

## RESTRICTIONS FOR ESTATES OF ELK RUN SUBDIVISION SECTION 1

THIS INDENTURE WITNESSETH, that the undersigned ("Developer"), being the sole owner of all lands and lots of the above named subdivision in Clark County, Indiana, as recorded in Plat Book \_\_\_\_\_ Page \_\_\_\_\_ does hereby publish, declare and impose the following covenants and restrictions upon all land within the plat to be applicable to and a covenant running with the lands situated in said subdivision for the mutual benefit of all persons and entities who may now or hereafter have any vested interest, legal or equitable, in any of said land within the said subdivision.

1. **Terms and Amendments.** These covenants and restrictions are to run with the land and shall be binding on all parties and persons claiming under them until January 1, 2028, at which time such covenants shall automatically be extended for successive periods of ten (10) years. The restrictions herein may be modified, amended, supplemented or terminated in whole or in part at any time by an agreement in writing signed by the then owners of not less than 51% of the lots in all sections of Elk Run (exclusive of dedicated roadways) and the Developer so long as Developer owns any lot within the Subdivision, recorded in the Recorder's Office of Clark County, Indiana.

2. **Enforcement.** If anyone shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons having a vested, legal or equitable interest in any of the land in said subdivision (including other sections of the subdivision), to prosecute any proceedings at law or in equity against the person or them from so doing and to recover damages for such violation, including expenses of litigation which shall include reasonable attorneys fees.

In the event that any building construction is done in violation of the plans, specification, materials and colors approved by the Architectural Control Committee, and not corrected within ten (10) days after written notice, then the building contractor and lot owner(s) shall be jointly and severally liable to the Architectural Control Committee for an enforcement fee of \$2,500.00 in addition to injunctive relief, damages and expenses of litigation, including reasonable attorneys fees. Such fee is payable within thirty (30) days of written notice of the violation if such violation has not been corrected or removed with such ten (10) day period.

3. **Land Use.** All lots or portions thereof shall be used only for single family residential purposes and for no other purpose, except that any lot or portion thereof may be dedicated by the owners thereof as a public street. Notwithstanding the foregoing language, any lot in this subdivision section may be used as a temporary real estate sales office by or on behalf of the undersigned owner so long as the owner is the title holder of any lot in this subdivision (including all existing and future sections). Notwithstanding any language in the document to the contrary, any lot may be used as a road by the Developer on a permanent or temporary basis and/or may be dedicated by the Developer as a public road.

4. **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 (2) stories in height, a private garage for not more than four (4) cars, a swimming pool and permitted fences. Lawn sheds or barns are not permitted. The ground floor livable area of the main structure, exclusive of open porches and garages, shall be not less than 1,600 square feet for a one-story dwelling. The ground floor livable area of the main structure, exclusive of open porches and garages, shall be not less than 1,000 square feet for a dwelling of more than one story, as measured at the outer line of the foundation. The livable area of the main structure, exclusive of open porches and garages, shall be not less than 1,600 square feet for a bi-level dwelling. Further no structure of any nature (such as an antenna) shall exceed two (2) stories above ground level. It shall be mandatory that each single family dwelling shall have a fully enclosed garage, built concurrently with the single family dwelling, of a minimum size large enough for two (2) cars. The roof pitch of all homes shall not be less than a 7/12 pitch, on main roof of house, porches overhangs and rear roofs of 1 and 1/2 or 2 story dwellings are excluded from this requirement.

5. **Building Location.** No portion of a building, porch or other covered structure within this subdivision shall be erected or permitted to remain nearer to the front line or side street line than the established building lines as shown on the recorded plat. No portion of a building shall be located nearer than six (6) feet to the side lot line of any lot. No portion of a building or other structure shall be located on any lot nearer than twenty (20) feet to the rear lot line. For the purposes of these restrictions, 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 line of any one or more lots or portions of any lot or lots used as a single residential building site. For the purpose of this covenant, caves, steps, and open porches shall not be construed to permit any portion of a building to encroach upon another lot. In no event shall any building be erected in violation of yard requirements of any zoning ordinance in effect at the time of construction thereof. No residence shall be located on a lot materially smaller than the lot size as shown on the recorded plat (i.e. only on (1) residential building may be built on any one lot as a described in the recorded plat of said subdivision). Each building shall be constructed to face a roadway within this platted subdivision.

6. **Nuisances.** No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

7. **Building Use and Temporary Structures.** Except as permitted in paragraph 3 herein, no portion of a building built on any of said lot 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, camper, mobile, barn or other building or structure of a temporary character shall be used as a residence either temporarily or permanently, at any time.

