

ENCROACHMENT AGREEMENT

This Encroachment Agreement (“Agreement”) is made this __ day of _____, 2024 (“Effective Date”) by and between Russell F. Schutz Jr. and Michelle K. Flowers-Schutz, husband and wife (“Schutz”), and Timothy P. Marshall and Deeana L. Marshall, husband and wife (“Marshall”), individually referred to herein as a “Party” and collectively referred to herein as the “Parties”.

RECITALS

WHEREAS, Schutz is the fee owner of certain real property commonly known as 7545 W 300 N, Warsaw, Indiana 46582, also known as Parcel No. 43-06-31-400-005.000-019 in the records of the Kosciusko County, Indiana Auditor, and more particularly described on the attached Exhibit “A”, which is incorporated herein by reference (“Schutz Parcel”);

WHEREAS, Marshall is the fee owner of certain real property commonly known as 7527 W Lake Park Rd, Warsaw, Indiana 46582, also known as Parcel No. 43-06-31-400-037.000-019 in the records of the Kosciusko County, Indiana Auditor, and more particularly described on the attached Exhibit “B”, which is incorporated herein by reference (“Marshall Parcel”);

WHEREAS, part of Schutz Parcel and Marshall Parcel are contiguous, with the east property line of part of Schutz parcel abutting the west property line of Marshall Parcel;

WHEREAS, Marshall has a fence located partially on Marshall Parcel that encroaches on Schutz Parcel (“Encroachment”) as depicted on the survey attached hereto as Exhibit “C” and incorporated herein by reference;

WHEREAS, all references to Schutz Parcel and Marshall Parcel are as depicted on Exhibit “C”;

WHEREAS, Schutz has agreed to allow the Encroachment to remain in place pursuant to the terms and conditions herein; and

WHEREAS, the Parties desire to memorialize the particulars related to the Encroachment by the execution and recording of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. All recitals set forth above are included in their entirety in this Agreement and made a part hereof.
2. Acknowledgement and Waiver of Ownership. Marshall acknowledges that the Encroachment is an encroachment onto Schutz Parcel and that Marshall did not receive consent from Schutz or its predecessor-in-title to construct Encroachment on Schutz Parcel. Marshall waives any rights of ownership or claims of rights of ownership in and to the portions of Schutz Parcel upon which Encroachment lies, acknowledges that its possession of Encroachment is not adverse to Schutz, and claims no right, title, or interest to Schutz Parcel except as provided herein.
3. Consent. Schutz consents to the existence of Encroachment on Schutz Parcel, subject to the terms and conditions herein.
4. Maintenance. Marshall shall maintain Encroachment in its present condition with reasonable care. Marshall shall have reasonable access to Schutz Parcel for this specific purpose.
5. Relocation By Schutz. Schutz may elect to move or relocate Encroachment, in its sole discretion and at its sole expense, wholly on to Marshall Parcel, in which case Encroachment shall be terminated as it relates to Schutz Parcel.
6. Changes to Encroachment by Marshall. No additions or extensions shall be made to Encroachment by Marshall. Encroachment shall be removed from Schutz Parcel when and if, for any reason, Encroachment is destroyed, removed, terminated, rebuilt, redone or moved for any reason by Marshall. Following the destruction, removal, termination, rebuilding, redoing, or moving of Encroachment, Schutz shall have no further obligation to allow Encroachment, and Encroachment shall be terminated.
7. Hold Harmless and Indemnification. Marshall shall hold harmless and indemnify Schutz from and against all liabilities, damages, causes of action, suits, claims or judgments (including reasonable attorneys' fees) arising from, in connection with, or relating to personal injury, death, or property damage occurring as a result of Marshall's use of Encroachment.
8. Default and Remedies. For the purposes of this Agreement, the term "Event of Default" shall mean the failure to observe or comply with any provision or covenant of this Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days of the date Notice of such default is given, which Notice shall specify the nature of the breach.
 - a. If an Event of Default occurs, the Party not in default make seek the

following remedies, which shall be cumulative and not mutually exclusive:
(i) all available legal and equitable remedies; and (ii) reasonable attorneys' fees, expenses, and costs incurred in connection with an Event of Default.

- b. The failure to enforce a breach of this Agreement shall not be construed as a waiver of the right to enforce such breach at a later time or to enforce any other breach.
- c. If a Party consists of more than one person, each person who is a Party shall be jointly and severally liable for such Party's defaults.

