

34
Jan 2, 97
Amend to Deed & Covenants
Suff 158 v. 356-60
Jay Bradley H&R H&R

**DECLARATION OF COVENANTS, RESTRICTIONS AND ASSESSMENTS
OF
HARVEST RIDGE SUBDIVISION, PHASE ONE
HENDRICKS COUNTY, INDIANA**

8733

THIS DECLARATION of Covenants, Restrictions, and Assessments, ("Declaration") is made this 24 day of April, 1994 by Harvest Properties, an Indiana General Partnership, ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Hendricks County, Indiana, as described in Exhibit "A" attached hereto and hereby made a part hereof; and,

WHEREAS, Declarant hereby subdivides said real property and designates said subdivision as HARVEST RIDGE, PHASE ONE, ("Development"), a 25-acre +/- parcel being more particularly described on said plat thereof recorded on April 23, 1994 in the Office of the Recorder of Hendricks County, Indiana, and hereby made a part hereof; and,

WHEREAS, Declarant hereby establishes a system of assessments to be borne by all Lot Owners of the Development, to provide for maintenance of Common Property, Common Expenses of the Development, and mutual enforcement of the Declaration.

NOW, THEREFORE, Declarant hereby affirms that the Development shall hereafter be held, subdivided, sold, and conveyed subject to this Declaration which purports to protect the value and desirability of the Development, and which shall run with the Development and shall be binding on all parties having any right, title or interest in the Development or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

A. The following are the definitions of terms used in this Declaration:

1. "Assessment" shall mean that share of the Common Expenses imposed upon each Lot, together with any interest or late charges thereon imposed for delinquency and any costs of collection thereof, including attorney fees, as determined and levied pursuant to the provisions herein.

"Association" shall mean Harvest Ridge Homeowners Association, Inc. or an organization of similar name, its successors and assigns, which shall be created as an Indiana not-for-profit corporation. Its membership shall consist of all Owners.

"Builder" shall mean the contractor(s) constructing the first Dwelling Unit on each Lot.

"Committee" shall mean the Development Control Committee, initially composed of three (3) members appointed by the Declarant who shall be subject to removal by the Declarant as long as Declarant owns a Lot, at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment by Declarant until such time as the subdivision is completely developed or provided for under Article XV Section E herein, at which time the Association shall appoint this Committee from its membership.

"Common Expenses" shall mean the actual and estimated cost to the Association for maintenance, management, operation, repair, taxation, improvement or replacement of the Common Property. Such costs shall include but not be limited to maintenance of any easements, entry landscaping, storm water retention lakes, and any other costs or expenses incurred by the Association for the benefit of the Common Property, including the cost of insurance as required herein. Common Expenses shall not include any construction costs incurred in connection with the initial installation of the streets, utility lines and mains, drainage systems, or other improvements constructed by Declarant.

"Common Property" shall mean all real and personal property which is in the nature of common or public improvements, whether or not such property is located on or within any Common Area.

"Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Property, including any future associations of additional phases to the Development.

"Dwelling Unit" shall mean a detached single-family residence, including attached garage, situated upon a Lot in the Development.

"Lot" shall mean any residential parcel of real estate as shown on the Plat. No Lot may be subsequently subdivided for development purposes, except for Declarant's adjustment for infillations which may occur.

BOOK 245 PAGE 145

"Owner" shall mean a person or legal entity which acquires title or interest, in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation.

BOOK 41 PAGE 36

"Plat" shall mean the subdivision plat of the Development identified as the Final Plat of Harvest Ridge, Phase One, recorded on the day of April, 1994 in Plat Cabinet A, Slide 135, Pages 1-2, as Instrument No. 8732 in the Office of the Recorder of Hendricks County, Indiana, and any plat of subsequent sections recorded thereafter.

