

**PROTECTIVE RESTRICTIONS, COVENANTS
LIMITATIONS AND EASEMENTS
FOR
DEVONSHIRE POINTE SECTION ONE, SECTION TWO
IN
ST. JOSEPH COUNTY, INDIANA**

as more particularly described in Exhibit "A" which is attached hereto and hereby made a part hereof.

All the lots in said Subdivision shall be subject to and impressed with the covenants, agreements, easements, restrictions, limitations, and changes hereinafter set forth; and they shall be considered a part of the conveyance of any lot in said Subdivision without being written therein. The provisions herein contained are for the mutual benefit and protection of James E. Russell, hereinafter referred to as "Developer", owners, present or future, of any and all lots in said Subdivision; and they shall run with the land and inure to the benefit of and be enforceable by the owner, or owners, of any land or lots included in said Subdivision, their respective legal representatives, heirs, successors, grantees and assigns. The Developer, owner or owners, present or future, of any land or lot included in said Subdivision shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injuries resulting from any violation thereof; but there shall be no right or reversion or forfeiture of title resulting from such violation. The restrictions and limitations imposed upon said Subdivision are as follows:

1. LAND AND USE AND BUILDING TYPE. No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one single— family dwelling not to exceed two and one—half (2 1/2) stories in height and a private garage for not more than three (3) cars. No lot or lots shall be used for any purpose other than as a single—family residence except that a home occupation defined as within the residence dwelling and participated on solely by a member of the immediate family residing in said residence. No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling is prohibited.
2. ARCHITECTURAL CONTROL. No building shall be erected or placed or altered on any lot until the construction plans of the structure have been approved by the Devonshire Pointe Section One, Section Two Developer. The plans must show floor plan, quality of construction, materials, external design, location with respect to lot lines, topography and finished grade elevations. Two (2) sets of complete prints must be submitted and one (1) set will be returned to the owner. The Developer's approval or disapproval shall be in writing. Neither Devonshire Pointe Section One, Section Two Subdivision, Devonshire Pointe Section One, Section Two Developer, nor any of their respective heirs, personal representatives, successors or assigns shall be liable to anyone submitting plans for approval by reason of mistakes in judgment, negligence or non—feasance arising out of or in connection with the approval or disapproval or failure to approve any plans. Any person or entity who submits plans to the Developer agrees, by the submission of such plans, that she or he or it will not bring any action or suit against the Developer of Devonshire Pointe Section One, Section Two to act or recover any damages. At such point as the Developer in his sole discretion may decide, the obligations and powers set forth in this paragraph may be assigned to a three (3) person architectural committee appointed by the Developer. Thereafter, members of this architectural committee may be replaced by a vote of seventy—five percent (75%) of the lot owners, with each lot having one (1) vote. Developer retains final decision for all proposals and may at any time overrule the acts or proposals of the architectural committee.
3. DWELLING SIZE.
 1. GENERAL RESTRICTIONS. No dwelling shall be permitted on any lot with a living floor area of the main structure, exclusive of one—story open porches and garages, of less than the following number of square feet for the following types of dwelling, unless a variance from this building requirement shall have been approved in writing by the Devonshire Pointe Section One, Section Two developers. In specific given areas, minimum square footage will be the following:

<u>Type of Home</u>	<u>Minimum Square Footage</u>	<u>Lake Lots</u>
Ranch Style	1800 square feet	2000 square feet
2—story	2200 square feet	2400 square feet

Other style homes square feet area to be determined by Devonshire Pointe Section One, Section Two developers or the architectural committee, Architectural Control shall apply to all structures. All fireplace chimneys exposed shall be of masonry exterior (see Paragraph #2).