9. Notice. Any notice, statement, request, or other communication required or allowed under this Agreement (each a "Notice") shall be in writing.

- a. Place of Notice. Notice to a Party shall be given at the Party's address stated below, or at such other address as a Party may designate in a Notice to the other Party:

If to Schutz: Russell F. Schutz Jr.
Michelle K. Flowers-Schutz
7545 W 300 N
Warsaw, Indiana 46582

If to Marshall: Timothy P. Marshall
Deanna L. Marshall
7527 W Lake Park Rd.
Warsaw, Indiana 46582

- b. Manner of Giving Notice. Notice shall be deemed given if delivered by hand, recognized overnight delivery service for next business day delivery, or mailed by registered or certified mail, postage prepaid, return receipt requested. Refusal by a Party to accept a Notice shall not affect the giving of the Notice.

10. Binding Effect. This Agreement shall run with the land and be binding upon the heirs, personal representatives, beneficiaries, successors-in-interest, future owners, or permitted assigns of the Parties.

11. Entire Agreement. This Agreement constitutes the entire understanding between the Parties regarding the subject matter herein. Any and all previous agreements or negotiations either in writing or verbal, shall be of no force and effect unless specifically incorporated herein. Any modification of the terms of this Agreement is only effective if in writing and executed with the same formality as this Agreement.

12. Severability. In case any one or more of the provisions contained in this Agreement

shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The Parties agree that the covenants contained herein are severable and separate, and the unenforceability of any specific covenant herein shall not affect the validity of any other covenant set forth herein.

13. Assignment. Except as provided herein, neither Party shall assign the rights or obligations hereunder without the prior written consent of the other Party. Any attempted assignment without prior written consent shall be null and void and without further effect.

14. Headings. Headings are for reference only, and do not affect the provisions of this Agreement.

15. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Indiana, without reference to its conflict of law provisions. Venue for any legal dispute between the Parties shall be in the state or federal courts located in Kosciusko County, Indiana and the Parties specifically submit to such jurisdiction.

16. Survival. Provisions herein which by their nature should apply beyond their terms shall survive and continue in full force and effect after any termination or expiration of this Agreement.

17. Rule of Construction. The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interest of the document's maker or drafter shall not apply to this Agreement.

18. Review by Counsel. Each Party has had the opportunity to have this Agreement reviewed by independent counsel prior to execution.

19. Execution. This Agreement may be executed in counterparts, and appropriately executed signatures of the Parties contained on counterparts are acknowledged to be contractual and binding when exchanged in good faith and with that apparent intention.

20. Recording. This Agreement shall be recorded in the Office of the Recorder or Kosciusko County, Indiana following its execution by the Parties.

[Remainder of this page intentionally left blank; Signatures on the following page]

IN WITNESS WHEREOF, the Parties have each signed this Agreement as of Effective Date and each acknowledges the receipt of a copy of the same.

Russell F. Schutz Jr.

Michelle K. Flowers-Schutz

STATE OF _____)

)

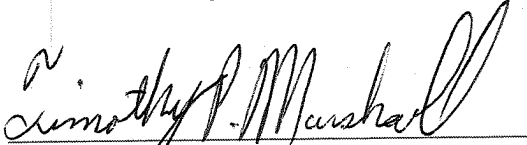
COUNTY OF _____)

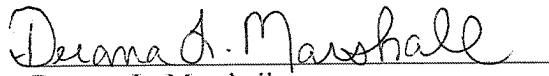
Before me, a notary public in and for said county and state, this _____ day of _____, 2024, personally appeared **Russell F. Schutz Jr. and Michelle K. Flowers-Schutz**, husband and wife, who each acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

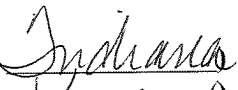
Notary Public (signature)

IN WITNESS WHEREOF, the Parties have each signed this Agreement as of Effective Date and each acknowledges the receipt of a copy of the same.

