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201905363

10/23/2019 02:05:51 PM
RECORDER OF DEKALB CO, IN
KATIE FIRESTONE
RECORDED AS PRESENTED
FEE AMOUNT: 25.00

HERITAGE ESTATES SUBDIVISION SECTION I DEDICATIONS, COVENANTS, AND RESTRICTIONS

The undersigned owners, hereby declare that the dedications, covenants and protective restrictions (hereinafter referred to as the "Covenants") following are for the purpose of developing a quality residential subdivision and to prevent any use as might tend to diminish the value or enjoyment by the owners of homes therein; and are hereby imposed upon the entire parcel subdivided.

As used in these Covenants, "Lot" shall mean any platted Lot, including any portion thereof which may be subject to any easement, within Heritage Estates Subdivision. Use of the term "Subdivision" shall mean Heritage Estates Subdivision Section I, the plat of which has been recorded in DeKalb County, Indiana, 201905362, which includes Lots 1 through 65 inclusive. Use of the term "Developer" shall mean Custer Farms, Inc. Use of the term "Association" shall mean the Heritage Estates Homeowners Association.

I. Development and Use Restrictions

1. All lots shall be used for residential purposes only. There shall be permitted one (1) single-family dwelling on a lot. There shall be only one accessory structure permitted on each lot and that structure is limited to one shed or storage building of not more than ten feet by twelve feet (10' by 12') and a maximum height of twelve feet (12'). This must be wooden structure. The sole accessory building must be approved by the Association and must obtain an Improvement Location Permit from the City of Garrett.
2. No business of any kind shall be conducted on any lot or within any structure on a lot. No group homes shall be allowed. All dwellings must be occupied by the owner of record or a buyer pursuant to a recorded contract for conditional sale of real estate. Renting a home is prohibited.
3. All dwellings erected shall have at least 1,250 square feet of living area. If the dwelling is a one story dwelling, then one story shall have at least 1,250 square feet of living area. If the dwelling is two story, the ground floor shall have at least 800 square feet of living area. In determining square feet, the dimensions of basements, open porches, breeze ways, terraces, garages, exterior stairways and decks shall not be included. In the event that the City of Garrett's zoning code prescribes minimum square footage of living area or of the ground floor area which are greater than those contained in this Paragraph 3, then the dwelling shall meet the minimum square footage requirements of the City of Garrett.
4. Any dwelling must be ready for occupancy as provided by applicable building codes and completely finished and occupied within twelve (12) months of the date of the improvement location permit issued by the City of Garrett, unless owned by a builder as a "spec" home.
5. Any dwelling erected on a lot shall be site-built upon a permanent foundation; under no circumstances shall a mobile home or pre-built manufactured, modular or pre-fabricated home be placed, temporarily or permanently, on any lot.

6. No farm, zoo or exotic animals, as defined in the City of Garrett Code Chapter 92, whether domestic or wild, nor livestock or poultry of any kind shall be raised, bred or kept at any time on any lot. Not more than three (3) domestic pets such as dogs and cats shall be kept on any lot, and said domestic pets shall not be kept, bred or maintained for any commercial purpose.
7. All lots and any improvements shall be kept in a clean, repaired and sightly condition. No rubbish, trash, garbage or other waste material shall be kept or permitted on any lot except in sanitary, enclosed containers, which containers shall be kept inside or at the rear of the dwelling so they are not visible from the street.
8. All lots must be covered with grass or other ground cover, to reduce dust and erosion except during the construction/development period. All lots, whether improved or not, must be maintained and not allowed to become unsightly. All lawns shall be constructed to maintain a uniform grade with adjoining lots.
9. No boat, motor home, camping or other trailer, or any equipment or machinery of any kind shall be kept, unless totally concealed within the garage of the dwelling. No unlicensed or unregistered automobiles or motorized vehicles may be parked or kept on any lot. No motor vehicle may be disassembled or allowed to remain in a state of disassembly or be inoperable or allowed to remain in an inoperable state on any lot but, instead, shall be equipped at all times for on-road driving.
10. No repairs to any automobile, boat trailer, or other mobile unit of any kind may be conducted on any lot except routine, minor repairs and maintenance to a vehicle and only if done within the garage.
11. No dwelling shall be erected, placed, or altered on any lot until the construction plans and specifications have been approved by the Architectural Control Committee as to the quality of workmanship and materials. Each dwelling shall be in harmony with other dwellings in the Subdivision.
12. Dwelling and accessory buildings shall conform to the setbacks as shown on the plat of the Subdivision approved by the City of Garrett and also shall conform to any other land use regulations of the City of Garrett.
13. Dwellings shall be constructed of new materials. Siding shall be of wood (such as cedar), aluminum, brick or vinyl. Roofing shall be of shingles. Each dwelling shall have brick or stone on the front as approved by the Architectural Control Committee, a concrete driveway and at least a two car attached garage.
14. Absolutely NO temporary structures shall be allowed.
15. Recreational burning shall be allowed but only in compliance within the Ordinances and restrictions of the City of Garrett.
16. Only natural gas or electricity shall be permitted as a source of heat or power through underground installations. No above ground fuel tanks shall be permitted. Small containers for yard maintenance equipment such as gas cans or grilling such as a small propane tank are allowed on the premises but shall be stored inside the garage, inside of an approved accessory dwelling or as part of the grill.