- B. GARAGES. All dwellings must have a full-size attached garage which is capable of storing at least two (2) automobiles but not to exceed space for three (3) automobiles.
4. BUILDING LOCATION. No building shall be located on any lot nearer to the right-of—way line than the minimum building setback lines as shown on the recorded Plat. No building shall be located nearer than eight (8) feet to any side lot line and having a total combined width of two (2) side yards of not less than twenty (20) feet. No dwelling shall be located closer than forty (40) feet to any rear lot line. 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 shall be not construed so as to permit any portion of a building on a lot to encroach upon another lot, nor violate any building code.
 5. EASEMENTS. There are strips of ground variable in width, as shown on this Plat, and marked “Easement”, reserved for use as roads and for the use of mains, poles, ducts, lines and wires, overland drainage flows subject at all times to the proper authorities and to the easement herein reserved. No permanent structures shall be erected or maintained upon said strip of land except as noted in paragraph 6, regarding screening of non-access easements. No changes shall be made in the grading of any lot areas used as drainage swales as initially provided which would alter the flow of the overland storm drainage runoff, but owners of lots in this sub-division shall take their titles subject to the rights of the public utilities. Furthermore, any utility company, in setting utility poles, shall have the right to set anchor poles at any change of direction of their lines. Such anchor poles may be set on any lot line outside the easement and not more than ten (10) feet from the rear line of any lot. All utility pedestals and transformers shall be erected on easements so provided.
 6. PROTECTIVE SCREENING. Protective screening areas are established as shown on the recorded Plat and are noted as “non—access easements”. Except as otherwise provided herein regarding street intersections under “Sight Distance at Intersections”, planting shall be retained and maintained throughout the entire length of areas by the owner or owners of the lots at their own expense to form an effective screen for the protection of the residential area. No building or structure, except a screen fence or landscaping or wall or utilities or drainage facilities, shall be placed or permitted to remain in such areas. No vehicular access over the area shall be permitted except for the purpose of installation and maintenance of screening, utilities and drainage facilities. In addition, on all lots, no screen planting over thirty—six (36) inches high shall be permitted between the building setback line and front lot line. Provided, further, that the only perimeter fencing permitted shall be a split rail (two [2] rails high, not to exceed four (4) feet high) as used by the developers throughout the addition or privacy fence of not more than six (6) feet and must conform to present architectural standards as set by the style of home thereon built, unless a variance from this fence requirement shall have been approved in writing by the Devonshire Pointe Section One, Section Two developer.
 7. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance in the neighborhood.
 8. PROHIBITED STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. Above—ground swimming pools are prohibited. In—ground pools shall be permitted when a privacy fence is installed and blended with the established home.
 9. DRIVEWAYS. No stone or cinder driveways shall be permitted. All driveways are to be a minimum of sixteen (16) feet wide and must be constructed of asphalt or concrete. If constructed of asphalt, the depth of the asphalt shall be at least three (3) inches thick. If constructed of concrete, the driveway shall be at least four (4) inches thick. Circular drives in front of homes (if any) shall be a minimum of nine (9) feet wide. All driveways shall be illuminated with a post lamp. If such post lamp is electric, it shall be equipped with automatic operators (electric eye) to provide light from sundown to dawn.

