

Return to William J. Reinke
100 N. Michigan, 6th Floor
South Bend, IN 46601

9424931

PROTECTIVE RESTRICTIONS, COVENANTS
LIMITATIONS AND EASEMENTS FOR

SUSSEX POINT
SECTION ONE AND SECTION TWO

IN

ST. JOSEPH COUNTY, INDIANA
(as described in Exhibit "A")

8

ST. JOSEPH CO. RECORDS
FILE NO. 9424931
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ST. JOSEPH CO.,
INDIANA
FILED FOR RECORD

Every Lot in Section One and Section Two of the Sussex Point Subdivision ("Sussex Point") shall be subject to and impressed with covenants, agreements, easements, restriction, limitations, and charges set forth herein for the benefit and protection of Sussex Point Development LLC and present and future owners of said lots. Sussex Point Development LLC shall be referred to herein as "Developer." Owner or owners of land or lots in Sussex Point shall be referred to as "Owner." The Developer and Owner, both present and future, shall be entitled to injunctive and other relief against any violation or attempted violation of the provisions hereof and damages for any injury resulting from any violation thereof. There shall be no right or reversion or forfeiture of title that might result from such violation. The restrictions and limitations imposed upon Sussex Point are:

1. LAND USE AND BUILDING STRUCTURE. There shall be no dwelling placed, erected, altered or permitted to stand on any lot other than one single-family building. The height is not to exceed two and one-half stories in height. The garage must be attached to the dwelling and shall accommodate no more than three automobiles. The Owner shall use the residence as a single family dwelling with the exception of a home occupation. Only immediate family members of Owner shall use the residence as a home occupation. There will be no sign or other indication that will depict that the dwelling is being utilized as anything but a home.

2. ARCHITECTURAL INTEGRITY. There shall be no construction or alteration of a structure until construction plans have been approved by the Developer. All dwellings must be constructed by Circle Corp., D/B/A Signature Homes ("Circle Corp."), thereby insuring quality control of the development, unless approval is mutually agreed upon by Developer, Circle Corp., and Owner. Notwithstanding the foregoing, Developer may remove Circle Corp. as the exclusive person for the construction of the dwellings and name another person to perform such obligations and possess the rights granted to Circle Corp. under this instrument. Such removal shall be accomplished by written amendment to this instrument signed by the Developer. The plans must have the floor plan, exterior design, setbacks, topography and finished grade. The Developer will give written approval or disapproval. The Developer shall not be liable for plans, whether approved or not, including but not limited to mistakes in judgment, negligence or non-feasance as a result of approval or disapproval of the plans. Any entity, person or persons who submits plans ("Submitter") to

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the Developer agrees by the act of submission of plans that the Submitter shall not bring any action or suit against the Developer.

3. **DWELLING SPECIFICATIONS.** The basis of the square footage of the dwelling is exclusive of porches and garage. The minimum square footage of a ranch dwelling is 1700 square feet and the minimum square footage of a 2-story is 1900 square feet. All dwellings must have a full-size attached garage capable of housing at least two automobiles but no more than three automobiles. Each vehicle housed on the lot must be housed in the garage. No street or lot storage of automobiles, boats, trucks, campers, trailers, recreational vehicles, commercial vehicles or other wheeled vehicles is permitted.

4. **DRIVEWAYS.** All driveways must be constructed of four inch thick concrete and must be at least sixteen feet wide.

5. **LOT SUBDIVISION.** A lot in Sussex Point shall not be subdivided. Circle Corp. has first right of refusal for purchase of any lot offered for sale in Sussex Point.

6. **EASEMENTS.** There shall be no permanent structure erected over an easement. There shall be no change in grade of any lot areas used as drainage runoff. Any utility company has the right to change direction of its utility.

7. **SETBACKS AND LIMITATIONS.** A building shall be located at least 8 feet from any side lot line and at least 40 feet from any rear lot line. Eaves, concrete porches, wood decks, and steps are not considered part of the building when figuring setbacks; however, these may not encroach upon another lot or violate any building code.

8. **FENCES AND SCREENING.** No fence, landscape plantings, or wall shall be erected between the back of the dwelling to the front side of the lot. Fences may be erected around patios and in-ground swimming pools. Fences may be no higher than 6 feet high. Perimeter fences are allowed only by a written variance from the Developer or Sussex Point Homeowners Association. Any fence must be approved by the Developer or the Sussex Point Homeowners Association in writing.

9. **PROHIBITED STRUCTURES.** There shall be no temporary structure, barn, pole barn, out building, trailer, tent, or garage used as a residence or storage facility. Above-ground swimming pools are prohibited. In-ground pools are permitted when a privacy fence is installed as required by law.

10. **SEWER AND SEPTIC SYSTEM.** Septic systems must be approved by the regulatory agency for St. Joseph County. Should sanitary sewers, water, or other utility be needed or required, neither the Developer or Circle Corp. shall be responsible for such costs thereof.

