

57.00
A B B
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DECLARATION OF COVENANTS AND RESTRICTIONS
HARBOR VIEW

This Declaration (hereafter "Declaration") made as of the 11 day of January, 200 0, by
Dura Development, an Indiana corporation;

WITNESSETH: WHEREAS, the following facts are true:

E00000010692
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
Dn 03-07-2000 At 08:40 a.m.
DEC COV RES 57.00

WHEREAS, Declarant is the owner of the developed real estate located in Hamilton County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which has purchased Harbor View.

WHEREAS, Declarant is the owner of part of that real estate which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Additional Real Estate");

WHEREAS, Declarant has purchased certain improvements and amenities which shall constitute Community Area;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Harbor View for the maintenance of the Property and the improvements thereon, and to this end desire to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future owners thereof.

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in Harbor View, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a not-for-profit corporation known as Harbor View Homeowner's Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Property, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Property or any part or parts thereof.

- 1) Definitions - The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
 - a) "Architectural Review Board" means that entity established pursuant to Paragraph 14 of this Declaration for the purposes therein stated.
 - b) "Articles" mean the Articles of Incorporation of the Corporation, as amended from time to time.
 - c) "Assessments" means all sums lawfully assessed against the Members of the Corporation, as amended from time to time.
 - d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.
 - e) "Bylaws" means the Code of By-Laws of the Corporation, as amended from time to time.
 - f) "Harbor View" means the name by which the Property shall be known.
 - g) "Common Area" means the area referred to on a Plat as a Common Area #1 (C.A. #1).
 - h) "Community Area" means (i) the Lake Control Structures (ii) the Drainage System, (iii) the Lake and Lake Access Easements, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (v) any area of land (1) shown on the Plat as a Common Area, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of all, of the Owners of Lots
 - i) "Corporation" or "Association" means Harbor View Homeowners Association, Inc., an Indiana not-for-profit, its successors and assigns.
 - j) "Declarant" means Harbor View, its successors and assigns to its interest in the Property other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated on intent that the grantee assumes the rights and obligations of Declarant).
 - k) "Drainage Board" means the Hamilton County Drainage Board, its successors or assigns.
 - l) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in the Property and designed for the

- purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.
- m) "Landscaping Easement" means a portion of C.A. #1 denoted on the Plat as an area to be landscaped and maintained by the Corporation.
 - n) "Lake" means the lake as depicted on the Plat. A numerically designated Lake means the Lake so designated by such number on the Plat.
 - o) "Lake Maintenance Access Easement" means an area designated on the Plat as a means of access, for purposes of maintenance, to a Lake or a Lake Control Structure.
 - p) "Lake Control Structures" means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.
 - q) "Lot," means a platted lot as shown on the Plat.
 - r) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.
 - s) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.
 - t) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.
 - u) "Mortgagee" means the holder of a first mortgage on a residence.
 - v) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.
 - w) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

- x) "Plat" means the final secondary plat of the Property recorded in the Office of the Recorder of Hamilton County, Indiana.
 - y) "Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area
 - z) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.
 - aa) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.
 - bb) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.
 - cc) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not be accepted for maintenance by a public authority
 - dd) "Zoning Authority" with respect to any action means the Hamilton County Board of Zoning or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act.
- 2) Declaration - Declarant expressly declares that the Property shall be held, transferred, and occupied subject to the Restrictions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such restrictions and agreement
- 3) The Lake - Declarant shall convey title to the Lake to the Corporation. The Corporation shall be responsible for maintaining the Lake. One hundred percent (100%) of the Maintenance Costs of the Lake shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot which abuts the Lake shall be responsible at

all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No boats shall be permitted upon any part of the Lake and no dock, pier, wall or other structure may be extended into the Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming or ice-skating will be permitted in the Lake except if and to the extent authorized by the Board of Directors. Except as otherwise provided herein, no individual using the Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Declarant, the Corporation and their employees, agents and assigns as set forth in the Declaration. Each Owner of a Lot abutting the Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to the Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.

4) The Lake Control Structures - Declarant shall convey title to the Lake Control Structures to the Corporation. The Corporation shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots

5) Drainage System - Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1999, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

6) Common Area Easements and Common Area - The Corporation shall maintain the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs, and other plantings located in a Landscaping Easement shall be kept nearly cut, cultivated or trimmed as reasonable required to maintain an attractive appearance, or a part thereof, or a planting area within Harbor View.

7) Roadways

a) Maintenance - Declarant shall maintain each Roadway in good condition satisfactory

for the purpose for which it was constructed until the Roadway has been accepted as a public roadway.

b) Cul-de-sac Parking - There shall be no parking on the Cul-de-sacs shown on the Plat.