10. SIGNS. No 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 a sign of any dimension used by a builder to advertise the property during the construction and sales period. There is reserved to Devonshire Pointe Section One, Section Two developer, its successors and assigns, the right to construct signs as they desire in order to foster the development promotion of the entire, and to effect sales of, lots or structures in said development.
11. LIVESTOCK AND POULTRY. 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 purposes and are not permitted to become a neighborhood nuisance or hazard in any manner.
12. GARAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
13. SIGHT DISTANCE AT INTERSECTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) 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. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
14. COMPLETION DATE. Any structure begun must be completed within a period of one (1) year from the date of beginning, or thereafter completely removed. The side yard and front yard of each lot shall be planted with grass seed or with sod within one hundred twenty (120) days after the structure is completed or the structure is occupied as a home, whichever is earlier. Wooded lots may use green cover, bark, stone, etc., when approved by the Developer.
15. CONSTRUCTION. Construction of a dwelling by recognized contractor(s) shall be completed within the period stated in paragraph 14. Unless a variance from this building requirement shall have been approved in writing by Devonshire Pointe Section One, Section Two developer or architectural committee.
16. FUEL STORAGE TANKS. All oil or fuel storage tanks must be installed underground or concealed within the main structure of the dwelling, basement or attached garage.
17. LOT DIVISION. There shall be no subdivision or sale of any lot by a homeowner for the purpose of building an additional dwelling.
18. UTILITIES. All lines for telephone and all other public utility services, either in the streets or on any lots, street or lot lighting shall be situated on posts with no lines visible.
19. SEWER - SEPTIC SYSTEMS. Until such time as a sanitary sewer system is constructed in the tract, or an individual sewage disposal system is approved by the Indiana Health Department, a sanitary septic system shall be installed for each dwelling erected in the tract. Such septic system shall be of a type and construction and so located on the individual lot as to be approved in writing by the appropriate regulatory agency as required in St. Joseph County. No other sanitary provision or device for sewage disposal shall be installed or permitted to remain in this tract.
20. FENCING. All fencing design shall have been approved in writing by the Developer or the architectural committee prior to installation. Privacy fence around an immediate patio or in-ground pool of not more than six (6) feet is permitted. Perimeter fencing is not allowed unless a variance from this fence requirement shall have been approved in writing by the Developer or the architectural committee.
21. DETACHED BUILDINGS. Prior approval in writing for the construction of a detached structure and its placement must be obtained from the Developer or the architectural committee. The Developer or architectural committee shall have the authority to require a protective screening or privacy fences around these structures. All structures must be of a quality construction and must be maintained in an attractive and neat appearance and blend with the established home.
22. UTILITIES AND TELEVISION ANTENNAS. All public utility services, either in the streets or on any lots, including but not limited to electric, gas and telephone service, and cable television, shall be located underground, and shall not be visible. No outside above-ground television, A.M., F.M., or short wave radio antennas of any type, including but not

limited to any type of satellite dish antenna, shall be erected or maintained on any lots or structures in this subdivision. All street or lot lighting shall be situated on posts with no lines visible.

23. DEVELOPER'S OPTION TO REPURCHASE. In the event that a residential dwelling meeting the requirements of these restrictions is not completed on any lot within a period of two (2) years from the date on which such lot is conveyed by the Developer to the purchaser thereof, unless such two (2) year period is extended by a written instrument duly executed by the Developer, the Developer shall thereupon have the right during the ensuing twelve (12) month period commencing on the second anniversary date of such conveyance to repurchase such lot from the current owner of such lot, free and clear of all liens and encumbrances except current property taxes which shall be prorated to the date of closing, at the same price at which the Developer sold such lot to the original purchaser thereof, without payment of interest or any other charges, upon the Developer serving written notice upon the current owner of such lot of the Developer's intention to exercise its option and effect such repurchase, notwithstanding whether the current owner of such lot was also the original purchaser thereof. The closing of such repurchase shall take place at the Developer's office not later than thirty (30) days from the date of the giving of such written notice to the current owner of such lot, who shall take such actions and shall execute such documents, including a warranty deed to such lot, as the attorneys for the Developer shall deem reasonably necessary to convey good title to such lot to the Developer, free and clear of all liens and encumbrances as aforesaid.
24. RECREATIONAL AND COMMERCIAL VEHICLES. No recreational or commercial vehicles (campers, trailers, trucks, or boats) may be kept in open areas in this subdivision, whether such open areas are on or off the lot of any lot owner.
25. HOMEOWNERS ASSOCIATION. The "Devonshire Pointe Homeowners Association, Inc.", hereinafter referred to as the "Association", which shall be an Indiana corporation, shall be created by the Developer acting on behalf of the owners and future owners of lots in this subdivision.