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11. GARBAGE, REFUSE, AND STORAGE TANKS. There shall be no dumping of garbage or refuse on any lot. Oil or fuel storage tanks are not permitted.

12. UTILITIES, ANTENNAS, SOLAR PANELS, AND SATELLITE DISH ANTENNA. Telephone and other utility services shall be underground. A post light shall be required for each home with underground wiring. Above ground A.M., F.M., short wave radio antennas, including but not limited to satellite dish antennas, are prohibited. Solar Panels may not be installed on any building or lot in Sussex Point.

13. SIGNS. The only signs allowed in Sussex Point are lots or "home for sale" signs by the homeowner or Realtors that are no larger than five square feet, signs promoting Sussex Point, or for sale signs by Signature Homes. No commercial signs advertising an in home business, or otherwise, are permitted.

14. LIVESTOCK AND POULTRY. No livestock, poultry, or animal of any kind shall be raised, bred or kept on any lot. The exception is dogs with a maximum of two, cats with a maximum of two, or other household pets may be kept, provided that they are not bred or maintained for any commercial purpose and are not permitted to become a neighborhood nuisance or hazard.

15. SIGHT OBSTRUCTION. No obstruction will be permitted on a corner lot within the triangular area formed by the street property lines and a line connecting them at points 26 feet from the intersection of the street lines or in the case of a rounded corner from the intersection of the street property lines extended. An obstruction may be, but not limited to, a fence, wall, shrubs or a tree.

16. SUSSEX POINT HOMEOWNERS ASSOCIATION. A "Sussex Point Homeowners Association, Inc.", hereinafter referred to as the "Association," will be an Indiana not-for-profit corporation created by the Developer acting on behalf of present and future Sussex Point lot owners. The Association will be created by the Developer at a time deemed practical and in the sole discretion of the Developer.

The purposes of said Association shall be as set forth in its Articles of Incorporation, and shall include the right to assess lot owners for maintenance of the entrance area, the drainage easement areas, common areas, landscaped entrances, street lighting, security services as deemed necessary, lot improvements, architectural approval, mowing and landscaping costs, installation and replacement costs of equipment and signs, and for payment of liability and other insurance costs. The Association also has the authority to enforce any and all restrictions and covenants contained herein, including but not limited to those pertaining to rubbish or weeds. The Association may engage in other activities that may be beneficial to lot owners which may qualify the Association as a "not-for-profit" corporation or association as defined in the Internal Revenue Code and regulations thereunder.

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Lot owners in Sussex Point will be members of the Association and will be entitled to one vote per lot owned. The Association will conduct at least one meeting each calendar year to organize itself, conduct business, elect officers, adopt By-Laws for its government, and levy and collect dues. The Association shall have the authority to impose and collect annual assessments which are initially set at One Hundred and Forty (\$140.00) Dollars per lot per year, which annual assessment shall remain in effect until modified either by two-thirds (2/3) of vote of the members or by written consent of the Board of Directors of the Association. As to each lot sold, dues shall be prorated for the balance of the first year of ownership and the amount thereof shall be paid to the Association at the time of closing. The Association shall bill homeowners assessments due in January of each year, which assessments must be paid within thirty (30) days. After said thirty (30) day period, interest at twelve percent (12%) shall be due on the unpaid amount from the due date. Assessments and interest thereon shall become a lien on each lot sold by Developer as to which assessments remain unpaid for a period of more than thirty (30) days, provided that the lien of such assessments shall be subordinate to the lien of any bona fide first mortgage, and shall be enforceable in the same manner as provided for by the Indiana Mechanics Lien statute, including interest, collection costs, and attorney's fees. The sale or transfer of any property interest pursuant to mortgage foreclosure or any proceedings in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve such property interest from liability for any assessments thereafter becoming due or from the lien of assessments which are due or owing prior thereto.

By the act of acceptance of a Warranty Deed, the recipient thereby becomes and accepted member of the Association, composed of all persons similarly situated in Sussex Point, and agrees to maintain membership therein and abide by all rules and regulations of said Association, including but not limited to payment of assessments prescribed herein and as such may be amended from time-to-time. Additionally and not in lieu thereof, members not current in the payment of assessments may be precluded from the privileges of membership in the Association.

The Developer, until such time as the Association is created, shall act on behalf of the Association and be entitled to carry out the responsibilities of the Association including levying assessments each year. At such time as ninety percent (90%) of all lots in Sussex Point are sold (or at any time prior thereto at the sole discretion of Developer) within twenty (20) days thereafter the Developer may give written notice of that fact to the Owners, which notice shall call a meeting for the purpose of electing a new Board of Directors of the Association, which names shall be held on a date specified by said notice within sixty (60) days after the giving of such notice. The new Board shall consist of not less than three (3) Directors who shall from and among themselves elect officers.