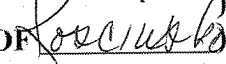

Timothy P. Marshall


Deanna L. Marshall

STATE OF

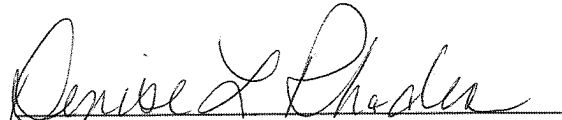


COUNTY OF



Before me, a notary public in and for said county and state, this 2 day of December 2024, personally appeared **Timothy P. Marshall and Deanna L. Marshall**, husband and wife, who each acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public (signature)



DENISE L RHODES, Notary Public
Kosciusko County, State of Indiana
Commission Number NP0718344
My Commission Expires February 4, 2027

Exhibit "A"

LOTS 9, 10, 25, 26, 31, 32, 45 & 46 LAKEVIEW PARK SUBDIVISION ON HOFFMAN LAKE.

Exhibit "B"

Escrow File No.: 02-142285

TRACT I

LOTS TWENTY-EIGHT (28), TWENTY-NINE (29) AND THIRTY (30) IN PLAT OF LAKEVIEW PARK ON HOFFMAN LAKE IN PRAIRIE TOWNSHIP, AS RECORDED IN PLAT BOOK 3, PAGE 331, IN THE OFFICE OF THE RECORDER OF KOSCIUSKO COUNTY, INDIANA.

ALSO: BEGINNING AT THE SOUTHEAST CORNER OF LOT TWENTY-EIGHT (28) IN LAKEVIEW PARK OF HOFFMAN LAKE SECTION 31, TOWNSHIP 33 NORTH, RANGE 5 EAST, AND RUNNING THENCE NORTH ALONG THE EAST LINE OF SAID LOT 28 TO THE NORTHEAST CORNER OF SAID LOT; THENCE EAST TO THE WATERS EDGE OF HOFFMAN LAKE AT LOW WATER MARK; THENCE SOUTH AND SOUTHWESTERLY ALONG THE WATERS EDGE OF SAID HOFFMAN LAKE AT LOW WATER TO A POINT EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING.

TRACT II

LOTS NUMBER FORTY-SEVEN (47), FORTY-EIGHT (48) AND FORTY-NINE (49) IN THE PLAT OF LAKEVIEW PARK ON HOFFMAN LAKE, IN PRAIRIE TOWNSHIP, AS IT IS RECORDED IN PLAT BOOK 3 AT PAGE 331 OF THE RECORDS OF KOSCIUSKO COUNTY, INDIANA.

ALSO: BEGINNING AT THE NORTHEAST CORNER OF LOT 49 IN LAKEVIEW PARK ON HOFFMAN LAKE IN SECTION 30, TOWNSHIP 33 NORTH, RANGE 5 EAST AND RUNNING THENCE EAST TO THE WATERS EDGE OF HOFFMAN LAKE AT LOW WATER MARK; THENCE SOUTH AND SOUTHWESTERLY ALONG THE WATERS EDGE OF SAID HOFFMAN LAKE AT LOW WATER MARK TO ITS POINT OF INTERSECTION WITH THE EAST LINE OF SAID LOT 49; THENCE NORTH AND ALONG THE EAST LINE TO THE PLACE OF BEGINNING.

EXHIBIT "C"

IAC 865 Boundary Survey

A tract of land located in Recorded Plat of Lakeview Park on Huffman Lake, as found in Plat Book 2, Page 148 in the Office of the Recorder of Kosciusko County, Warsaw, Indiana located in the Northwest Quarter of Section 31, Township 33 North, Range 5 East, Prairie Township, Kosciusko County, Indiana

Spike Nail Found
(Flush) Good Cond
Northwest Corner,
Section 31, Township 33
North, Range 5 East,
Prairie Township,
Kosciusko County, Indiana

