Subdivision Covenants and Restrictions

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# 26653  
RECEIVED FOR RECORD  
6 by June 24  
and recorded in recorded Cotton 99 - 12  
11:35 a.m.  
Betty McFarland  
Official Deputy Recorder  

BIG WALNUT ACRES  

COVENANTS AND RESTRICTIONS  

The following restrictions, covenants, provisions, and conditions shall apply to this plat for the mutual benefit of all parcel (lot) owners, and the same are hereby dedicated to be covenants which shall run with the land and shall be enforced by any one or more of the parcel (lot) owners of the real property set out in this plat:  

1.0 Big Walnut Acres Association  

All owners of the real estate, whether legal or equitable, shall be members of an unincorporated association of such owners know as Big Walnut Acres Association.  

1.1 Members. One (1) membership shall exist for each ownership of a parcel. "Ownership" shall mean all owners, whether legal or equitable and regardless of the number or form of tenancy. Purchasers on contract (equitable owners) shall be entitled to the membership rather than the record title holder. Additional memberships shall extend as to each additional parcel of adjoining land conveyed. "Parcel" shall refer to that real estate labeled with a parcel number as shown on the plat of survey recorded with this document.  

1.2 Voting. Each membership shall be entitled to one (1) vote. The majority vote of members present and voting shall prevail.  

1.3 Meetings. The Association shall meet each year on the 1st day of October, commencing the next October 1st following recording of this document. Other meetings shall be upon the call of the Director or request of a majority of members.  

1.4 Director.  

1. The initial Director of the Association is Marshall M. Harshey. The initial Director shall serve until the first annual meeting, whereupon the successor shall be elected for a one (1) year term or until a successor is elected and qualified.  

2. The Director shall be responsible to collect, and the members shall pay, all assessments to the Director in trust or escrow, for Association purposes. The Director shall annually appoint a committee of members to audit the accounts and records.  

3. The Director shall cause notice of the annual or any called or special meeting to be sent to all members according to the ownership records and addresses as maintained by the Auditor of Putnam County, by U.S. Certified Mail, return
receipt requested, noting the purpose, time, date and place of meeting.

(4) The Director shall be responsible for the expenditures of assessments for Association purposes, including maintenance and repair of the private roads. Road maintenance fees shall be placed in an escrow or trust account separate from other membership fees. The Director shall be reimbursed for all necessary and proper expenses and such other compensation as the members may set.

1.5 Levies and Assessments. The members shall set all levies or assessments sufficient to maintain and repair the private roads as good, all-weather roads free of ruts and chuckholes. Other fees or levies shall be assessed as the membership deems appropriate for the mutual benefit and good of all members of the Association. The road maintenance fee and other levies/assessments shall be assessed equally according to the number of parcels (memberships) in Big Walnut Acres as defined in Item 1.1 above, except Parcels 1 and 8 which are exempt from payment of private road maintenance fees or levies, unless access to a dwelling or other building located on the subject parcels is via a private road.

1.6 Liens.

(1) All road levies, fees, or other assessments shall be due and payable on or before October 1st of each calendar year and if not fully paid on or before November 1st of each calendar year, it shall be a lien upon the real estate of the member which may be foreclosed in the name of the Association by judicial proceeding, together with prejudgment interest, attorney fees and costs of collection, without relief from valuation and appraisal laws.

(2) The Director shall cause a list of delinquencies to be prepared each year as of January 1st and record the same by last known names of owners of record, as shown in the records of the Putnam County Auditor, in the Miscellaneous Records of the Putnam County Recorder's Office.

(3) The priority of any lien herein shall be second and junior to any purchase money mortgage. Otherwise, such lien is entitled to the priority and dignity according the date of recordation and the operation of law.

1.7 Term. The Association shall commence upon recordation of this instrument and continue in force for a term of ten (10) years, which shall automatically extend for additional ten (10) year terms until termination by a vote of seventy percent (70%) of the members in writing and recorded in the records of the Recorder of Putnam County with a cross reference to recordation of this document.
2.0 AMENDMENT.