ARTICLE II CHARACTER OF THE DEVELOPMENT

Each Lot shall be used exclusively for single family residential purposes. No permanent structure shall be erected, placed or permitted to remain upon any Lot except a Dwelling Unit. No business buildings may be erected on any Lots thereof. No business may be conducted on any Lots thereof, other than those occupations permitted in the Hendricks County Zoning Ordinance of Hendricks County, Indiana or applicable ordinances affecting the Development. All Lots shall be subject to the covenants, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

ARTICLE III RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF DWELLING UNITS AND OTHER STRUCTURES

- A. **Type, Size, and Nature of Construction Permitted and Approval Required:** No Dwelling Unit, greenhouse, porch, garage, swimming pool, hot tub, accessory building, deck, fence, basketball goal, tennis court or other exterior improvement or addition shall be erected, placed, stored, or altered on any Lot without the prior written approval of the Committee. Each Owner or Builder shall request such approval in writing to the Committee and shall take into account restrictions including, but not limited to, the type of materials, exterior facade, exterior paint colors, design, layout, location, landscaping and finished grade elevations. Declarant shall approve all Builder plans. Builders shall be permitted to submit sets of Master Plans of typical homes to the Declarant, and when approved by the Declarant, those Master Plans shall not require subsequent approval unless there are changes thereto.

Declarant may, at the option of Declarant, impose higher standards of construction to the Development than those required herein throughout the Development Period.

1. **Minimum Areas:** Any Dwelling Unit shall have the following minimum areas, exclusive of open porches and garages:
 - a. The minimum floor area of a Dwelling Unit shall be 1,350 square feet.
 - b. The minimum main floor area of a Dwelling Unit of more than one story shall be 800 s.f., provided that the total floor area of each home is at least 1,350 s.f.
2. **Attached Garage:** Each Dwelling Unit shall have a minimum of a two-car attached garage.
3. **Driveways and Off-Street Parking Spaces:** There shall be a minimum of two (2) off-street parking spaces in each driveway. All driveways shall be constructed upon initial construction and completed prior to occupancy, weather permitting, with concrete or asphalt material. A driveway shall not, without Committee approval, encroach in width, the side boundaries of the garage it serves and must be a minimum width equal to the interior width of the garage it serves. No additional parking shall be permitted on a Lot other than in the existing driveway.
4. **Prohibition of Relocated or Movable Structures:** No Dwelling Unit, garage, trailer, or other structure of any kind may be moved onto any Lot for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a Dwelling Unit on a Lot.
5. **Time Limits on Construction:** The exterior of every Dwelling Unit or other structure herein permitted to be constructed or to remain on any Lot shall be completed within six (6) months from the start of construction, including the application of at least one (1) coat of paint or stain on any exterior wood surfaces. All such structures must be completed within one (1) year from commencement of framing.
6. **Maintenance of Lots During Construction:** All Lots shall be kept and maintained in a neat and orderly manner during the period of construction of any structures on said Lots. No unreasonable amount of trash or unused construction materials of any kind shall be permitted to accumulate on any Lot or adjacent Lots, except in dumpsters or temporary fencing both of which shall be placed on the Lots and not on the streets. It is understood by all parties to this Declaration that due to the construction nature of the Development throughout the Development Period, a certain level of rubbish and erosion may exist until all Lots have been improved. Throughout the construction of a Dwelling Unit, Owners and Builders shall keep curbs and streets reasonably clear of mud and dirt from lot erosion due to construction. Unless Declarant has directly disposed of trash on a Lot, Declarant shall not be responsible for the removal of debris, construction materials, etc. on any Lots owned by Declarant.

