

DULY ENTERED FOR TAXATION

14185

BOOK 149 PAGE 124

AUG 23 1995

Mary Jane Russell
AUDITOR HENDRICKS COUNTY

**BROWNSWOOD ESTATES
SECTION V
COVENANTS**

In order to afford adequate protection to all present and future owners of lots in this subdivision, the undersigned owners hereby adopt and establish the following protective covenants, each and all enduring to the benefits of each and every owner of any lot or lots in said subdivision, their heirs and/or assigns, binding all their heirs and/or assigns.

1. **LAND USE.** Lots may be used only for residential purposes. Only one single-family dwelling with a private garage and other such accessory buildings as are usual and incidental to the use of a residential lot may be constructed on any lot. No portion of any lot may be sold or re-subdivided such that there will be a greater number of uses thereon than the number of the original lots platted hereon. Garages and such other accessory buildings shall be subordinate in size related to the dwelling.

2. **BUILDING CONTROL.** Prior to construction of any structure upon a lot, the building plans therefore, including plot plans, exterior plans, roof plans, elevation plans, specifications plans for landscaping and any other data or information which may be requested, must be submitted to the Building Committee for its approval or disapproval; said approval to be evidenced by a written instrument executed by a majority of the Building Committee and delivered to the person or persons requesting such approval.

3. **BUILDING COMMITTEE.** The Building Committee consists of four members and shall be initially composed of the following: Ronald K. Fisher, Larry L. Dunkerly, Matthew J. Ochs, Thomas J. Dunkerly. In the event of the death, disability or resignation of any of the aforementioned members, the remaining member are authorized to select the successor or successors to fill the vacancy or vacancies created. A majority of the members of the Building Committee constitutes a quorum of the transaction of business and the decision of a majority is controlling and final. The Building Committee is authorized to determine whether the location of the proposed structures, and the plans and specifications show conformity and harmony of location and external design with existing structures, and whether the building and property setback lines are in conformity with applicable plat requirements. It shall also undertake such other duties and responsibilities as are assigned to it herein. No charge will be made to any purchaser of a lot for examination of plans or for giving approval for construction thereon. In the event the Building Committee does not indicate in writing its approval or disapproval of plans submitted for its review within a period of 30 days after submission, the Building Committee is deemed to have approved such plans. Upon the death, disability or resignation of all the original members of the Building Committee, the owners of the lots shall elect a new Building Committee for the purposes set forth in these covenants.

ENTERED FOR RECORD

AUG 24 1995

At 10:00
Page 124-31

Jay Bailey
HENDRICKS COUNTY RECORDER

4. **ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

A. Association. Association shall mean and refer to Brownswood Estates, Section V Homeowners Association, its successors and assigns.

B. Board of Directors. Board of Directors shall mean and refer to the Board of Directors of the Association. The owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

C. Common Area. Common Area shall mean and refer to any and all real estate and facilities and all personal property leased or owned by the Association for the benefit, use and enjoyment of its members, including any areas denominated as "Common Area" on the Plat.

D. Membership. Every owner of a lot which is subject to assessment shall be a member of the Association and subject to the terms herein. Membership shall be appurtenant to and may not be separated from ownership of any lot.

E. Classes of Membership. The Association shall have two classes of voting membership.

Class A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B members shall be the Declarant who shall be entitled to three (3) votes for each Lot owned, and the members of the first Board of Directors during their respective terms. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on January 1, 1997.

F. Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

G. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. No assessments shall be made for any Lots owned by Declarant or a builder until such Lot is actually used as a single family residence. The Regular Assessments and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

H. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in Brownswood Estates, Section V and for the improvement and maintenance of the Common Area and other areas of Brownswood Estates, Section V and other purposes as specifically provided herein.

I. Maximum Regular Assessments.

(a) Until January 1, 1996, the maximum Regular Assessment on any lot conveyed by Declarant shall be \$100.00 per Lot per year.

(b) From and after January 1, 1996, the Maximum Regular Assessment may be increased effective January 1 of each year without a vote of the membership by the greater of 15% or the increase, if any, of the Consumer Price Index for all urban consumers ("CPI-U") as published by the Bureau of Labor Statistics (or other comparable index in the event the CPI-U shall be discontinued) for the preceding month of September as compared to said price index twelve (12) months prior thereto.

(c) From and after January 1, 1996, the maximum Regular Assessment may be increased by more than the amount specified in sub-section (b) above by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called by this purpose.

(d) The Board of Directors may fix the Regular Assessments at an amount not in excess of the maximum and may determine whether the Regular Assessment shall be payable annually or monthly.

(e) A portion of such Regular Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the

Common Areas or of any capital improvement which the Association is required to maintain

J. Special Assessments for Capital Improvements and Operating Deficits.

In addition to the Regular Assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

K. Notice and Quorum for Any Action Authorized under Paragraph 4B and 4F.

Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 4B and 4F shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

L. Uniform Rate of Assessment. Both Regular Assessments and special assessments for Common Area expenses, Common Area capital improvements and operating deficits must be fixed at a uniform rate for all lots and may be collected on an annual or monthly basis.

M. Date of Commencement of Monthly Assessments: Due Dates. The Regular Assessment provided for herein shall commence for any lot on the first day of the first month following the date of conveyance by Declarant or a building to an Owner of a lot. The Board of Directors shall fix any increase in the amount of the Regular Assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

BOOK 149 PAGE 127

N. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 12% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

O. Subordination of the Lien to Mortgages. 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. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

5. DWELLING SIZE. No residence may be constructed on any lot unless such residence, exclusive of open porches, attached garages, and basements, shall have a ground level floor living area of 1,500 square feet and two story dwellings shall have a 900 square foot minimum for the ground level floor living area and a combined minimum of 1800 square feet for living area.