An affirmative vote, in writing, of seventy percent (70%) of the members of the Association is required to modify, amend, or revoke these covenants and restrictions. If a member does not respond to a notice, properly served as cited in Item 1.4(3) of this document, to amend these covenants and restrictions, then the Director shall act as proxy for the non-responsive member. When voting as proxy, the Director shall state in writing the name of the member(s) for whom the proxy vote is cast. If any modification, amendment or revocation of these covenants and restrictions is approved by the members, the written vote with amendments shall be recorded in the records of the Recorder of Putnam County with a cross reference to recordation of this document.

3.0 EASEMENTS.

3.1 Private Road. On the attached plat of survey there is shown a private road way and easement to Big Walnut Creek. These strips of land are non-exclusive easements for the mutual benefit of the members of the Association. The purpose of the non-exclusive easements is to provide various parcels with access to the public roads, allow for utility service and access to Big Walnut Creek. No fences, trees, buildings (permanent or temporary), or other structures shall be erected or maintained within the Access and Utility Easements. As used herein "Private Road" does not include the private driveways to be constructed by each owner on individual parcels, for dwelling access.

3.2 Utility Easements. The non-exclusive Access and Utility Easements are for the installation, maintenance and repair of water, sewer, electric, natural gas, telephone, cable television and other similar types of utilities, exclusive of transmission utilities, whether public or private.

4.0 USE. Big Walnut Acres shall be exclusively a single family residential development. No more than one dwelling shall be erected per parcel. Business or commercial activity of any nature (except farming activities) are prohibited.

4.1 Division. Division of any parcel for the purpose of creating another building/dwelling site is prohibited.

4.2 Construction.

(1) All construction shall be completed within one (1) year of commencement.
(2) The dwelling shall contain a minimum of one thousand two hundred (1,200) square feet of living area exclusive of porches, decks, patios, garages and basements.

(4) Prefabricated or modular construction of the dwelling is prohibited. Portable or mobile homes are prohibited. Residence in a trailer or garage whether temporary or permanent is prohibited.

(5) All dwellings shall be constructed upon concrete footings with concrete block or cast-in-place foundation walls. Slab-on-grade dwelling construction is prohibited.

(6) The driveway to the dwelling construction site shall be in place (minimum of 6" thickness of crushed stone and ten (10) feet in width) prior to commencing work on the building. All cost associated with construction of drive shall be at owner's expense.

4.3 Appearance. All parcels shall be maintained and grass and weeds cut in order to present a neat and orderly appearance. No trash, garbage, debris, or the open and unsheltered storage of materials, equipment, junk, or inoperative vehicles shall be permitted. No junk, rubbish, debris or garbage shall be permitted to accumulate or be dumped upon the premises. Fuel storage tanks shall be located within a structure or screened so as to not be obvious from the roads.

4.4 Animals. Traditional household pets shall be permitted as well as cows and horses, except that the total of cows and horses allowed on each parcel shall not exceed one (1) animal for each two (2) acres of land. Hogs/pigs are prohibited. Also, commercial breeding or kennel activities are prohibited.

4.5 Activities. Noxious, offensive or illegal activity or action constituting a nuisance is prohibited. Hunting with rifle is prohibited, however, hunting with shotgun or bow and arrow is allowed.

4.6 Water and Sewer. All wells or water systems and septic or sewage systems shall be operable and meet the health requirements of Putnam County and the State of Indiana.

5.0 ENFORCEMENT. Enforcement is reserved to the Association and the owners of real estate within Big Walnut Acres by injunction, together with the right to cause non-conforming uses and/or structures to be removed by process of law in addition to any other lawful remedy. Violation of any covenant or restriction shall not result in forfeiture or reversion of title. Failure to enforce a particular provision or prosecute a particular violation shall not be construed as
waiver of the right of enforcement. The invalidity of a particular covenant or restriction shall not invalidate any remaining covenant or restriction.

6.0 ACCEPTANCE AND REFERENCE. Upon recordation of this document and plat of survey, any subsequent conveyance of a parcel, as shown and designated on the attached plat of survey, shall be subject to the covenants, restrictions, uses and activities contained herein and all owners, their heirs and assigns shall take their title subject to the same. The instrument of conveyance of the parcels need not recite this document in whole, reference to the recordation book and page number shall be deemed sufficient to incorporate this document in its entirety.