17. Sidewalks constructed on each lot shall be constructed to comply with the zoning code of the City of Garrett. Sidewalk construction is the responsibility of the homeowner and should be constructed immediately after the dwelling is built or during construction of the dwelling or within one (1) year after the purchase of the lot if no dwelling is constructed within one (1) year of the purchase.
18. Front lawn lights shall be installed on each property. These lights shall be on a photocell type switch so as to automatically operate from dusk to dawn. These lights shall have a minimum of one hundred (100) watts and shall be upon a pole no less than six (6) feet high and said pole shall be fifteen (15) feet behind the sidewalk. Maintenance of said lights is the responsibility of the homeowner.
19. No screen planting or fences shall be permitted between the street right-of-way and the front of the dwelling on the lot. Fences in the rear yards are permitted as provided by the Garrett Zoning Code and other restrictions. However, Lots 1, 34 through 56 inclusive, 64 and 65 may construct a fence that extends no more than fifteen (15) feet from the rear of the dwelling and with a maximum height of four (4) feet. No chainlink, stockade or split rail fences will be permitted. All fences require approval of the Architectural Control Committee as well as compliance with the City of Garrett. The following information must be submitted to the Architectural Control Committee and to the City of Garrett for any fence:
 - Plot plan
 - Dimension and placement of the fence or other structures.
 - Photograph or brochure of type of fence requested.
 - Color of fence.
20. No individual water supply or individual sewage disposal system shall be installed, maintained, or used in this subdivision. All dwellings shall be connected to municipal water and municipal sewer systems.

II. Lake Restrictions

21. The lake is for the use and benefit of the Lot Owners. Piers of any kind, size or shape, boats, rafts, pontoons, canoes, kayaks and the like are prohibited. Ice fishing is prohibited. If fishing is permitted by the Association, fishing shall be from the shore only. Alteration of the shoreline or the lake bed is prohibited. The use of the lake is restricted to Lot Owners, or their guests, unless the Association permits otherwise. All side Lot lines go to the water's edge of Pond One, thus, there is no common area around the perimeter of Pond One. The Developer shall maintain Pond One until the turn over to Association pursuant to Section 22 of these Covenants.

III. Heritage Estates Homeowners Association

22. Lot owners shall be members of an association for the Subdivision known as the Association. Membership shall be mandatory to and may not be separated from Lot ownership.
 - a. Each Lot (excluding lots owned by Developer) shall be entitled to one (1) Class A membership. Multiple

owners of a Lot shall share the membership as between themselves and shall designate one of the co-owners to be listed as the member. Each Class A membership is entitled to one vote. In no event shall more than one vote be cast for a "Class A" designated Lot.

- b. Each Lot owned by the Developer shall be entitled to one (1) Class B membership. Each Class B member shall be entitled to seven (7) votes. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:
 - i. When fee simple title to fifty percent (50%) of the lots have been conveyed by Developer; or
 - ii. On December 31, 2027. If Developer still owns any lots as of this date, all such lots shall revert to Class A membership.

Unless otherwise provided in By-Laws of the Association adopted as provided herein, the Association membership shall annually elect members to the Board of Directors. Unless otherwise provided in the By-Laws of the Association, the Board of Directors shall then elect officers from the Board, including a President, Vice-President, Secretary and Treasurer.

- 23. Each Owner, excluding Developer or Builder, by the acceptance of a deed for any Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges. Such assessments to be established and collected as provided in these Covenants. The annual assessments, together with interest, costs and reasonable attorney fees incurred (all of which sums may hereinafter be referred to as "assessments"), shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. In the case of joint or multiple owners, the personal obligations shall be a joint and several obligation or all owners of such Lot. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by the successor although the lien will remain upon the land until paid or foreclosed.
- 24. The assessments levied by the Association shall be used exclusively to conduct the business of the Association and promote the recreation, health, and welfare common to the residents in the Subdivision, and for the improvement, maintenance and utilities associated with the common areas and facilities in the Subdivision.
- 25. Until changed by vote of the Association membership, the annual assessment shall be One Hundred and Fifty dollars (\$150.00) per Lot for Class A membership, with no annual assessment on Class B membership. Subsequent assessments may be increased no more than Twenty-five percent (25%) above the previous annual assessment, only by the vote or written assent of Fifty-one percent (51%) of the total membership votes including the total of each class of members of the Association.
- 26. Any action authorized under Section Twenty-five (25) changing the amount of assessments shall be taken at a meeting of the Association called for that purpose, written notice, including the date, time and place of the meeting and a statement of the purpose, of which shall be sent to all members not less than thirty (30) days, nor more than sixty (60)

days, in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within thirty (30) days of the date of such meeting.

