PAMELA ADAMS COLEMAN 9P
STEUBEN COUNTY RECORDER
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PROTECTIVE COVENANTS, RESTRICTIONS, AND LIMITATIONS OF HERRINGTON HEIGHTS SUBDIVISION, PHASE II

These Protective Covenants, Restrictions, and Limitations of Herrington Heights Subdivision, Phase II, (Protective Covenants) are hereby adopted and shall be in full force and effect as to all real estate which is a part of Herrington Heights Subdivision, Phase II, as of the date of the recording of said plat. These Protective Covenants, Restrictions, and Limitations shall run with the title and shall be binding upon all present and future titleholders (as well as tenants and contract purchasers) of all or any part of the real estate in Herrington Heights Subdivision, Phase II, until the Protective Covenants, Restrictions, and Limitations are amended or vacated as prescribed in this document.

1. The Architectural Review Committee shall have three or more members, each of whom shall be appointed by HSW Developers, Inc. The Architectural Review Committee shall review applications, plans, specifications, materials, and samples for the purpose of determining whether proposed structures conform in appearance and construction to the standards and policies set by the Committee.

2. The titleholder of the lot, or his designated agent or agents, shall submit two copies of Required Information to the Architectural Review Committee before commencing any site development or construction. The Required Information must include

   a. Name of Applicant

   b. Address of Applicant

   c. Telephone number of Applicant

   d. Description of proposed site development and/or construction

   e. Builder's name, address, and telephone number

f. Construction schedule, including start date and completion date

g. Site plan drawing showing lot lines, and location of residence and driveway and sidewalk

h. Blueprints for proposed housing construction with complete written building specifications

i. A sample of residence siding with proposed stain or paint color and any exterior brick (including trim)

j. A written statement of type and color of roofing to be used

k. Elevation drawings of all sides of the residence.

3. All Applicants shall receive a written response within ten (10) days after all Required Information has been submitted.

4. The requirements, objectives, standards, and procedures contained in these Protective Covenants are intended to establish a harmonious community. Through these Protective Covenants and the design review process, a consensus is sought between individual aesthetic judgment and the broader interest of community standards.

5. These Protective Covenants are designed to promote those qualities in Herrington Heights Subdivision, Phase II, which will bring value to individual properties and will promote the attractiveness and functional utility of the community. Those qualities include a harmonious relationship among structures, vegetation, topography, and overall design of the community.

6. The Architectural Review Committee shall apply the standards set forth herein in acting on applications, in addition to such other criteria as may apply to a particular location:

a. Lot Grading - The Applicant is required to replace any topsoil removed from lot during construction. Any changes to grading shall be approved by the Committee. No new grading shall divert water onto other properties or alter existing drainage patterns.

b. Building Restrictions/Setbacks - Unless otherwise noted, the minimum setbacks for all residential buildings, including garages, shall be:

Front: 25 feet
Side: 8 feet
Rear: 30 feet

c. Square Footage - The minimum square footage (living space) for each residence shall be as follows:

Single Story Dwelling, except Villa: 1600 square feet
Each Villa Unit: 1200 square feet total
Two Story Dwelling (bottom floor except Villa): 1200 square feet

d. Sidewalks - The Applicant (Property owner/Builder) shall construct concrete sidewalks from property line to property line.

e. Driveways - All driveways shall extend from street to garage and be of concrete construction.

f. Garage - Each residence shall have an attached 2-car garage with the capacity for at least two cars.

g. Colors - Each residence shall have earth tone colors with 25% of front consisting of brick or stone.

h. Height - Maximum building height shall be 35 feet at ridge line of roof.

i. Heating and Cooling Units - Rooftop heating or cooling units of any type are prohibited.

j. Antennae and Satellite Dishes - All exterior antennae and large satellite dishes are prohibited.

k. Storage Sheds - Detached storage sheds are prohibited.

l. Landscaping - All housing lots shall be landscaped by the Applicant prior to home occupancy or within 60 days thereafter, weather conditions permitting.

7. All proposed landscaping and fencing shall be submitted to the Architectural Review Committee for approval prior to installation.

8. Each mailbox shall be earth tone in color, shall have a 6" x 6" cedar newspaper box, and shall be approved by the Architectural Review Committee before installation.

