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BOOK 627 PAGE 867

FILED FOR RECORD

At 11 O'clock A.M.

PROTECTIVE COVENANTS

DEC 3 1984

WHISPERING TIMBERS SUBDIVISION

JOSEPHINE R. HEYLAND

Clerk and Recorder
BENTON COUNTY, ARK.

PHASE 4

Frank M. Smith Development, Inc., is the sole owner and developer of Whispering Timbers, Phase 4 Subdivision, containing thirty-four (34) lots, and does hereby establish and create the following Protective Covenants which shall apply to said lots as shown on the recorded plat of the said Subdivision.

1. SINGLE-FAMILY RESIDENTIAL LAND USE AND BUILDING TYPE. All lots within Phase 4, except as hereinafter provided, shall be held, owned, and used in accordance with Rogers City Code pertaining to and RMF-6A zoning designation in effect on July 27, 1984, more particularly described as Rogers Ordinance No. 83-19 as enacted by the City Council of Rogers, Arkansas, on or about the 22nd day of March, 1983. All lots within Phase 4 shall be governed by said provisions with the exception of the westernmost lots south of Mockingbird Lane, being Lots Nos. 12, 11, 10, and 9 on the western portion of Phase 4, which are being zoned R1A, which shall be used and occupied and built on in accordance with Rogers Code governing zoning of R1A use in effect on July 27, 1984.

2. BUILDING LIMITATIONS. Building, architectural, and design specifications shall be in accordance with those set forth in Rogers City Code designated as RMF-6A as shown in Rogers ordinance 83-19, and approved on or about the 22nd day of March, 1983. In addition, compliance with the above referenced ordinance shall be judged and determined and requiring a prior approval of an Architectural Committee (as hereinafter set forth), which shall view all plans and specifications for all structures prior to construction and be given the power to amend or alter any such designs or specifications prior to approval for construction in Phase 4. The specifications and requirements of the above mentioned RMF-6A designation are designed as a minimum requirement for architectural and design specifications, and may be supplemented from time to time, where not inconsistent, by the architectural committee, and same shall be binding its requirements for prior approval of construction. All builders and owners should contact the architectural committee prior to commencement of construction, to be appraised of current requirements.

3. ARCHITECTURAL COMMITTEE. The Architectural Committee for Phase 4 of Whispering Timbers shall consist of two (2) members, same being the President and Vice-President of Frank M. Smith Development, Inc., and the original members shall serve for thirty (30) years, and thereafter as replaced by an election of the majority of the lots (one lot, one vote) in Phase 4 of Whispering Timbers.

4. HOME OCCUPATIONS. Home occupations as defined by the Rogers City Code shall be prohibited.

5. YARD SPACE RESTRICTIONS. Yard space restrictions shall be as allowed by Rogers Code in effect on July 27, 1984, more specifically referred to as Ordinance No. 83-19, which was executed on or about March 22, 1984. Any buildings shall conform to said RMF-6A designation as of that date, and if so, in relation to lot line shall be deemed appropriate and satisfactory. Further, the westernmost four (4) lots on the south side of Mockingbird Lane, being Lots Nos. 12, 11, 10, and 9, shall not allow any single family residential building to be located nearer than twenty-five (25) feet to the front property line.

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nor nearer than seven and one-half (7½) feet to the side property line, nor nearer than twenty (20) feet to the rear property line, nor nearer than twenty-five (25) feet from the side street line. Should any building set-back line shown on the Plat of Phase 4 vary from the set-back requirements required herein, the building set-back line shown on the said Plat as filed shall control those stated herein. It is expressly understood that this further requirement shall extend only to the westernmost four (4) lots referenced herein, inasmuch as those are zoned R1A at the time of making these covenants.

6. FENCES. Fencing of front yards is prohibited; however, lot owners may fence the back yards.

7. OFF-STREET PARKING. All vehicles, except recreational vehicles, of the respective lot owners shall be parked in the garage or driveway of the respective lot, and parking on the streets as shown in the plat of the subdivision shall be prohibited for a period of time exceeding three (3) days. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers, and the like, shall not be parked or stored within 25 feet of the front lot line for a period of time exceeding three (3) days. Provided further, however, recreational vehicles and equipment may be parked in the back yards for a period exceeding three (3) days, so long as same is screened by proper fencing or other shrubs so as to reasonably screen the sight of said equipment from neighbors.