Each owner of a lot in Devonshire pointe Section One shall be a member of the Association and shall be entitled to cast one (1) vote at all meetings for each lot that is owned. The purpose of the Association is to manage and to support financially all park areas, all landscaped entrance ways, and all street lighting and the provision of such security services as may be deemed advisable and practical in the sole discretion of the Association or, until such time as the Association is created by the Developer, in the sole discretion of the Developer, and all purposes as the membership deems necessary. After its creation by the Developer, the Association shall conduct a meeting at least once each year to organize itself and to elect its officers. The Association shall adopt By—Laws for its government and may levy and collect dues. The Association shall have the authority to impose and collect annual assessments for the installation and operation of street lighting, the maintenance and improvement of park areas or other "common areas", and the provision of the aforesaid security services; provided, however, that the total of such dues and assessments levied against such lot shall not exceed One Hundred Fifty Dollars (\$150.00) per lot per year for the first five (5) years. Those assessments shall be levied equally on each lot in all Additions to and Sections of the recorded Plat of Devonshire Pointe Section One, Section Two. Failure to pay said assessments or annual dues shall be a violation of these covenants and restrictions. Any such assessments or annual dues shall be billed by the Association to the owner of each lot during the month of January of each year and shall be due and payable within thirty (30) days. All lots in these Sections shall, from and after the recording of these restrictions, be subject to said annual dues and, assessments. Said dues and assessments, including interest, costs of collection and attorneys' fees, if any, as hereinafter provided, shall be a lien in favor of the Association upon the lot against which such dues and assessments are charged until discharged by payment or released by the Association, which lien may, but need not, be enforced in the same manner as is provided in the mechanic's lien statutes of the State of Indiana. Notwithstanding anything to the contrary herein, the Association need not file or record or send any notice with respect to any lien or liens or bring suit thereon within any time specified in the mechanic's lien statutes of the State of Indiana to enforce the same. The Association may, but need not, publicly record such notices of undischarged liens arising hereunder as it deems appropriate and may, but need not, bring a separate independent action in any court to enforce payment of, or to foreclose, the lien created hereunder. Provided further, that any person purchasing or dealing with said lot may rely upon a certificate signed by the President or Secretary of the Association showing the amount of such certificate, and the Association shall not be entitled to enforce any lien for such charge accruing prior to the date of any such certificate unless the amount thereof is shown in the said certificate. The within above-described lien is subordinate to any first mortgage lien. The Association may also enforce the restrictions concerning accumulations of rubbish, weeds, or trash, and may own any land for use by all or less than all of the lot owners as a "common area". Any past—due annual dues, assessments, or other charges assessable hereunder shall bear interest at the rate of eight percent (8%) per annum commencing thirty (30) days after same become due and with

attorneys' fees, and shall be due and payable without relief from valuation and appraisal laws. The Association may be formed for, and engage in, such other activities as may be beneficial to the lot owners, to the public at large, or which may qualify the Association as a "not-for-profit corporation or association", as defined in the Internal Revenue Code. Until such time as the Association is created by the Developer, the Developer, acting on behalf of the Association to be formed, shall be entitled to carry out the responsibilities assigned to, and enjoy and exercise the rights and powers granted to, the Association pursuant to these restrictions; provided, however, that the total of such dues and assessments levied by the Developer in such capacity against each lot shall not exceed One Hundred Dollars (\$100.00) per lot per year so long as the Association has not been created and the Developer is acting in such capacity on behalf of the Association to be formed.