9. Small vegetable gardens will be permitted but must be approved by the Architectural Review Committee.

10. Outside clotheslines are prohibited.

11. All garbage, trash, rubbish, and other waste shall be kept in closed containers and out of view.

12. Firewood shall be neatly stacked beside the residence or garage.

13. No noxious or offensive or unlawful activity shall be conducted upon any lot in this Subdivision; no activity shall be conducted or tolerated which is an annoyance or nuisance to other residents in the Subdivision.

14. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot in the Subdivision with the exception of usual household pets. No animals shall be kept on any lot in the Subdivision for a commercial purpose.

15. Pets shall not be allowed to roam unsupervised in the Subdivision.

16. Kennels, doghouses, and other pet shelters are prohibited.

17. Travel trailers, campers, boats, boat trailers, and motor homes shall not be parked in the Subdivision.

18. No sign of any type shall be displayed on a lot after occupancy of the residence except for a single sign advertising the home for sale.

19. When more than fifty (50) percent of the total lots in Phase II have been sold and title has been conveyed to the purchasers thereof, the Herrington Heights Subdivision, Phase II,

Residential Association shall be formed by the lot owners. The Association shall receive title to all common areas, detention ponds, entry areas, and such other areas as are included within the perimeter of Herrington Heights Subdivision, Phase II, but not platted as lots.

20. Each owner of a lot in Herrington Heights Subdivision, Phase II, shall be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of a lot. This Paragraph 20 is subject to the provisions of Paragraph 26.

21. The Association shall have two classes of voting members, as follows:

> Class A. Class A members shall be all owners with the exception of HSW Developers, Inc., and shall be entitled to one vote for each lot owned. When more than one person holds an interest in a given lot, all such persons shall be members and the vote for such lot shall be exercised as they may determine between or among themselves. In no event shall more than one vote be cast with respect to any lot owned by Class A members except in the event of a duplex dwelling; see Paragraph 26.
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> Class B. The Class B member shall be HSW Developers, Inc., who shall be entitled to exercise seven (7) votes for each lot owned. The Class B membership shall cease and shall be converted to Class A membership when HSW Developers, Inc. records a statement indicating that its Class B membership has ended.

This Paragraph 21 is subject to the provisions of Paragraph 26.

22. HSW Developers, Inc. covenants for each lot within Herrington Heights Subdivision, Phase II, and each owner of real estate in Herrington Heights Subdivision, Phase II, is deemed to covenant by acceptance of each owner's deed, to pay to the Association annual assessments as determined by the Board of Directors of the Association to be necessary in order to promote the health, safety, and welfare of the residents in the Subdivision, and for the improvement and maintenance of the areas owned by the Association.

23. The annual assessments, together with interest, costs, and reasonable attorney fees, shall be a charge on the land and a continuing lien on each lot (or unit) against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person or persons who owned the lot (or the unit) at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed. This Paragraph 23 is subject to the provisions of Paragraph 26.

24. No assessments shall be imposed or shall be payable until transfer of title has occurred as set forth in Paragraph 19 above.

25. The Association shall adopt By-Laws and shall be governed by a duly elected Board of Directors consisting of not fewer than three (3) members and not more than five (5) members.

26. Certain lots in Herrington Heights Subdivision, Phase II, may be used for construction of villas rather than single family residences. Notwithstanding any contrary provisions in these Protective Covenants, the following provisions shall apply to all lots used for construction of villas:

a. Each duplex dwelling shall have garage capacity for two motor vehicles for each unit.

b. If a duplex dwelling is constructed on a lot, then and in that event each unit shall have one membership in the Association and each unit shall have one vote in matters to be voted upon in the Association.

c. If the ownership of a duplex dwelling is divided so that one unit is owned separately from the other unit in the duplex dwelling,

(1) The owner of Unit A and the owner of Unit B shall share equally the expense of exterior maintenance and repair of the duplex dwelling, maintenance and repair and replacement of the roof of the duplex dwelling, maintenance and repair of the common wall in the duplex dwelling, and maintenance and repair of any shared driveway. This subparagraph (1) applies to routine replacement, repair, and maintenance obligations and is not intended, and shall not be construed, as determining or controlling liability if any issue of negligence or fault is involved as to the reason the replacement or repairs are necessary.

