other piece of mechanical equipment or building supplies

may be stored on the lots, and off street parking for all vehicles appurtenant to the residence must be provided. There shall be no recreational vehicles, namely boats or campers, or semi-trucks permitted to be parked on the lots within sight of the street.

11. *Building Completion.* No structure shall be allowed to remain upon any lot within Elk Pointe in partial state of completion for a substantially greater length of time than would normally be required for the completion of such a structure, having regard only for general circumstances and conditions in the vicinity and not circumstances and conditions pertaining to the owner or other person or persons responsible for such construction.

12. *Architectural Control.* No building shall be erected, placed or altered upon any lot until the construction plans and specifications and a plan showing the location of the structure shall have been approved by Declarant/Developer as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation.

13. *Easements.* Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easement, no structures, plantings or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easement. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

14. *Fences and Shrubs.* No fence or privacy shrubs of any kind shall be allowed on said lots in excess of six (6) feet in height without approval of the Declarant/Developer. No fence except those that meet approval of the Declarant/Developer shall be constructed from the rear line of the house to the front property line, nor landscaping of more than twenty-four (24) inches in height along said line except ornamental fences not exceeding twenty-four (24) inches in height which are used around shrubs and flower beds.

15. *Swimming Pools and Jacuzzi.* A swimming pool or jacuzzi is permitted within the area where a six (6) foot fence may be located, provided said swimming pool or jacuzzi has a six (6) foot fence surrounding it.

16. *Sewer Systems, Fuel Tanks and Utility Cables.* All buildings erected on the lots in Elk Pointe shall be connected to the Jeffersonville Sewage Department lines and must be installed in accordance and with the approval of the City of Jeffersonville Sewage Department. All fuel tanks must be buried below finish grade. All utility cables, electric, phone or other utility lines upon said lots must be buried below finish grade in accordance with the specifications of the installing utility company where underground service is provided.

17. *Maintenance of lots.*

A. *lots Unimproved.* The owner shall maintain the grass at a level not to exceed twelve (12) inches in height.

B. *lots Improved.* The owner shall maintain the grass at a level not to exceed a height congruent with other improved lots within Elk Pointe.

C. If owner fails to maintain any unimproved lot or lots, the Declarant/Developer may cut the grass and bill the owner of the reasonable cost of same.

18. *Reservation of Drainage Easement.* All lots subject to public utility and drainage easements as shown on the plat are further subject to usage of such easements for utilities and drainage for future development and platted residential subdivision adjoining this Elk Pointe or adjacent to those future subdivision.

19. *Plan of Development of Elk Pointe.* Elk Pointe is planned to be developed into three or more sections. Section/Unit 3 includes real estate subject to this declaration and is intended to be developed into 61 lots. Additional common areas may be conveyed to the Association at the time that subsequent sections are developed, and the developer reserves the right to annex said section to Elk Pointe and each lot owner in Sections 1, 2 and 3 and each of the subsequent sections annexed hereto shall become members of the Association to share the use of all common areas, and such lot owners shall be assessed for common expenses the same manner as all the lot owners in this section of Elk Pointe.

20. *Association.*

A. *Membership and Voting Rights.*

(i) Every owner of a lot which is subject to assessment shall be a member of the Association. Membership

shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

(ii) The Association shall have two classes of voting membership: Class A and Class B.

Class A Class A members shall be all owners with the exception of Declarant/Developer and shall be entitled to one vote for each lot owned. When more than one person owns an interest in any lot, all such persons shall be members. The vote for such lots shall be exercised as they among themselves agree, but in no event shall the vote be split into fractional votes not shall more than one vote be cast with respect for any lot. Each vote cast for a lot shall be presumptively valid. If such vote is questioned by any member holding any interest in such lot and all such members are not in agreement, the vote of such lot which is in question shall not be counted.

Class B Class B members shall be the Declarant/Developer and the Class B member shall be entitled to three votes for each lot owned. Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever shall come first: (a) the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or (b) May 31, 1995.