8. SIGNS. No signs, either permanent or temporary, of any kind, shall be placed or erected on any property except that a single sign not more than five (5) square feet in size may be permitted upon property to advertise the same for sale or for rent. Provided further, however, the developer, Frank M. Smith Development, Inc., hereby reserves the right to have a sign to designate the name of the addition, and to advertise same, and restrictions on size and location shall not apply to said sign or signs.

9. TEMPORARY STRUCTURES. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on a building site covered by these covenants shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. This restriction does not prohibit the storing of recreational vehicles on the lots.

10. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted, nor shall oil wells, crude oil tanks, tunnels, mineral excavations or shafts be permitted upon or on any building site. No derrick or other structure designed for use in boring for oil, natural gas, salt, or any other mineral or petroleum product shall be erected, maintained, or permitted upon any building site.

11. LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be raised or kept on any residential building site except that dogs, cats, or other household pets may be kept, provided that they are not kept or maintained for any commercial purposes.

12. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear of each lot. No trees, incinerator structures, buildings, pavement, or similar improvements shall be grown, built, or maintained within the area of the utility easements. Owners are hereby put on notice that any structures or plant material in the easements are subject to removal.

13. 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.

14. INOPERATIVE VEHICLES. No vehicle, bus, tractor, or other vehicle or other conveyance or rig, other than a lawn grass apparatus, shall be left inoperative on any platted lot for a period of more than fourteen (14) days.

15. SIGHT DISTANCE AT INTERSECTIONS. No fence, wall, hedge, or shrub which obstructs sight lines at intersections in the subdivision shall be permitted.

16. VIOLATIONS. In the event of any violation or attempt to violate any of the covenants or restrictions herein before the expiration date hereof (whether the original expiration date or the expiration date of any extensions thereof), it shall be lawful for any person or persons owning any lots in this subdivision to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate such covenants or restrictions, and either to prevent him or them from so doing and/or to recover damages for such violations. Provided further, however, that there shall be a committee in Phase 4 which shall first advise any violator of said violations prior to legal action being taken, and the committee shall be elected for two (2) year terms, by a majority vote of the lots in Phase 4, with each lot having one (1) vote. The violations committee shall receive from residents any complaints as to violations of the covenants, and shall reasonably notify any violator prior to legal actions being taken.

17. AMENDMENTS OF COVENANTS. These covenants may be amended at any time upon the majority vote of the then lots existing in Phase 4. It is the expressed intent that this number shall never exceed thirty-six (36), same being the number of lots platted. It is expressly required that each lot shall be given one (1) vote, and a simple majority will be deemed sufficient to amend said covenants. Further, no amendments shall be allowed which would be in violation of the zoning designation in affect at the time of the amendment.

18. DURATION OF COVENANTS. These covenants and restrictions shall run with the land for a minimum period of thirty (30) years, to be automatically extended for successive periods of five (5) years without further action unless terminated by a majority of the property owners in the development, casting votes as hereinabove set forth in the amendment section of these covenants, and voting one (1) vote for each lot. It is the intent that these covenants promote the aesthetic value of Phase 4 of Whispering Timbers.

19. SEVERABILITY. Invalidation of any restriction set forth herein, or any part thereof, by an order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

EXECUTED THIS 27th DAY OF August, 1984.

FRANK M. SMITH DEVELOPMENT, INC.

By:

Frank M. Smith
FRANK M. SMITH, President

By:

Wanda L. Smith
WANDA L. SMITH, Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)

SS:

COUNTY OF BENTON)

On this 7th day of August, 1984, before me a Notary Public, duly commissioned, qualified, and acting within and for said county and state, appeared in person the within named Frank M. Smith and Wanda L. Smith, President and Secretary, respectively, of Frank M. Smith Development, Inc., an Arkansas corporation, duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes herein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as Notary Public the day and year first hereinabove written.

Patti Hidlebaugh
Notary Public

My commission expires:

May 22, 1992