8. **Driveways.** All driveways shall be paved solidly of concrete and shall be kept in proper maintenance. No driveway shall exit onto State Highway 60.

9. **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 sign of not more than five (5) square feet advertising the property for sale or rent; or, except advertising signs of builders and material men erected during the course of construction, and which signs shall be removed immediately after the completion of the construction work. Each builder or Lot Owner, at their own expense, shall install a uniformly designed heavy gauge metal mail box with attached paper holder and with uniform house numbers on both sides of the mail box all as specified by the Developer and which may be purchased directly from the Developer, a related entity or an independent third party vendor.

10. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other 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 three (3) in number, at any one time. No dog runs or kennels shall be erected on any lot.

11. **Fuel Tanks and Utility Cables.** All fuel tanks must be buried below finish grade within thirty (30) days of substantial completion of the building on any lot. All utility cables, electric, phone or other utility upon any lot must be buried below finished grade in accordance with the specifications of the installing utility company.

12. **Vehicle and Boat Parking.** No car, truck, trailer, boat, racing vehicle, unlicensed or inoperative motor vehicle, camper, recreational vehicle, or attachments or parts thereof, or a vehicle or personal property of a like nature shall be left parked in side yards, front yards, or on a public street in the subdivision for a period in excess of one (1) hour during any 24 hour period or in excess of 24 hours in any calendar year. However, a boat and boat trailer or camper not exceeding twenty-one (21) feet in length

may be parked in the driveway during the season of use (not exceeding 120 days in a calendar year) if owned by the lot owner. No "lettered" or commercial truck or van in excess of a 1 and 1/2 ton gross weight capacity shall be parked on any lot overnight.

13. **Easements.** Easements for installation and maintenance of utilities and drainage facilities affecting all lots are reserved as shown on the recorded plat. Within these easements, no structure, planting (except grass), 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. **Garbage and Refuse Disposal.** No trash, garbage, or other waste or refuse shall be kept within this subdivision except in neat and sanitary containers. Any incinerator or other equipment for the storage or disposal of such materials shall be kept in a clean, neat and sanitary condition and maintained and/or used in accordance with all federal, State and local laws or ordinances. On or about January 1<sup>st</sup> of each year the president of the home owners association shall negotiate three (3) bids with three waste disposal company's for the entire development. Upon receiving three (3) bids, the home owners association shall vote and select a single contractor for the entire subdivision.

15. **Fences and Shrubs.** No portion of a fence of any kind shall be allowed on said lots in excess of six (6) feet in height, and no fences at all shall be constructed from the rear line of the house to the front property line, excepting ornamental fences not exceeding twenty-four (24) inches which are used around shrubs and flower beds. All fences so constructed shall be of an appropriate material so as not to detract from any dwelling, and shall be properly maintained. No fence, wall, hedge, or shrub planting which obstructs sight line at elevation between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular areas formed by the street property line and a line connecting them at points twenty four (24) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

16. **Building completion.** No portion of a 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 peculiar to the owner or other person or persons responsible for such construction, and in no event in excess of one (1) year from date of first construction.

17. **Architectural Control Committee Approval.** No portion of a building shall be erected, placed or altered upon any lot until the construction plans, and specifications (including roof, brick and outside trim colors) and a plan showing the location of the structure shall have been approved by the Architectural control Committee 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. No fence, hedge or wall shall be erected, placed or altered without the prior approval of said Architectural Control Committee.

The ruling of the Architectural Control Committee, upon any application made under this provision shall be given to the applicant in writing, if requested, and within thirty (30) days from the submission of the application to any member of the committee. The failure of the committee to submit its ruling within such time period shall be an affirmative ruling thereon; and if the committee shall fail to institute proceedings for an injunction in a court of proper

jurisdiction and to file a lis pendens notice in the office of the Clerk of such court within thirty (30) days after the completion of any improvements under its jurisdiction, the committee shall be conclusively presumed to have approved such improvements.

18. **Architectural Control Committee Approval.** The initial Architectural Control Committee shall be and is composed of Jeff Corbett.

A majority of the committee may designate a representative to act for it. In the event of death, resignation, or incapacity of any member or members of the committee, the remaining member or members shall have full authority to designate a successor. If at any time the committee loses all of its members (either the original member herein set out or designated successor members), or the members refuse to act for a period of one (1) year or more, then a majority of the lot owners residing in the subdivision may select a new committee. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant except for violation fees provided for elsewhere in this document. Successors to the above named committee shall be named and their addresses stated by written notice filed in the Miscellaneous Record in the Office of the Recorder of Clark County, Indiana, and they shall be presumed to continue in office until the recording of written notice as provided herein of the names of any replacements.