B. Creation of the Lien of Personal Obligations of the Assessments.

(i) The Declarant/Developer for each lot owned within Elk Pointe hereby covenants and each owner of any lot by acceptance of the deed thereto, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association an annual assessment or charge which is initially in the sum of twenty-five dollars (\$25.00) per lot beginning with the initial conveyance of the lot from the Declarant/Developer, and then due the following January 1, and thereafter due in a like manner on the following 1st day of January. The annual assessment, together with interest, cost, and reasonable attorney's fees, shall be a charge on the land and a continuing lien upon the property on which such assessment is made. Each assessment together with interest, cost and reasonable attorneys fees shall also be the personal obligations of the person who was the owner of such property at the time of the assessments are due. The personal obligations for delinquent assessments shall

not pass to its successors in title unless expressly assumed by them.

(ii) The purpose of the assessment levied by the Association shall be exclusively to promote the recreation, health, safety and welfare of the residents of the properties and for the improvement and maintenance of the Common Areas, and the island and median existing in the dedicated streets with the consent of the City of Jeffersonville.

(iii) The Association, by vote of the majority of the members of said Association, may increase the annual assessment.

(iv) Remedies of the Association for nonpayment of assessment. Any assessments not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owner primarily to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his/her lot.

(v) Subordination of the Lien to Mortgages. The liens of the assessment provided for herein shall be subordinate to the lien of any first mortgage in existence at the time that the assessment becomes a lien. The sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to any mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for the assessment thereafter becoming due or from the lien thereof.

(vi) Exempt Property. All properties dedicated to and accepted by a local public authority, the Common Area, and all properties owned by the declarant/developer, and lots 1, 2, 3, 4, 5, 45, 46, 47 and 48 so long as they remain undeveloped shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from the said assessments.

### C. Meetings of the Association.

(i) The declarant/developer shall call the first meeting of the Association by giving thirty days written notice to all members. The first meeting has already been held.

(ii) Notice and Quorum for any Action. Written notice of any meetings called for the purpose of taking any action shall be sent to all members no less than thirty, nor more than sixty, days in advance of the meeting. At the first meeting called, the presence of the members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. A required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting. A majority vote of the quorum shall be required to take any action.

D. Directors and Corporation. This Association is an unincorporation entity and has not been incorporated. The Association pursuant to the regulations as set forth herein may take by property vote the action to incorporate the Association or they may decide to stay as a unincorporated entity. They may also take the action of appointing a board of directors to act on behalf of the Association, and to set forth by-laws to guide the Association and/or its directors.

E. Owners Easement and Rights of Enjoyment. Every owner shall have the right and easement of enjoyment in and to the Common Area which right and easement shall be appurtenant to and shall pass with the title to every lot subject to the following provision:

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

21. *Construction Trailer.* The Declarant/Developer reserves the right to maintain a construction trailer on the premises until such item as construction has been completed.

22. *Terms and Amendments.* These covenants shall be in full force and effect for a period of twenty-five (25) years from the date they are recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless there is an agreement in writing changing said covenants,



in whole or in part, signed by the then owners of not less than fifty-one percent (51%) of Association.

IN WITNESS WHEREOF, Elk Pointe Developers, Inc., by its duly authorized officers, and Martha J. Paynter have hereunto set their hand and seals this \_\_\_\_\_ day of September, 1993.

ELK POINTE DEVELOPERS, INC.,  
an Indiana corporation

By: Tony Schuler  
Tony Schuler  
Title: President

ATTEST:

Martha J. Paynter  
Martha J. Paynter, Secretary

STATE OF INDIANA

COUNTY OF CLARK

Before me, a Notary Public in and for the above county and state, on the 24<sup>th</sup> day of September, 1993, personally appeared Tony Schuler, as president of Elk Pointe Developers, Inc., and acknowledged the execution of the foregoing Restrictive Covenants.

WITNESS my hand and notarial seal.

Mary duPont  
Notary Public  
Resident of Clark County, Indiana

Printed Signature:

Mary duPont

My Commission Expires:

8-26-95

STATE OF INDIANA     )  
                                  )    ss:  
COUNTY OF CLARK     )

Before me, a Notary Public, in and for the above county and state, on the 27<sup>th</sup> day of January, 1994, personally appeared Martha J. Paynter, as secretary of Elk Pointe Developers, Inc., and acknowledged the execution of the foregoing Restrictive Covenants.

WITNESS my hand and notarial seal.



Lisa K. Payton  
NOTARY PUBLIC

Resident of Clark County, IN

Printed Signature:

LISA K. PAYTON

My Commission Expires:

3-22-97

This instrument prepared by:  
Charles R. Murphy  
Young, Lind, Endres & Kraft  
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New Albany, Indiana 47150  
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