

RAYMOND WATTS  
VIGO County Recorder IN  
IN 2004018595 CV  
08/31/2004 15:54:00 8 PGS  
Filing Fee: \$23.00

## DECLARATION OF COVENANTS

### GOVERNING

#### BIRCH GROVE COMMUNITY

WHEREAS, the undersigned Mutchner Development Company, Inc., hereinafter referred to as Declarant, is the owner of the following described real estate in Vigo County, State of Indiana, more particularly described as follows:

A part of the Southeast Quarter of Section Twenty-five (25), Township Twelve (12) North, Range Nine (9) West, Second Principal Meridian (2<sup>nd</sup> PM) Harrison Township, Vigo County, Indiana. Also being a portion of that land owned by John T. and Norma J. Mutchner, husband and wife, as described in Deed Record 444, Pages 6532 and 5323 as found in the Office of the Recorder of Vigo County, Indiana.

Commencing at a stone in a port (street monument) located at the intersection of Brown Avenue and Hulman Street in Terre Haute, Indiana. Said stone also being the Southwest Corner of the Southwest Corner of Section Twenty-five (25), Township Twelve (12) North, Range Nine (9) West, 2<sup>nd</sup> P.M., Harrison Township, Vigo County, Indiana. Thence "EAST" (N 90°00'00" E - Assumed Bearing) on the South line of said Quarter Section, Two Hundred Seven and Eighty-one hundredths (207.81) feet to the point of beginning of this description. Thence North Zero degrees, forty-six minutes, Twenty seconds West (N 00°46'20" W), Three Hundred Ninety-six and Zero hundredths (396.00) feet to a 5/8" iron pin; thence "EAST" One and Twenty-nine hundredths (1.29) feet to a 5/8" iron pin; thence "WEST" (N 90°00'00" W), Twenty-one and Zero hundredths (21.00) feet to a 5/8" iron pin; thence North Zero degrees, Forty-six minutes, Twenty seconds West (N 00°46'20" W), Seventy-four and Ninety-six hundredths to a 5/8" iron pin; thence "EAST" Five Hundred Fifteen and Zero hundredths (515.00) feet to a 5/8" iron rod, 30 inches in length with a plastic cap stamped "J.R. Keller L.S. '8092000" (hereafter referred to as 5/8" iron rod); thence North Zero degrees, Forty-six minutes, Twenty seconds West (N 00°46'20" W), Two Hundred Forty-seven and Fifty hundredths (247.50) feet to a 5/8" iron rod; thence

North Zero degrees, Twenty-eight minutes, Thirty seconds West (N 00°28'30" W), fifty-three and Eight hundredths (53.08) feet to a 1" iron pipe; thence "EAST" Three Hundred Forty-nine and Thirty hundredths (349.30) feet to the West right-of-way line of the CSX Railroad, thence South Twenty-two degrees, Twenty-two minutes, Forty-three seconds West (S 22°22'43" W) on said right-of-way line One thousand, Two Hundred, Twenty-seven and Ninety-seven hundredths (1227.97) feet to a 5/8" iron rod; thence "WEST" (N 90°00'00" W), Five Hundred Twenty-eight and Four hundredths (528.04) feet to a 5/8" iron rod; thence South Zero degrees, Forty-six minutes, Twenty-seven seconds East (S 0°46'23" W), Four Hundred Seventy-two and Eighty-five hundredths (472.85) feet to the South line of the aforementioned Southwest Quarter; thence "WEST" (S 90°00'00" W) on said line Two Hundred Eight-five and Zero hundredths (285.00) feet to the point of beginning. Containing 26.62 acres more or less.

Subject to the right-of-way for Hulman Street off of the entire South end thereof. ALSO subject to any other grants, right-of-way, easements, restrictions or encumbrances of record which may affect the title to the subject real estate.

hereinafter specifically described on the Birch Grove Community recorded as Instrument No. 2004011982 in the office of the Recorder of Vigo County, Indiana on the 19<sup>th</sup> day of May, 2004.

WHEREAS, it is the desire of the Declarant that Birch Grove Community be subject to certain covenants, restrictions, and easements hereinafter described, each and all of which is and are for the benefit of said property, and for each owner thereof, an shall inure to the benefit of and pass with said property, and each and every parcel thereof.

NOW THEREFORE, the Declarant hereby adopts the following covenants, restrictions and easements for Birch Grove Community hereinafter referred to as the Subdivision, as follows:

1. All lots in said Subdivision shall be known and designated as residential lots with no businesses allowed of any type, except as provided herein. Each lot of the Subdivision shall be used only for single family residence purposes.
2. No other structure shall be erected, altered, placed or permitted to remain on any residential lot other than a single family dwelling, except one out-building which size shall not exceed twelve (12") feet by ten (10") feet and shall be one story with a maximum height of twelve (12") feet. Storage buildings shall be constructed of wood, color coordinated to match dwelling, and approved by Declarant or its designated representative.