17 COVENANT AMENDMENTS, DURATION, SEVERABILITY, AND ENFORCEMENT. It is expressly provided that the Developer, its successors or assigns, shall retain the exclusive right for a period of five (5) years from the date of recording these

protective restrictions, covenants, limitations and easements, to amend any or all of the restrictions or covenants herein contained. Amendments shall be written amendments and signed and recorded in the office of the Recorder of St. Joseph County and be effective upon recording. These protective restrictions, covenants, limitations and easements are all binding on all parties and run with the land. They are binding until five (5) years from the date of recording hereof, at which time they are automatically extended for successive periods of ten (10) years unless a vote of seventy-five percent (75%) of the lot owners of the fee title agree to terminate or otherwise change such, which action must be in writing, signed, and recorded to become effective.

Invalidation of one or more covenant or restriction by a Court shall not affect the remaining covenants or restrictions, which shall remain in full force and effect.

The above-mentioned covenants and restriction may be enforced by a civil action for injunctive relief and/or for damages plus attorney fees and costs.

IN WITNESS WHEREOF, the undersigned Developer does hereby execute and make effective the above protective restrictions, covenants, limitations and easements for Sussex Point, Section One and Section Two, in St. Joseph County, Indiana, which is done this 25th day of February, 1994.

SUSSEX POINT DEVELOPMENT LLC

By: Craig A. Taelman
Craig A. Taelman, Manager

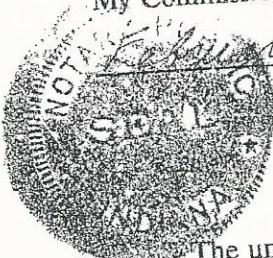
STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said County and State, on this 25th day of February, 1994, personally appeared Craig A. Taelman, the Manager of Sussex Point Development LLC, an Indiana liability company, and acknowledged the execution of the above and foregoing Protective Restrictions, Covenants, Limitations and Easements for Sussex Point Section One and Section Two for and on behalf of said limited liability company as being its voluntary act and deed.

WITNESS my hand and Notarial Seal.

Patsy J. Woolley
PATSY JO WOOLLEY, Notary Public,
Residing in St. Joseph County, IN

My Commission Expires:



CONSENT AND JOINDER

The undersigned present owners of legal title to the realty described on Exhibit A, do now and hereby agree to, consent, and join in the foregoing Protective Restrictions, Covenants, Limitations and Easements by developer Sussex Point Development LLC, with effective date of February 25, 1994.

John R. Penn
John R. Penn

Richard A. Penn
Richard A. Penn

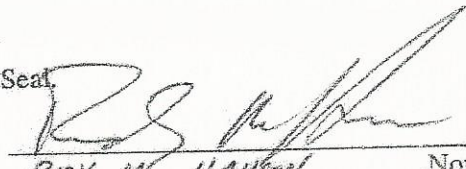
STATE OF INDIANA

COUNTY OF ST. JOSEPH

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) SS:
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Before me, the undersigned, a Notary Public in and for said County and State, on this 20TH day of JUNE, 1994, personally appeared John R. Penn and Richard A. Penn, and acknowledged the execution of their Consent to the above and foregoing Protective Restrictions, Covenants, Limitations and Easements by developer Sussex Point Development LLC.

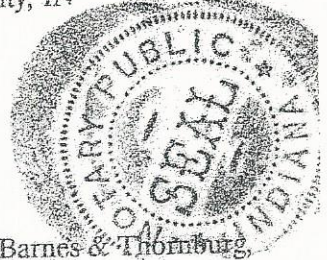
WITNESS my hand and Notarial Seal.



RUDY M. HANSON, Notary Public,
Residing in St. Joseph County, IN

My Commission Expires:

7/21/96



This instrument was prepared by William J. Reinke, Attorney-at-Law, Barnes & Thornburg,
600 1st Source Bank Center, 100 North Michigan, South Bend, Indiana 46601.

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EXHIBIT A - LEGAL DESCRIPTION

A parcel of land being a part of the Northeast Quarter of Section 14, Township 38 North, Range 3 East, Harris Township, St. Joseph County, Indiana and being more particularly described as follows:

Beginning at the Northeast corner of said Northeast Quarter; thence South $0^{\circ}-43'-10''$ East along the East line of said Northeast Quarter, a distance of 1470.90 feet to the Northeast corner of Weston Minor Sub.; thence South $89^{\circ}-49'-22''$ West along the North line of said Weston Minor Sub., a distance of 662.06 feet; thence North $0^{\circ}-37'-06''$ West, a distance of 1473.37 feet to the North line of said Northeast Quarter; thence South $89^{\circ}-57'-38''$ East along said North line, a distance of 659.49 feet to the place of beginning. Containing 22.33 acres more or less.