(2) In the event any disagreement arises as to the necessity of replacement or maintenance or repairs which are a shared obligation, the owner of Unit A and the owner of Unit B shall each select a contractor to advise as to the necessity of replacement or repair or maintenance and those two contractors shall agree upon selection of a third contractor; the decision of the third contractor as to the necessity of replacement or maintenance or repair shall be binding on the owner of Unit A and binding on the owner of Unit B.

(3) In the event the owner of Unit A and the owner of Unit B agree that certain replacement or maintenance or repairs are necessary but cannot agree as to color or materials to be used, any such disagreement shall be resolved by using the color and materials as identical as possible to those which were used in the original construction of the duplex dwelling.

(4) The owner of Unit A and the owner of Unit B shall cooperate as necessary in order to obtain and keep homeowner's insurance in force on the duplex dwelling.

(5) The owner of Unit A and the owner of Unit B shall cooperate in matters of lawn maintenance and landscaping with the goal of giving the duplex dwelling an appealing and uniform appearance.

(6) In the event the owner of one unit (but not both units) of a duplex dwelling decides to sell the unit, the owner who decides to sell the unit must first give to the owner of the other unit in that duplex dwelling the opportunity to purchase the unit for the same price and on terms no less favorable to Seller than those terms offered by a third party. Seller must provide a copy of the pending offer to the owner of the other unit by certified United States Mail, return receipt requested, postage prepaid. The owner of the other unit must submit

to Seller an Offer to Purchase within fifteen (15) days after receipt of Seller's notice; if the owner of the other unit does not submit an offer to purchase within said fifteen-day period for the same price and on terms no less favorable to Seller than those terms offered by a third-party, or if the owner of the other unit submits an Offer to Purchase but fails to meet his obligations thereunder, the right of first refusal shall be of no further force or effect as to that sale and Seller may go forward with sale to the previously disclosed third party. The new purchaser shall be subject to all provisions of these covenants and restrictions, including this Paragraph 26(c)(6).

27. HSW Developers, Inc. is the owner of certain real estate located between Herrington Heights Subdivision, Phase II, and State Road 827. HSW Developers, Inc., at some time in the future, may apply for a zoning designation or variance or special exception so that said real estate located between Herrington Heights Subdivision, Phase II, and State Road 827 can be used for commercial purposes. By acceptance of a Deed for any real estate in Herrington Heights Subdivision, Phase II, the titleholder(s) waive objection to the commercial use of said real estate located between Herrington Heights Subdivision, Phase II, and State Road 827 and further agree, individually and as member(s) of the Association, not to oppose any such application by HSW Developers, Inc. (or its assignee or designee or successor) for a zoning designation or a variance or a special exception so that said real estate located between Herrington Heights Subdivision, Phase II, and State Road 827 can be used for commercial purposes.

28. These Protective Covenants may be amended by duly recording an instrument executed and acknowledged by the record titleholders of not less than eighty (80) percent of the lots in Herrington Heights Subdivision, Phase II.

29. HSW Developers, Inc., the Association, or any titleholder of record of any real estate in Herrington Heights Subdivision, Phase II, shall have the right to enforce, by any proceeding at law

in no event be deemed a waiver of a right to do so at a later date.

30. Invalidation of any one of these covenants shall in no way affect the enforceability of other provisions, which shall remain in full force and effect.

Executed at Angola, Steuben County, Indiana, on this 31 day of July, 2003.

HSW DEVELOPERS, INC.

By Hal R. Henricks
HAL R. HENRICKS, President

By Aaron J. Steury
AARON J. STEURY, Secretary

By James D Wise
JAMES D. WISE, Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF STEUBEN)

Before me, a Notary Public in and for said County and State, personally appeared HSW Developers, Inc. by HAL R. HENRICKS, its President, AARON J. STEURY, its Secretary, and JAMES D. WISE, its Treasurer, each over the age of eighteen (18) years, and acknowledged the execution of the foregoing document as the voluntary act of HSW Developers, Inc.

Witness my hand and Notarial Seal on this 31 day of July, 2003.

My commission expires:
8/28/06

Signature Latrielle Wheat
LATRIELLE WHEAT Notary Public
Resident of STEUBEN County

This instrument prepared by Latrielle Wheat, Attorney No. 1402-02, Attorney at Law, 107 W. Maumee Street, Angola, Indiana 46703

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