19. **Excavation and Grade.** No excavation shall be mad on any lot or portion thereof except as reasonably necessary for walls, basements, swimming pools, or public utilities. No person shall, at any time, raise the grade of any lot or portion thereof above the grade reasonably necessary to construct the permitted building.

20. **Sodding of Front Yards.** Immediately upon completion of construction of a dwelling upon any lot and weather permitting, the lot owner(s) shall install grass sodding on all unimproved areas of the lot from the front line of the dwelling to the front property line (i.e. all of front yard of lot). All other unimproved areas of the lot shall be seeded with grass or sodded at such time.

21. **Landscape Requirement.** Each lot owner, within 180 days of substantial completion of a residence on a lot, shall properly plant and maintain at least one (1) live tree of an above ground height of at least six (6) feet in the front yard of said lot. At such time, landscaping and planting shall be completed at the front of the house and such planting's shall conform to the neighborhood and equal in size and quantity of other new homes being built in the subdivision at that time. It shall be the duty of each owner, from and after the date of purchase of said lot, to keep the grass on the lot properly cut and free from trash, and to keep it otherwise neat and attractive in appearance. Should any owner fail to do so, the Developer may take such actions as it deems appropriate, including, but not limited to mowing and/or contracting with a professional lawn treatment company, in order to make the lot neat and attractive, and the owner shall, upon demand, reimburse Developer or its agents performing said services, the expense incurred in doing so. The builder/owner shall provide a landscape plan to the architectural control committee fro approval prior to installation of the plants.

22. **Sump Pumps (basement drainage).** Each lot owner with a home, which contains a basement sump pump, shall, when the home is constructed, install a below ground leach coil discharge system of at least 50 feet in length to discharge all water collected, build a dry well, pipe to nearest storm sewer or drainage ditch, swale or construct any other legal system so that no discharge water shall stand anywhere upon any lot or easement at any time. No such line or pipe shall be permitted to empty directly into the street.

23. **Tree Removal.** If it becomes necessary to remove any tree(s) for construction of the improvements on any lot the tree(s) shall be removed ant lot owner's expense.

24. **Curb Repair or Replacement.** Lot owner(s) are responsible for any broken curbs that occur during construction. Lot owner(s) shall replace any broken curbs at their expense. If within thirty (30) days after notification of need to repair, owners do not make the necessary repair or replacement, then

developer or the governmental department with jurisdiction has the right to make the necessary repairs or replacements and recover all costs from lot owner(s).

25. **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

26. **Applicability to Mortgage Foreclosure or Tax Sale.** Should any mortgage or lien be foreclosed or should any tax sale occur with regards to any property to which this instrument refers, then the title acquired by such foreclosure or sale and the person(s) who thereupon and thereafter become owner of any such property, shall be subject to and bound by all restrictions enumerated herein.

27. **Compliance with Soil Erosion Control Plan.** Each lot owner (including a builder owning any lot) shall comply with the erosion control plan file for the subdivision pursuant to Rule 5 of 3231AC15 Storm Water Run-Off Associated with Construction Activity. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

Each lot owner (including a builder) shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands, penalties, fines, and actions of any nature whatsoever, including reasonable attorney fees, which may arise out of or are connected with, or are claimed to arise out of or to be connected with, any work done by a lot owner, a builder, an employee, or subcontractor which is not in compliance with the erosion control plan implemented for the Subdivision.

28. **Maintaining Drainage Easements.** The undersigned owner has placed drainage sewages and easements within this subdivision according to the subdivision plans and specifications which have been approved for this subdivision by the Clark County Plan Commission. Any subsequent developer or homeowner who, for construction activities or for any other reason, interferes with or disrupts the drainage and utility easements shall, at their own expense, replace and maintain such easements and drainage in accordance with the plans and specifications approved by the Clark County Plan Commission unless released accordance with the plans and specifications approved by the Clark County Plan Commission unless released from such obligation in writing by Clark County Indiana of the Municipal government with jurisdiction.

29. **Sanitary Sewers.** The undersigned owner has placed sanitary sewers within the subdivision in accordance with the subdivision plans and specifications. Certain lots within this subdivision have sanitary sewer manholes located on them. In no event shall manhole covers be partially or completely covered with dirt or other material so as to hinder or prevent access or to allow infiltration into the sewer system. Furthermore, all connections to the sanitary sewer system shall be done according to Town of Sellersburg standards at the time of connections but in any event shall be sealed in a professional manner to prevent infiltration or leakage.