7. **Security Lights:** Prior to completion of construction, Builders shall install one (1) "dark to down" security light in the front yard of each Dwelling Unit. The Committee shall approve the type and location of all security lights. Each Owner shall subsequently maintain their security light as to condition and bulb replacement.
8. **Fences:** All fences shall be approved by the Committee prior to construction, and, except those located at the entrance of the Development and Common Areas, must meet the following standards:
 - a. Design of fences must be shadow box, split-rail, vinyl-clad chain link, or black iron style, unless another design is approved by the Committee.
 - b. If wooden fences are painted or stained, they shall be in a color approved by the Committee and shall complement the color of the Dwelling Unit. Chain link vinyl colors shall also be approved by the Committee.
 - c. For corner lots, no fence shall encroach into the side yard as determined by the side face of the house. For non-corner lots, no fence shall be installed between the street and the rear face of the house. The Committee may allow such encroachments only if satisfied as to landscaping plans to reduce the appearance of such encroachments.
 - d. All corner lots fences shall meet the requirements of Article III.B of this Declaration regarding sight distances.
 - e. The heights of shadow box or similar privacy or pool fences may not exceed six (6) feet. The heights of any other type of fence may not exceed four (4) feet. Every fence shall be installed in a sturdy, workmanlike manner, and must be maintained in good condition by the owner. Fence care includes but is not limited to repainting/stain, rust removal, and repair of structural damage, defects, or deterioration of fencing, posts, and gates.
 - f. Any deviation from the above requirements must have written approval of the Committee.
9. **Utility Lines:** All utility lines in the Development shall be placed underground. Utility lines shall be installed under completed streets only by jacking or boring methods. Street cuts shall not be permitted.
10. **Storage Tanks:** Outside fuel storage tanks shall not be permitted in the Development.
11. **Gutters and Downspouts:** All gutters and downspouts shall be painted, either at the factory or on-site, prior to occupancy.
12. **Awnings and Patio Covers:** Awnings and patio covers made of metal, fiberglass or similar type materials shall not be permitted in the Development.
13. **Above Ground Swimming Pools:** No above-ground (or mid-grade or similar) swimming pools shall be permitted in the Development.
14. **Storage Sheds:** Committee approval shall be required for all storage sheds, dog houses, gazebos, or similar type structures, including location of structures on the Lot. Such structures shall not encroach into side or front yards, and no aluminum or sheet metal structures are allowed.
15. **Satellite Dishes:** No satellite dishes shall be permitted in the Development.
16. **Brick Requirement:** All Dwelling Units shall be improved with a minimum brick exterior on the first floor front elevation of 75% (after deducting any area for items such as doors, windows, vents, gables, or garage doors.)
17. **Roof Pitch:** All homes shall be improved with a minimum roof pitch of 6/12.
18. **Antennae:** The Committee shall approve all exposed antennas. The maximum height of exposed antennas shall not exceed five (5) feet above the respective roof peak.
19. **Solar Heat Panels:** No solar heat panels shall be allowed.
20. **Sight Distances at Intersections:** No fence, wall, hedge or planting which obstructs sight lines at elevations less than 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 twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. No landscaping shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height sufficient to prevent obstruction of such sight lines.

- BOOK 141 PAGE 1-15
- C. **Building Setback Lines:** Front, side and rear building setback lines are established as shown on the Plat. Between the side and rear right-of-way lines of the streets and the side and rear lot lines, no structures, including but not limited to, docks, or accessory buildings may be erected or maintained.
- D. **Damaged Structures:** No Dwelling Unit which has been partially or totally destroyed by fire or other catastrophic event shall be allowed to remain in such state without commencement of reconstruction for more than sixty (60) days from the date of such occurrence.
- E. **Maintenance of Lots and Improvements:** The Owner of any Lot shall at all times maintain the Lot and any improvements thereon in such a manner to prevent the Lot or improvements from becoming unsightly, in the opinion of the Committee. These requirements shall not apply to Lots owned by the Declarant during the Development Period or during the initial construction period of a Dwelling Unit. Specifically, the Owner shall: 1) establish and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height; 2) keep Lot free of debris, equipment, stored building materials, and rubbish including any outside storage of trash containers which shall be screened with fencing and subject to modification of design by the Committee; 3) prevent the existence of any other conditions which may detract from or diminish the aesthetic appearance of the Development; 4) remove dead or unsightly trees or other plants; and, 5) maintain the exterior of all improvements in good repair to avoid any unsightly appearance, in the opinion of the Committee.
- F. **Requirement to Mow Grass in Public Right-of-Way:** All Owners shall be required to mow the grass in public rights-of-way of their Lot.