Marshall M. Harshey, Director

STATE OF INDIANA)

COUNTY OF MARION)

Before the undersigned, a Notary Public for Marion County, State of Indiana, personally appeared Marshall M. Harshey and acknowledged the execution of this instrument this 13th day of June, 1994.

My Commission expires: 6-12-96

Signature, Notary Public

Printed

Residing in Marion County.

This instrument prepared by Frank B. Harshey, attorney at law,

#8507-49
Harshey Private Road

I, the undersigned, a duly licensed land surveyor in the State of Indiana hereby certify that to the best of my knowledge and belief the attached plat and the following legal description accurately represent a survey performed wholly under my direction according to survey requirements contained in Title 865 IAC 1-12 this 12th day of May, 1994.

Situate in the State of Indiana, County of Putnam and being a part of the West half of the Southeast quarter of Section 20, Township 16 North, Range 3 West, of the Second Principal Meridian, more particularly described to-wit:

Commencing at a railroad spike marking the Northeast corner of the West half of the Southeast quarter of Section 20, Township 16 North, Range 3 West; thence West 1133.46 feet with the North line of said West half quarter to the true point of beginning of the real estate herein described; thence South 07 degrees 58 minutes 37 seconds East 482.29 feet; thence South 11 degrees 56 minutes 33 seconds East 482.29 feet; thence Southerly, Westerly, and Northerly 261.86 feet on a curve to the right having a radius of 50.00 feet and subtended by a long chord bearing South 78 degrees 03 minutes 27 seconds West 50.88 feet; thence North 11 degrees 56 minutes 33 seconds West 484.02 feet; thence North 07 degrees 58 minutes 37 seconds West 1317.65 feet to a point on the North line of the aforesaid West half quarter; thence East 50.49 feet to the point of beginning, containing 2.24 acres, more or less.

Subject to all rights-of-way and pertinent easements of record.

Certified this 12th day of May, 1994.

[Signature]

John K. Phillips, Reg. Land Surveyor #50287
ASA Land Surveying
STATE OF Illinois 
) SS:
COUNTY OF Marion 

Subscribed and sworn before me, a Notary Public, in and for said County and State, this day of May 6, 2000.

My Commission Expires: 2-27-2001

County of Residence: Marion

Signature of Notary Public

Printed Name of Notary Public
STATE OF IN
COUNTY OF Grant

Subscribed and sworn before me, a Notary Public, in and for said County and State, this 22nd day of August, 2000.

Signature of Notary Public
Angela Farnell
Printed Name of Notary Public
The undersign hereby acknowledge that this signature page is being attached to the re-recording of the Big Walnut Acres Covenants and Restrictions, and that we are an owner of real estate in said Big Walnut Acres.

[Signature]
Marshall M. Harshey

[Signature]
Alma Y. Harshey

STATE OF Indiana)
COUNTY OF Hendricks)

SS:

Subscribed and sworn before me, a Notary Public, in and for said County and State, this 24 day of Aug., 2000.

My Commission Expires:
8-11-03

[Signature]
Signature of Notary Public

County of Residence: Hendricks

[Signature]
Printed Name of Notary Public
The undersign hereby acknowledge that this signature page is being attached to the re-recording of the Big Walnut Acres Covenants and Restrictions, and that we are an owner of real estate in said Big Walnut Acres.

Glenn E. Frazier

Marie S. Frazier

STATE OF IN

) SS.

COUNTY OF Boone

Subscribed and sworn before me, a Notary Public, in and for said County and State, this 20 day of August, 2000.

My Commission Expires: 11-8-2000

Angela Ends
Signature of Notary Public

County of Residence: Boone

Angela Ends
Printed Name of Notary Public
STATE OF INDIANA, PUTNAM COUNTY

I, ____________________________, Recorder of Putnam County, in and for the State of Indiana, do hereby certify that the document to which this certificate is attached is a true and complete copy of the original now on file in my office in Book Misc 98, Page 584 & 593, the office of the said Recorder of said County and State:

In testimony whereof, I hereunto subscribe my name and hereto affix the seal of Putnam County Recorder at my office in Greencastle, Indiana this __________ day of __________, 2000.

(Seal)

Marty G. Watts
Putnam County Recorder of Indiana

My Commission expires __________.