The Association Membership shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the date the annual assessment is due. Once determined, written notice of the annual assessment shall be given to every Owner although failure to provide said notice does not abrogate the assessment obligation. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.

27. Annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis. Upon the purchase of a Lot, the total annual assessment shall be due and payable, that is, there is no proration to the time of purchase. The Developer shall collect and retain One Hundred percent (100%) of the assessments until turnover to the Association, at which time, the balance retained shall also be turned over to the Association.
28. The annual assessments under Section Twenty-four (24) shall commence as to all Lots then subject to an assessment, on the first day of the month, twelve (12) months after the conveyance of the first lot sold by Developer. The Developer shall be responsible for maintenance of the common areas until fifty percent (50%) of the lots are sold, or December 31, 2027, whichever occurs first.
29. Effect of Non-payment of Assessment / Remedies of the Association.
 - a. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum, or the rate set by the Association membership.
 - b. The Association may bring an action by law against any Owner and foreclosure the lien of any assessment against a Lot in accordance with the laws governing foreclosure of liens in general. Liability of an assessment is absolute and is not discharged or otherwise lessened by non-use of the Common Areas or abandonment of a Lot. The Association shall also be entitled to recover all attorney fees, costs and expenses incurred due to the failure of an Owner to timely pay assessments.
30. The lien of the assessments made under the Covenants shall be subordinate to the lien of any mortgages only.

IV. Architectural Control Committee

31. An Architectural Control Committee is hereby established to insure that the quality of the Development is maintained and that the exterior of the structures and designs of the structures are harmonious with the other dwellings in the Subdivision. The Committee shall be composed of three (3) members, the Committee members shall be: Curt Custer, Kevin Custer and Dan Study. In the event of death or resignation of any members of the Committee, the remaining committee members shall have full authority to designate a successor.
 - a. The Committee shall have the exclusive authority and responsibility to review plans for construction of all

residences and landscaping in the Subdivision.

- b. After primary residences have been constructed on all Lots in the Subdivision, the Association shall review all construction, modifications, and additions of structures in the Subdivision, from that point on. The Association may create its own Architectural Control Committee or continue to use the provisions of these restrictions relating to their Architectural Control Committee.
 - c. In the event the Committee fails to approve or disapprove of the design and location of a proposed structure within sixty (60) days after said plans and specifications have been duly submitted to it, approval under the Section will be deemed to have been given.
32. No building, fence, wall, swimming pool (in or above ground), or other structure can be commenced, nor shall any landscaping be erected or maintained upon a Lot, nor shall any exterior addition, change, or alteration be made to a structure until plans and specifications clearly showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the Committee in writing as to the structure's harmony of external design and location in relation to surrounding structures and topography in the Subdivision. All such improvements shall be subject to the Zoning Code of the City of Garrett and other building restrictions.

V. Effect and Enforcement

33. These Covenants shall run with the land, in perpetuity, and bind any owner of any lot, and shall inure to the benefit of and be enforceable by any lot owner. These Covenants are also enforceable by the Association. These Covenants are not enforceable by the City of Garrett.
34. Any lot owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions and covenants imposed by the provisions of this declaration. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
35. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.
36. The covenants and restrictions of this declaration may be amended by duly recording an instrument executed and acknowledged by not less than three quarters (3/4) of the lot owners.

VI. Drainage Easement

37. The drainage easements, including the drainage detention areas described as Pond One on the recorded Plat shall be maintained by the Developer, until such time as the Association takes control of the maintenance of Pond One. Pond One includes not only the surface area but any storm water detention structures and the dam (or dike) located on the East end of Pond One, the overflow pipe and the emergency overflow structures located within Pond One or within the Subdivision. The drainage easements, drainage detention areas, storm water detention structures, any dam, or dike, the overflow pipe, the emergency overflow structures and any other components of these easements, area or structures shall be installed as prescribed by the DeKalb County Drainage Board and shall be maintained as prescribed

by the DeKalb County Drainage Board and the City of Garrett.

Adopted this 21 day of October, 2019.

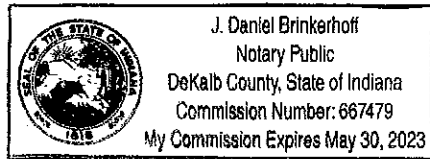
**OWNERS:
CUSTER FARMS, INC.**

By: Curt N. Custer, secy.
Curt N. Custer, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF DEKALB)

Subscribed and sworn to before me, a Notary Public, in and for said County and State, on this 21 day of October, 2019, personally appeared Curt N. Custer, Secretary acknowledged his signature on the foregoing document.

Witness my hand and notarial seal.



[Handwritten Signature]
_____, Notary Public

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. - J. D. Brinkerhoff. This instrument prepared by J. D. Brinkerhoff, Attorney at Law, BRINKERHOFF & BRINKERHOFF, PC, 101 N. Randolph Street, P. O. Box 269, Garrett, IN 46738. Attorney No. 3639-17. Telephone: (260) 357-5111. 10/17/2019