8) Construction of Residences

a) Land Use - Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the Hamilton County, Indiana. No portion of any Lot may be subdivided such that there will be thereby a greater number of Residences in the Lot than the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

b) Size of Residence - Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have floor areas of 1,200 square feet minimum. All Residences shall have an attached garage capable of storing at least two (2) vehicles.

c) Temporary Structures - No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

d) Building Location and Finished Floor Elevation - No building may be erected between the building line shown on the Plat and the front Lot line but in any event no building shall be erected nearer than thirty (30) feet to the right of way of the street in front of the Lot, and no structure or part thereof may be built or erected nearer than eight (8) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line. The side yards must aggregate 20% of the building set back line. No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation, shown on the development plan for Harbor View, has been established for each Lot depicted on the Plat and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a

licensed land surveyor

- e) Driveways - All driveways shall be paved and maintained dust free
 - f) Yard Lights - If street lights are not installed in Harbor View, then the builder on each Lot shall supply and install a yard light or twin coach lights on the garage in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The Lot Owner thereafter shall maintain the light(s) in proper working order. "
 - g) Storage Tanks - All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited
 - h) Construction and Landscaping - All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Landscaping shall include a minimum of two 1 1/4" deciduous trees planted near the street right-of-way, taking care to avoid easements and not to violate site distance requirements.
- The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the Lot within the time periods specified herein. For the purposes of this sub-paragraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.
- a) Mailboxes - All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.
 - b) Septic Systems - No septic tank, absorption field or any other on-site sewage disposal system, other than a lateral main connected to a sanitary sewage collection system, shall be installed or maintained on any Lot
 - c) Water Systems - Each Owner shall connect to such water line maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain

and use irrigation water well on his Lot.

- d) Drainage - In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Harbor View may be included in a legal drain established by the Drainage Board. In such event, each Lot in Harbor View will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains, shall be connected whenever feasible into a subsurface drainage tile. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.
- e) Vacant Lots - It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereon. Declarant and the Corporation shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots.
- f) Out buildings and sheds - Prohibited except that Declarant may allow them on a case by case basis.
- 9) Maintenance of Lots
- a) Vehicle Parking - No camper, motor home, truck, trailer, boat or disabled or unlicensed vehicle may be parked or stored overnight or longer on any Lot in open public view. No carports shall be installed on any Lot. No mechanical work shall be performed in the driveway of any Lot.
- b) Signs - Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of Harbor View and the sale of Lots therein and such signs as may be located in any Common Area or Community Area, no sign of any kind shall be displayed to the public view on any Lot except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. A builder shall display a "sold" sign on the Lot when he has sold the property. All houses shall have uniform permanent house numbers visible from the street.
- c) Fencing - No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall

- be permitted between the front property line and the front building set-back line except where such planing is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Corner Lots shall be deemed to have two (2) front yards. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscaping Easement or Sign Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. No fencing shall be erected on the street side of any perimeter landscaping and/or mounding. No fence may be erected on a Lot without the prior approval of the Architectural Review Board, which may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences. All fences shall be kept in good repair and shall be made of vinyl material. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) 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 street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. All fencing along the perimeter of the Plat shall be of the same style, color and materials.
- d) Vegetation - An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this restriction, the Architectural Review Board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof. All Lots shall be landscaped with at least two (2) 1 1/2" caliper trees, one of which shall be a hardwood variety.
- e) 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. Barking dogs shall constitute a nuisance.
- f) Garbage and Refuse Disposal - No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.
- g) 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 that 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. Owners of dogs shall so control or confine them so as to avoid

barking which will annoy or disturb adjoining Owners.

- h) **Outside Burning** - No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.
- i) **Antennas and Receivers** - No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, except for satellite disks of no more than two feet (2') in diameter on any residential Lot without the written approval of the Architectural Review Board, which approval shall not be unreasonably withheld, provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common areas; (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws; or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.
- j) **Exterior Lights** - No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.
- k) **Electric Bug Killers** - Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.
- l) **Tennis Courts** - No tennis court shall be installed or maintained on any Lot.
- m) **Swimming Pools** - No swimming pool or equipment or building related thereto shall be constructed without the prior approval of the Architectural Review Board. No above ground pools shall be permitted. No swimming pool shall be located on a Lot abutting within 35 feet from the water's edge of a Lake at normal pool elevation as established on the engineering design plans for the Lake filed with the zoning authority. If a variance permitting installation of a mechanical pool cover in lieu of fencing has been obtained from the Zoning Authority, then the Architectural Review Board may require, as a condition to the location of a swimming pool on a Lot, that the Owner install a mechanical pool cover. If the Board imposes such requirement, then a mechanical pool cover of a type and manufacture approved by the Architectural Review Board shall be installed by the Owner in compliance with all applicable legal requirements established by the Zoning Authority as a condition to such variance, and all requirements established by the Architectural Review Board.