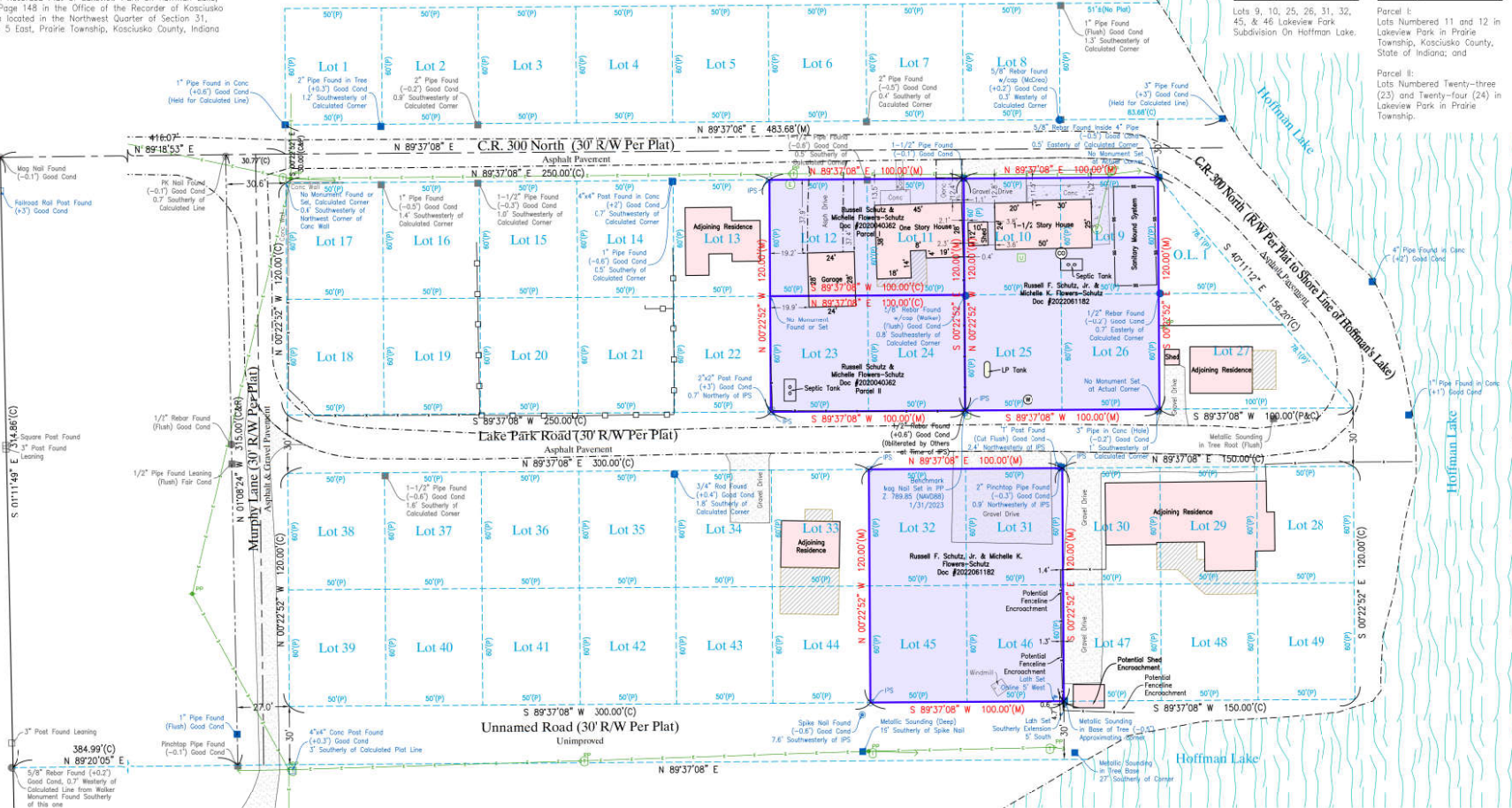
Transaction Note

This document prepared solely for use in the following transaction: for Michelle K. Flower-Schutz on February 1, 2023, the undersigned assumes no liability for future uses of this document including "Survey Affidavits" that may be prepared by others.

Reference Surveys

J.K. Walker &
Associates, P.C.
Kevin R. Michel
Date: October 3, 2017
Job#: CE-167

John Kimpel &
Associates, Inc.
Christopher W. McCrea
Date: Not Signed or
Sealed (CAD Drawing)
Job#: JK-20298



Surveyor's Report

The acceptable relative positional accuracy for this subject tract is: Suburban Survey: 0.13 (ee 40 millimeters) plus 100 parts per million.

The purpose of this survey was to perform a retracement survey for the subject tract. All corner markers of this subject tract were located as shown on the face of the plot. Found monuments & the plot of record were used to establish the subject tract, unless otherwise noted. These found monuments are in agreement with surrounding found monuments of adjoining tracts. Monuments that needed to be set were set at plot record distances from corners established the date of this survey, unless otherwise noted.