6. TEMPORARY STRUCTURES. No trailer, shack, tent, boat, basement, garage or other out-building may be used at anytime as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence.

7. **BUILDING LOCATION AND GRADE LINE ELEVATION.** No building may be erected between the building lines shown on the plat and the property line; no structure or part thereof may be built or erected nearer than 10 feet to any yard line. A grade line elevation, shown on the recorded plat, is hereby established as a minimum grade line for each lot and no improvements may be constructed below the minimum grade line for each to show on the plat without the written consent of the Building Committee. Before building commences, said grade line shall be physically checked on the lot and certified by a licensed professional Engineer or a licensed Land Surveyor.
8. **BUILDING EXTERIOR.** All Buildings must have a masonry exterior (brick or stone) on the ground floor level of the building. No vinyl or aluminum siding shall be used on the remainder of the exterior. All materials other than masonry for aesthetic or architectural reasons shall be approved by Building Committee prior to construction.
9. **BUILDING COMPLETION.** Unless a delay is caused by strikes, war, court injunction or acts of God, the exterior of any dwelling or structure built upon any lot shall be completed within a year after the date of commencement of the building process, after which time the Building Committee may re-enter, take possession of said lot, without notice and sell the same together with improvements; and after payment of liens, expenses and attorney fees, pay the balance of the sale proceeds to the owner of said lot at the time of sale.
10. **SIDEWALKS.** Concrete sidewalks with a minimum of four (4) feet shall be constructed on each side of the street. Lot Owners shall be responsible for the cost of constructing and maintaining the sidewalks on their respective lots. Sidewalks shall be installed at the time of construction of any residential dwelling, and shall be completed prior to occupancy of such dwelling. However for lots on which homes shall be substantially completed on or after November 15 and before April 15 of any year, sidewalks shall be completed on or before the following June 1. All sidewalks must be constructed in accordance with the Committee's specifications. Lot Owners shall keep sidewalks on their respective Lots free of snow and cleared of debris.
11. **EASEMENT FOR DRAINAGE, SEWERS AND UTILITIES.** Lots are subject to drainage easements, sewer easements and utility easements, either separately or in any combination of the three, as shown on the plat, which are reserved for the use of lot owners, public utility companies, and governmental agencies as follows: (A) Drainage Easements (D.E.) are created to provide paths and courses for area and local storm drainage, whether overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage system; and it shall be the individual responsibility of each land owner to maintain the drainage across his own lot. Under no circumstance shall said easement be blocked in any manner by the construction, nor reconstruction of any improvement, nor shall any grading restrict, in any manner the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the developer of the subdivision. Said easements are for the mutual use and benefits of the owners of all lots in the addition. (B) Sewer Easements (S.E.) are created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system designated to serve the addition

for the purpose of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect with any public sanitary sewer available. (C) Utility Easement (U.E.) are created for the use of Public Utility Companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements. All such easements mentioned therein include the right of responsible ingress and egress for the exercise of the other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement.

12. **DRIVEWAYS.** All driveways shall be paved simultaneously with construction of the dwelling and the type of construction and materials must be first approved by the Building Committee.

13. **VEHICLE PARKING.** No camper, motor home, truck, trailer or boat may be stored on any lot in open public view.

14. **SIGNS.** No sign of any kind shall be displayed to the public view on any lot except that one sign of not more than six square feet may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

15. **FENCING.** No chain link fencing shall be allowed on any lot. Wooden fencing, maximum of 5 feet tall, may be used with approval from the Building Committee prior to construction.

16. **VEGETATION.** Lot owners shall not permit the growth of weeds and volunteer trees and bushes, and shall keep their lots reasonably clear from unsightly growth at all times. Failure to comply shall warrant any landowner in said subdivision to cut weeds and clear the lot of such growth at the expense of the lot owner, and such lot owner shall have a lien against said real estate for the expense thereof.

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

18. **GARBAGE AND REFUSE DISPOSAL.** No lot shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

19. **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 they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective lots such that they will not be a nuisance.

20. STORAGE TANKS. Any gas or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view.

21. ANTENNAS. No antenna or satellite dish may be used on any lot or roof top in open public view.

22. OUTBUILDINGS AND GARAGES. No outbuildings are allowed unless first approved by the Building Committee. Any such outbuildings shall be constructed of materials to compliment and blend with the dwelling and adjacent properties.

23. SWIMMING POOLS. No above ground swimming pools are allowed.

24. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 5 feet above the street 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 points 25 feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of said street lines extended. The same sight line limitations shall apply to any lot within 10 feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distance of such intersection unless foliage line is maintained at sufficient height to prevent obstruction of sight line.


25. ENFORCEMENT. The right of enforcement of each of the foregoing restrictions by injunction together with the right to cause the removal by due process of law for structures erected or maintained in violation thereof, is reserved to the Building Committee, the owners of the lots in the subdivision or their heirs and assigns. Any action to enforce the terms herein shall include attorneys' fees and the costs of such action to the successful party.

26. SEVERABILITY. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

27. GENERAL PROVISIONS. The foregoing restrictions may be amended at any time by the owners of at least two-thirds of the lots subject to such restrictions. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph, and recorded in the Hendricks County Recorder's Office.

Timber Park Development Corp.
5637 Georgetown Road
Indianapolis, IN 46254

by:

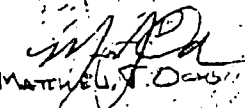

Larry U. Dunkerly, Secretary


Ronald K. Fisher, President

BEFORE ME Ronald K. Fisher
and Larry L. Dunkerly personally
APPEARS ON THIS 23rd day of
August 1995.

Commission Expires
3/8/99

County of Residence
Hendricks


Matthew J. Davis

BOOK 149 PAGE 131