26. LAKE TADDINGTON ASSOCIATION. The owners of lots numbered 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, and 131, in addition to the other rights, restrictions and obligations set forth in these covenants, shall also be obligated to collectively maintain the wells, water level and lake liner of Lake Taddington. These obligations shall be shared with the owners of lots 111, 112, 113, 114, 115, 116, 117, 118, 119, 132, 133, 134, 135, 136, 137, and 138 when developed. All decisions concerning the wells, water level and lake liner as well as rules for use and maintenance of sea walls, piers, diving and water crafts, shall be by vote of at least sixty-five percent (65%) of the lot owners, with each lot having one (1) vote.
27. AMENDMENT OF COVENANTS. It is expressly provided that Devonshire Pointe Section One, Section Two developer, its successors or assigns, shall have the exclusive right for a period of five (5) years from the date of recording of this Plat to amend any or all of the restrictions or covenants herein contained. Such amendment shall be evidenced by the recording of a written amendment signed and recorded in the office of the Recorder of St. Joseph County and shall become effective upon such recording. This shall include the right to waive any part of the restrictions or conditions as to any particular lot. After five (5) years from the date of recording this Plat, these restrictions and limitations may be amended at any time by the recording of such amendment executed by the owners of the fee title of not less than seventy-five percent (75%) of the lots in the subdivision.
28. DURATIONS OF COVENANTS. These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until June 1, 1998, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of the then owners of the fee title of not less than seventy-five percent (75%) of the lots covered by these covenants or restrictions, it is agreed to change such covenants or restrictions in whole or in part.
29. SEPARABILITY OF COVENANTS. Invalidation of any one of the covenants or restrictions by judgment of a Court of competent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these restrictions shall remain in full force and effect.
30. ENFORCEMENT OF COVENANTS. The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law of any structure, is hereby vested in each owner of a lot in Devonshire Pointe Section One, Section Two and in Devonshire Pointe Section One, Section Two developer, its successors and assigns. Developer retains the right of periodic inspection during construction to determine compliance with submitted plans. These covenants and restrictions may all be enforced by a civil action for damages and attorney fees.
31. EFFECTIVE DATE. These restrictions and covenants shall be attached to and shall be considered a part of the Plat of Devonshire Pointe Section One, Section Two, and shall become effective upon the recording of said Plat in the Office of the Recorder of St. Joseph County, Indiana.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this
 ___20th___ day of ___July_____, 1993

DEVONSHIRE POINTE SECTION ONE, SECTION TWO

By: _____
 James E. Russell, Developer

STATE OF INDIANA)
)
 ss:

COUNTY OF ELKHART)

Personally appeared before me, the undersigned, a notary public in and for said county and state, James E. Russell, Developer, who acknowledged the execution of the foregoing Protective Restrictions, Covenants, Limitations and Easements for Devonshire Pointe Section One, Section Two as being his voluntary act and deed.

My Commission Expires:

Notary Public
residing in Elkhart County, IN

This instrument was prepared by James L. McCaslin, Attorney at Law, 228 West High Street, Elkhart, Indiana 46516.

9533802

**DUPLICATE
AMENDMENT TO PROTECTIVE RESTRICTIONS
COVENANTS, LIMITATIONS AND EASEMENTS
FOR
DEVONSHIRE POINTE SECTION ONE,
SECTION TWO AND SECTION THREE**

**IN
ST. JOSEPH COUNTY, INDIANA**

COMES NOW JAMES E. RUSSELL, developer of Devonshire Pointe Section One, Section Two and Section Three, and does by his signature affixed to this instrument hereby amend the previous protective restrictions filed July 20, 1993, in the records of the Recorder of St. Joseph County, being Instrument No. 9327815, to provide as follows:

1. Section Three of Devonshire Pointe shall be included and impressed with all of the protective restrictions, covenants, limitations and easements as previously set forth for Devonshire Pointe Section One, Section Two, and such instrument is hereby amended and each paragraph where appropriate to include the name Section Three along with Section One and Section Two;
2. Paragraph 25, entitled HOMEOWNERS ASSOCIATION, shall be amended in the following manner:
 - a. The annual assessment shall be increased from \$100.00 per year to \$150.00 per year per lot with the further condition that all lots unsold by the developer shall be excluded and exempt from said assessment until such time as they are conveyed by the developer;
 - b. For so long as the developer retains a lot unsold in any of the sections of Devonshire Pointe as affected by these protective restrictions, covenants, limitations and easements, the developer shall retain power to veto any restrictions or other action of the association; and the developer shall have the power to modify, revoke and otherwise submit and declare as binding any other restrictions, by—laws or other provisions in relating to the association;
3. Pursuant to the power set forth in Paragraph 27, AMENDMENT OF COVENANTS, the developer expressly provides that the period of time over which the developer shall have the exclusive right to amend any and all of the restrictions or covenants shall be extended to and including June 1, 2001, and the recording of this instrument shall meet the requirements of Paragraph 25 as it relates to recording;
4. Paragraph 28, DURATIONS OF COVENANTS, developer does hereby extend the period of time during which the covenants and restrictions run with the land and are binding on all parties and all persons claiming under them until June 1, 2001. The other provisions of Paragraph 28 shall remain in full force and effect.

IN WITNESS WHEREOF, the developer has set his hand and seal
this __10th__ day of _October_____ 1995

DEVONSHIRE POINTE SECTION ONE,
SECTION TWO, SECTION THREE

By: James E Russell, Developer

STATE OF INDIANA)
)
COUNTY OF ELKHART) ss:

Personally appeared before me, the undersigned, a notary public in and for said county and state, James E. Russell, Developer, who acknowledged the execution of the foregoing Amendment To Protective Restrictions, Covenants, Limitations and Easements for Devonshire Pointe Section One, Section Two, and Section Three as being his voluntary act and deed.

My Commission Expires:
September 9, 1996

Debra Cox Notary Public
Residing in Elkhart County, IN

This instrument was prepared by James L. McCaslin, Attorney at Law, 228 West High Street, Elkhart, Indiana 46516.

0105930

**DUPLICATE
AMENDMENT TO PROTECTIVE RESTRICTIONS
COVENANTS, LIMITATIONS AND EASEMENTS
FOR
DEVONSHIRE POINTE SECTION ONE,
SECTION TWO AND SECTION THREE**

**IN
ST. JOSEPH COUNTY, INDIANA**

COMES NOW JAMES E. RUSSELL, developer of Devonshire Pointe Section One, Section Two and Section Three, and does by his signature affixed to this instrument hereby amend the previous protective restrictions filed by July 20, 1993, in the records of the Records of St. Joseph County, Indiana being Instrument No. 9327815, and as amended and filed the 10th day of October 1995, in the records of the Recorder of St. Joseph County, Indiana being instrument No. 9533802, to provide as follows:

1. Pursuant to the power set forth in Paragraph 27, AMENDMENT OF COVENANTS, the developer expressly provides that the period of time over which the developer shall have the exclusive right to amend any and all of the restrictions or covenants shall be extended to and including June 1, 2007, and the recording of this instrument shall meet the requirements of Paragraph 25 as it relates to recording;
2. Paragraph 28, DURATION OF COVENANTS, developer does hereby extend the period of time during which the covenants and restrictions run with the land and are binding on all parties and all persons claiming under them until June 1, 2007. The other provisions of Paragraph 28 shall remain in full force and effect.

IN WITNESS WHEREOF, the developer has set his hand and seal
this 12th day of February, 2001.

DEVONSHIRE POINTE SECTION ONE,
SECTION TWO, SECTION THREE

By: James E Russell, Developer

STATE OF INDIANA)
)
COUNTY OF ELKHART) ss:

Personally appeared before me, the undersigned, a notary public in and for said county and state, James E. Russell, Developer, who acknowledged the execution of the foregoing Amendment To Protective Restrictions, Covenants, Limitations and Easements for Devonshire Pointe Section One, Section Two, and Section Three as being his voluntary act and deed.

My Commission Expires:

Julia L. Wert Notary Public
Residing in LaGrange County, IN

This instrument was prepared by James L. McCaslin, Attorney at Law, 228 West High Street, Elkhart, Indiana 46516.