3. All single family dwellings must be at least or exceed 1,100 sq. ft. of living space and two story single family dwellings must be at least or exceed 600 sq. ft. of living space on the first floor.
4. A garage erected on a residential lot must be at least a two car garage and attached to the dwelling.
5. No satellite dishes or other electronic aeriels shall be maintained on any lot in this Subdivision, except as provided herein. A satellite dish, that is 24 inches or less, may be located on a lot with approval of the Declarant or its designated representative. A satellite dish, that is greater than 24 inches and/or less than 50 inches, may be located in a rear yard enclosed by a fence ( which encompasses the whole rear yard of a lot), with approval of the Declarant or its designated representative.
6. No structure, including residences, garages, outbuildings and fences, entry ways, gates, landscaping and tree removal and other improvements shall be erected, placed or altered on any building area in said Subdivision until plans, specifications, and plot plans showing the location of each structure upon such building area removal have been approved in writing by the Declarant or its designated representative, as to conformity and harmony of external design in keeping with high standards of the Subdivision, and as to location of structures with respect to the topography of the ground and the finished ground elevation, by Declarant or its designated representative, or a committee of owners that may be designated by Declarant, Declarant or its designated representative, in keeping with high quality standards of construction and to effect continuity of construction, shall have the right to approve or disapprove in writing the building contractor of each structure. If Declarant or its designated representative shall fail to approve or disapprove the plans within thirty (30) days after such plans have been submitted, no such approval shall be required.
7. Recreation structures, including but not limited to swing sets, play-ground equipment and basketball goals shall be constructed in a manner as to conformity and harmony of external design in keeping with the high standards of the Subdivision. Swimming pools must be in ground and enclosed by a privacy fence, and any outbuilding for said pool must match exterior of the dwelling house.
8. All driveways leading from the street driving surface to the garage located on any lot shall be constructed out of concrete.

9. No professional office, business, trade, church or school or other commercial activity of any kind shall be conducted in any building or on any portion of the property covered by these covenants, except as specifically permitted hereby. It is specially declared that Declarant or its designated representative may maintain an office for the sale of lots an office for the sale of lots and other related business purposes.
10. No trailers, mobile homes, shack or temporary residences of any kind shall be erected, altered, placed or permitted on any residential lot either temporarily or permanently. No basement, tent, garage, barn or other out building erected or placed upon any lot shall at any time be used as a residence, or a business either temporarily or permanently. No structure of any type shall ever be moved onto any lot in this subdivision. All structures erected on said lots shall be newly erected thereon. No clothes lines or similar structures be erected or be used on said real estate.
11. No lot or building site shall be sale, transfer, re-subdivided, or other means be so reduced as to contain a lesser area than herein described, however, the owner of two contiguous lots may erect one residence thereon without regard to any restriction with respect to the side line of each of said lots which forms the boundary between said lots.
12. No animals or poultry of any kind, other than those classified as house pet, shall be maintained, reared or harbored on any lots in the Subdivision.
13. No intoxicating liquors or alcoholic beverages of any kind or nature shall be manufactured or sole on any lot in the Subdivision.
14. No obnoxious, offensive, deleterious or objectional odors, sounds, lights, or activities of any kind or nature shall be permitted to exist, or in any way used or done upon said premises which could be an annoyance or nuisance to the neighborhood.
15. No use shall ever be carried on upon any lot nor shall anything be done thereon which may become an annoyance or a nuisance to the Subdivision.
16. No boat, trailer, mobile home, camper of any kind, commercial vehicle, or inoperative vehicle or the like, shall be kept or parked except within a garage.
17. The design and location of all mailboxes shall be approved by Declarant prior to their installation. All mailboxes will be of the same design.