30. **Masonry Exteriors.** All sides of all residences constructed on any lot shall be constructed and maintained with brick, stone or other masonry excepting unsupported gables, bay window, eaves, overhangs and cantilevers. The developer recognized that in certain cases other exterior material may be of architectural significance and reserves the right to approve such other materials.

31. **Trees.** Each purchaser of any lot or partial lot has exclusive responsibility, at his/his/it's own cost and expense, to care for or remove any tree or part thereof, living or dead, located on the lot or partial lot at the time of purchase and thereafter. This obligation of Purchaser shall include any tree killed or damaged during construction. The Purchase of any lot or partial lot by any purchaser, releases and waives all claims against the undersigned for any damages, injury or death arising from or related to any tree located, at the time of purchase, on the property purchased.

32. **Maintenance Assessments and Owner's Association.**

**Section 1.** "Association" shall mean and refer to an Indiana non profit corporation which may be formed by the Developer, its successors and assigns.

**Section 2.** "Owner" 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 a part of this Subdivision Section, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3.** "Properties" shall mean and refer to any and all real property which constitutes the Nature Reserve and any common areas and which may later be conveyed by the Developer to the Association.

**Section 4.** "Lot" shall mean and refer to any Lot shown on the recorded Plat of this subdivision. The rights and obligations of each Owner under this paragraph shall be prorated in accordance to the area of the Lot owned by each Owner as to any Lot which has been split.

**Section 5.** Every Owner shall have rights to the use and enjoyment of the Properties only as established from time to time by the Association and in accordance with any restrictions placed on such rights by the Association. The Association may restrict or prohibit any Owner from using any of the Properties if the Owner is in breach of this paragraph 32.

**Section 6.** Every Owner shall pay before due date the annual maintenance assessments uniformly assessed against each Lot by the Association from time to time for purposes of expenses of the Association and Maintenance and/or improvement of the Properties and any drainage areas within the subdivision.

**Section 7.** There shall be only one vote per Lot (or fractional vote if the Lot has been split) excepting that Lots owned by the Developer shall be entitled to ten (10) votes per Lot. When more than one person is an Owner of a Lot or part of a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one full vote be cast with respect to any Lot.

**Section 8.** The developer, for each Lot within this Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them; however, the lien shall remain valid as to the Lot.

**Section 9.** The Initial Maximum Annual Assessment shall be \$100.00 per Lot which shall be paid to the Developer until such time as the Association is formed and the Properties transferred to the Association. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the annual due date.

**Section 10.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of 75% of the votes.

**Section 11.** The operational procedures for the Association shall be set forth in the By Laws of the Association to be established when the Association is formed. The By Laws shall include but not be limited to, Notice of Meetings, establishment of Quorum and Board of Directors. In any event, the By Laws of the Association may not amend or contradict the terms and conditions of this document. Each Owner by the acceptance of a deed consents to the By Laws to be established.

**Section 12.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**Section 13.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Properties to the Association. The First annual assessment shall be adjusted according to the number of the month remaining in the calendar year. Until such time as the Properties are conveyed to the Association, the Developer shall have the option to assess and collect the initial annual assessment amount from each Owner commencing with the first day of the month following conveyance of the Lot from the Developer to the Owner. The failure of Developer or the Association to assess a maintenance fee in any year shall not be considered a waiver of the right to collect past due amount or to assess such fees in the future. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Association or the developer as the case may be. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

**Section 14.** Any assessment not paid within thirty (30) days after the due date shall earn interest from the due date at the rate of 18 percent per annum. The association may bring an action at law against the Owner personally obligated to pay the same and/or file a lien with the County Recorder and/or foreclose the lien against the property. No owner may waive or otherwise escape liability of the assessments provided for herein by non-use of the Properties or abandonment of the Lot.

**Section 15.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding 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 or Owner from liability for any assessments thereafter becoming due or from the lien thereof. Failure of the Association to file a lien notice with the Recorder shall not preclude the personal obligation of the owner.

**Section 16.** The Developer may file Articles of Incorporation with the Indiana Secretary of State without any further consent of any Owner. The Developer shall, upon establishment of the Association, record with the Recorder of the County a notice of creation of the Association and further mail such notice, by regular US mail, to each Lot Owner as indicated in the Plat books of the County Auditor and to the address of each Owner as shown for real estate tax notices as maintained by such Auditor. Each Lot Owner, by acceptance of a deed thereto, shall automatically become a member of the Association, regardless of any other abilities, intentions or desires of such owner, and each lot owner agrees to abide by the rules, regulations and By Laws of such Association.