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INSTR. NO. 10534
CAROLYN P. MAKOWSKY
RECORDER OF CLARK CO

RESTRICTIVE COVENANTS FOR ELK POINTE SUBDIVISION

The undersigned, Elk Pointe Developers, Inc., an Indiana corporation, acting by and through its duly authorized officers, and Harry Paynter and Martha J. Paynter, husband and wife, being the sole owners of all lots in Elk Pointe Subdivision, as the same appears of record in the office of the Recorder of Clark County, Indiana, in Plat Book 9, at Page 64, does hereby impose the following restrictions upon each lot within the plat of said Elk Pointe Subdivision, and said restrictions are hereby declared to be covenants running with the land, for the mutual benefit of all persons and corporations who may now or hereafter have any vested interest, legal or equitable, in any lot within said subdivision.

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 Subdivision.
- 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 Subdivision.
- 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) "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. Notwithstanding the above, lots 45, 46, 47 and 48 may be used for both residential and agricultural purposes by the present owners Martha Paynter and Harry Paynter or their respective heirs. Upon transfer of that property to anyone other than their respective heirs then those lots shall be subject to being used only for residential purposes.

3. BUILDING TYPE AND SIZE: All lots in said subdivision 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 1 story, both as measured at the outer line of the foundation. No detached storage buildings, satellite disk, 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 Elk Pointe Developers, Inc.

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 twenty-five (25) feet or as shown on the recorded plat. No

building shall be located nearer than 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 lot, so that these restrictions relative to side lot lines shall mean the side lines of any one or more lots or portion or portions of any lot or lots used as a single residential building site. For the purpose 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 of 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 one professional sign of 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; or, 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 mail box shall provide that they be maintained in the same state of repair as that of the dwelling and that they will, if lettered, be lettered in a professional manner or have attached thereto an appropriate name plat. There is further reserved the right to maintain an appropriate sign indentifying the subdivision

and a entrance wall on Lots 1 and 48 and Common Areas A and B which signs shall be established in their locations prior to construction of a residence on the lots 1 and 48.

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; and 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 any commercial purpose, 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: Shall be keep from the view of neighboring homes and streets. All rubble, 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 year after completion of construction of a residence, all driveways must be paved solidly of concrete or asphalt and shall be kept in proper maintenance. 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 this subdivision 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 lot, 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 this subdivision in a 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 the developers 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 easements, 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 easements. 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 Developers, and no fences at all shall be constructed from the rear line of the house to the front property line, or landscaping of no 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, except fences that meet approval of the Developers. A swimming pool or jacuzzi is permitted within the area where a six (6) foot fence may be located, and said swimming pool or jacuzzi must have a six (6) foot fence surrounding it.

15. SEWER SYSTEM, FUEL TANKS, AND UTILITY CABLES: All buildings erected on the lots in this subdivision 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.

16. 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 said subdivision.

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

17. 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 of platted residential subdivisions adjoining this subdivision or adjacent to those future subdivision.

18. PLAN OF DEVELOPMENT OF ELK POINTE: Elk Pointe is planned to be developed in three or more sections. Section 1 includes real estate subject to this declaration as intended to be developed into forty-eight lots. Additional common areas maybe conveyed to the Association at the time that subsequent sections are developed, and the developer deserves the right to annex said section to the subdivision and each lot owner in Section 1 and each of the subsequent sections annexed hereto shall have the right to 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 manners as all the lot owners in this section of the subdivision.

19. HOMEOWNERS 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 the developer/declarant 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 such vote be split into fractional votes nor shall more than one vote be cast with respect for any lot. Each vote cast for a lot shall be presumptively valid. But if such vote is questioned by any member holding any interest in such lot, if all such members are not in agreement, the vote of such lot which is questions 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. A Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs 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 and personal obligations of the assessments.