18. The exterior of any structure once started is to be completed within a period not to exceed twelve (12) months from the date of commencement of construction. This provision to include exterior site work and planting and seeding of a lawn. During this period of construction the contractors and subcontractors shall keep the building site free of litter and debris.
19. Oil drilling, oil development operations, refining, mining operations of any kind, or quarrying shall not be permitted upon or in any of the building sites in the Subdivision described herein, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the building sites covered by these Covenants.
20. The residents of the lots covered by these Covenants shall not discharge firearms on the property nor carry out any target practice or other sport which involves the discharge of firearms of any type.
21. The Declarant will approve the location, height, width and construction of all fences. No fence will be placed in front of the single family residence. No chain link or similar fencing shall be approved. No fence shall be over six feet (6') in height.
22. Maintenance of the surface of any right-of-way for a street from the edge of its hard surface to the property line of a lot shall be the responsibility of the owner of the lot whose property line abuts said street right-of-way.
23. Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded Subdivision plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or that may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements on such lot shall be continuously maintained by the owner or owners of such lot, except for improvements for maintenance of which a public authority or utility company is responsible.
24. Lots 59, 60, 61, 62, 63, 64, 65, 66, 67, 113, 114, 115, 116, 117, 118, 119, 120 and 121 in the Subdivision are subject to an easement for the construction, maintenance, repair and replacement of a privacy fence. The privacy fence, located on the East side of Lots 114 through 121 and at the Southeast corner of Lot 113 and on the South side of Lots 59 through 67, shall be owned and maintained by Birch Grove Community Home Owners Association.

25. The Southeast corner of Lot 1 and the Southwest corner of Lot 121 are subject to an easement for Subdivision signs, landscaping and related electrical equipment and lines for the Subdivision signs which Subdivision signs shall be owned and maintained by the Birch Grove Community Home Owners Association
26. Ten feet (10') off the North side of Lot 33 in said Subdivision shall be subject to an easement for construction, maintenance, repair and replacement of the Subdivision's sewer line.
27. The Declarant or its duly designated representative may, at their option, cause to be formed Birch Grove Community Home Owners Association. Each lot owner shall have one vote in decisions relative to the Association. Each owner of a lot of the Subdivision will be a member of the Birch Grove Community Home Owners Association and shall be subject to rules, regulations and assessments adopted and approved by the Birch Grove Community Home Owners Association.
28. If the parties hereto, or any of them, or their heirs, successors, assigns, or representatives shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said tract, his representatives or assigns, to prosecute any proceedings at law or in equity against the person or person violating or attempting to violate any such covenant, and either to prevent him or them from so doing and to recover damages, reasonable attorney fees, and other dues for such violation, including all costs of said prosecution.
29. The owners of all lots in Birch Grove Community agree to indemnify the Declarant for any liabilities or damages of any kind or nature whatsoever resulting from or in any way attributable to the discharge or cause to be discharged any storm water, ground water, roof runoff, (down spouts from gutters, or roofing ties), subsurface drainage, (basement foundation drains), cooling water or unpolluted industrial process waters of any sanitary sewer.
30. Declarant shall not be liable to any person, firm or corporation who may be the owner of any lot in said Subdivision, or otherwise, for any action taken by them under the provisions of this instrument, nor shall said Declarant be liable to any such person, firm or corporation for failure or refusal to do any act or thing which them may be authorized to do under the provisions of this instrument. Each and every subsequent owner of any and all of said lots in said Subdivision by acceptance of deed therefore, shall be deemed to have waived and released for himself, his heirs, administrators, executors,

successors and assigns any rights he may have, or might acquire subsequently, to maintain any action at law or otherwise against Declarant for any action taken or any failure or refusal to take any action under and pursuant to the provisions of this instrument.

31. These covenants are to run with the land and shall be binding as to all parties and all persons claiming under them until August 1, 2014, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owners of the building areas covered by these covenants is it agreed to change said covenants which shall remain in full force and effect. However, Declarant shall have the right to amend these Covenants with consent of a majority of lot owners of Birch Grove Community and with consent of the Board of Directors of the Birch Grove Community Home Owners Association, if applicable, until August 1, 2006.
32. Invalidations of any one of these covenants or any part thereof by judgment of court order shall in no ways effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant, Mutchner Development Company, Inc., has caused the Declaration of Covenants Governing Birch Grove Community to be executed this 31<sup>st</sup> day of August, 2004.

MUTCHNER DEVELOPMENT COMPANY, INC.

By:   
Jon R. Mutchner, President

STATE OF INDIANA     )  
                                  )SS:  
COUNTY OF VIGO     )

Before me, a Notary Public in and for said County and State, personally appeared the within named Jon R. Mutchner, President of Mutchner Development Company, Inc., hereby acknowledged the execution of said Declaration of Covenants Governing Birch Grove Community to be his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by office seal this 31<sup>st</sup> day of August, 2004.

Anita G. Baldwin  
Anita G. Baldwin, Notary Public

My Commission Expires:  
09-14-06

County of Residence:  
Vigo

This instrument prepared by Richard J. Shagley, Attorney at Law, 500 Ohio Street, P.O. Box 8448, Terre Haute, Indiana 47808-8448.