A 1" pipe found monumented at the Southwest Corner of Lot 1 on the Recreation Plot of Lakeview Park on Hoffman Lane, as found in Part Book 2, Page 148 in the Office of the Recorder of Kosciusko County, Warsaw, Indiana located in the Northwest Quarter of Section 31, Township 33 North, Range 5 East, Prairie Township, Kosciusko County, Indiana and a 3" Pipe found monumented at the Southwest Corner of Lot 1 on the Recreation Plot near the Water's Edge of Hoffman Lane were used to establish the south line of said Lots 1-8 in said Plot. Multiple monuments found on this line did not conform to this station, while one did. The references to monuments and the collection of a set of bearings and distances to the monuments on this line and the theory of location of the boundary lines in the plot described hereafter. This line was held as a straight line and 90° angles of all lots described hereafter.

then calculated starting at the Southwest Corner of said Lot 4 by turning all angles and finding full measure. In multiple instances monumentation found did not conform with this theory of location. It did however hit other multiple monuments such as the railroad, the highway, and the river. The monumentation was found in places through the plot. The solution, not only of the subject tracts of land, but also of the entire plot, gives everyone on the subdivision there full assurance that the location is correct. The monumentation being shown on this survey. Monumentation that was found to be off, varied in multiple directions (i.e. NW, SE, S, & NE) based on this theory of location.

A potential fence encroachment is being noted on this survey at the Southwest Corner of Lot 4G in said plot. This was brought up to the client and the client stated that they were not sure if this was a fence or not, and also, claims that the location of this fence is not in the same location as the fence that existed prior to this one by approximately 1–3 feet. Please note that this fence is not shown on this survey. The location of this fence property line through the plot as calculated by this theory of location.

The monumentation found throughout the plot on the date of this survey was of a different configuration than that of a digital survey (CAD File), shown on the map. The monumentation found on the date of this survey was as follows: Multiple monuments found on the date of his survey were the same as the monuments that were found on the date of my survey. The digital location of the monuments found on the McCrea/Kimpel Survey were used and accepted as good evidence based on a number of things, but mostly because of the both surveys utilizing the Indiana East State Plane Coordinates as the basis of bearings and coordinates. It is not to dry rock or to dry rock (precision and/or accuracy found in comparing them to each other. Multiple monuments noted on said McCrea/Kimpel Survey were not and/or could not be relocated on the date of this survey (New fence location, Trees, Obliterated Corners, etc.). The McCrea/Kimpel Survey Corners are referenced as a gray scale

Due to Variances in reference monuments: 2'± North-South, 1' East-West

Due to inconsistencies in lines of occupation: 1.5' East-West, 4.2' North-South, in reference to the potential encroachment at the Southeast Corner of Lot 46. All other lines inconsistencies in lines of occupation should be referenced to the Variances in reference monuments of 2'± North-South, 1' East-West

The commitment for title insurance was not provided at the time of this report. An abstract or title search may reveal additional information affecting the property.

All monuments found on adjoining properties have been shown as reference monuments for the subject tract. These monuments were located on the basis of this survey and were used in conjunction with this survey to support the theory of location of the subject tract. These monuments may or may not be the actual location of the adjoining tracts actual corners. A boundary survey of the adjoining tracts would need to be performed to determine the actual corner location of said adjoining tracts.

Flood Zone Designation

Portions of this property are within Zone "X" (Areas determined to be outside the 0.2% annual chance floodplain) as defined by the FIRM (Flood Insurance Rate Map) and portions of this property are within Zone "AE" (Special Flood Hazard Areas (SFHAs) Subject to Inundation by the 1% Annual Chance Flood) for Noble County, Indiana and Incorporated Areas on Map Number 18085C0140D and having the effective date of September 30, 2015.

Community: Kosciusko County
Number: 180121
Panel: 0140
Suffix: D

SCALE: 1" = 40'
GRAPHIC SCALE
0' 20' 40' 80'

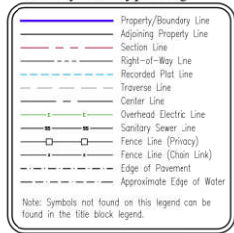
Certification

I, Ryan C Weber, a registered Land Surveyor in the State of Indiana, hereby certify that the above survey was performed wholly under my direction, and to the best of my knowledge and belief was executed according to the survey requirements set forth in IAC 865-1-12, and that the lines, angles, and distances hereon are true and accurate to the best of my knowledge and belief.

Date of Field Work: January 6, 2022
Certification Date: February 1, 2023

[Signature]

Survey Linetype Legend

[illegible]