(i) The declarant for each lot owned within the property 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 \$25.00 per lot beginning with the initial conveyance of the lot out of the developer, and then due the following January 1, and thereafter due in a like manner on the following 1st day of

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January. The annual assessment, together with interest, cost, and reasonable attorneys fees, shall be a charged on the land and shall be a continuing lien upon the property in which such assessment is made. Each assessment together with interest, cost and reasonable attorneys fees shall also be the personal obligation of the person who was the owner of such property at the time the assessments are due. The personal obligations for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

(ii) Purpose of the assessments level by the Association shall be exclusively to prompte the recreation, health, safety and welfare of the residence of the properties and for the improvement and maintenance of the Common Areas, and the island and medium existing in the dedicated streets with the consent of the City of Jeffersonville.

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

(iv) Effect of nonpayment of assessments: remedies of the Association: 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 liens and mortgages. The liens of the assessment provided for herein shall be subordinate to the lien of any first mortgage in existence at this time that the assessment becomes a lien. 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.

(vii) The declarant/developer shall call the first meeting of the Homeowners session by giving thirty days written notice to all members. The first meeting shall take place no later January 1, 1990.

(ix) 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 not 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. And a required quorum at the subsequent meeting shall be one-half of the required quorum at the proceeding meeting. No subsequent meeting shall be held more than sixty days following the proceeding meeting. A majority vote of the quorum shall be required to take any action.

(x) Directors and corporation. This Homeowners Association is an unincorporated entity and has not been incorporated. The Homeowners Association pursuant to the regulations

as set forth herein may take by proper vote the action to incorporate the Homeowners 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.

(xi) Owners easements 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 provisions:

1) 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 of agreeing to such dedication or transfer is signed by two-thirds of each class of members has been recorded.

20. CONSTRUCTION TRAILER. The Declarant/developer reserves the right to maintain a construction trailer on the premises until such time as construction has been completed.

21. FIRE HYDRANT. The owners of lots 1, 2, 3, 4, 5, 45, 46, 47 and 48 shall be responsible for the placing of a fire hydrant on the common area of either A or B as set forth in the plat of Elk Pointe Subdivision. Said fire hydrant shall be located with the consent of the Jeffersonville Fire Department or its successor. Said fire hydrant is to be installed upon the completion of construction of improvements on any of lots 1, 2, 3, 4, 5, 45, 46, 47 and 48. Whichever owner or owners shall bear the cost of the installation of the fire hydrants shall be entitled to contribution from the remaining owners of lots 1, 2, 3, 4, 5, 45, 46 or

47. The cost of installing the fire hydrant is to be equally divided among the nine lots.

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 51% of said tract.

IN WITNESS WHEREOF, Elk Pointe Developers, Inc., has caused this instrument to be executed by its duly authorized officers by affixing their signatures and seals and by the hands of Harry Paynter and Martha J. Paynter this 22nd day of SEPTEMBER, 1988.

ELK POINT DEVELOPERS, INC.
AN INDIANA CORPORATION

BY: Tony Schuler
Tony Schuler, President

ATTEST:

Harry A. Paynter
Secretary

Harry A. Paynter
Harry Paynter

Martha J. Paynter
Martha J. Paynter

STATE OF INDIANA

COUNTY OF CLARK

Before me, the undersigned, a Notary Public, in and for the above-named County and State, this 22nd day of SEPTEMBER, 1988, personally appeared Tony Schuler, as President, and HARRY PAYNTER, as Secretary, of Elk Pointe Developers, Inc., and Harry Paynter and Martha J. Paynter, acknowledged the execution of the foregoing instrument for the intents and purposes herein stated.

WITNESS my hand and notarial seal.

Charles R. Murphy

Notary Public

My commission expires:

CHARLES R MURPHY

Printed Signature

2-1-1991

Resident of FLOYD County, Indiana

This Instrument Was Prepared By:
Charles R. Murphy
STITES & HARBISON
FIFER, LANUM & BLAU
323 E. Court Avenue
Jeffersonville, Indiana 47130
(812) 282-7566

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JARGOLYN P. HAKOWSKY
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