ARTICLE IV EASEMENTS

The strips of ground shown on the Plat which are marked "D.&U.E." (Drainage and Utility Easement) are reserved for the use of public utility companies, including cable television companies and municipal agencies, but not including transportation companies, for the purpose of installing and maintaining swales, ducts, poles, lines, wires, sewers, drains and appurtenances thereto. Said easements shall be perpetual from the date of this instrument by the Declarant, its successors and assigns. No permanent structures may be erected in said easements except for temporary structures, facades, driveways and walkways and subject to the applicable easement(s). Owners shall take title to said Lots subject to the rights of said companies, agencies, and other Owners for purposes of ingress and egress in, along and through said easements as reserved.

ARTICLE V MISCELLANEOUS PROVISIONS AND PROHIBITIONS

- A. **Nuisance:** No noxious or offensive activities shall be conducted on any Lot, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to Owners of other Lots, in the opinion of the Committee.
- B. **Signs:** No signs or advertisements shall be displayed or placed on any Lot or structure in the Development without the prior written approval of the Committee, except for the sale of a Lot or Dwelling Unit (limited to one sign per Lot), however, Declarant and designated Builders may use signs for advertising during the initial sale of Lots and the initial construction of Dwelling Units in the Development.
- C. **Animals:** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs or cats may be kept, provided that they: 1) are not kept, bred, or maintained for any commercial purpose; 2) do not become a nuisance to other Owners, in the opinion of the Committee, such as excessive barking or number or type of pets; and, 3) they be leashed upon leaving Owner's property, and their waste be promptly disposed of.
- D. **Vehicle Parking:** Unless otherwise provided herein, motor homes, mobile homes, any motor vehicle which is inoperative and not being used for normal transportation, trailers, boats, campers, commercial delivery trucks and similar vehicles shall not be parked or stored upon a Lot unless within a closed garage. All passenger vehicles shall be parked in garages or in driveways and shall not be parked upon grassy or landscaped areas. Guest passenger vehicles may be parked on the street for a period not exceeding forty-eight (48) hours; however, this does not include vehicles parked on the streets on a frequent (in excess of 48 hours per month) basis. No vehicles shall be placed on blocks or jacks for purposes of repair, except for repairs made in closed garages.
- E. **Ditches and Swales:** Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales located on their respective Lots. Owners shall comply at all times with the provisions of the Development Grading Plan as approved for this plat by the Hendricks County Drainage Board, and the requirements of all drainage permits issued for any Lot within the Development. Any field tile or underground drain encountered during construction of any improvements within the Development shall be perpetuated. All Owners, their successors and assigns, shall comply with the Indiana Drainage Code and all amendments thereto. Any damage or change from Declarant's original grade(s) caused by Owners, Builders or their contractors shall be restored to original grades at Owner's expense.
- F. **Open Burning:** No receptacle used for burning of debris or trash shall be placed on any Lot, nor shall any Owner burn debris or trash on a frequent basis, except in the Autumn months for the purpose of leaf destruction. Any burning of leaves shall be as allowed by local restrictions, and, if allowed, shall be limited to the hours of 11:00 a.m. and 4:00 p.m.

- G. **Sump Pump:** No sump pump may be discharged into any street after a Dwelling Unit is completed. Designated drainage swales or storm sewers shall be used for each discharge. The sump pump must be installed underground with plastic pipe or tile in such designated areas. Downspouts from Dwelling Units may be discharged to the streets via similar underground piping.
- H. **Excavate Dirt:** Any excess dirt from excavation shall not be spread out over any Lot in such a way that changes the original drainage grade, covers the existing natural tree root systems, or alters natural drainage flows, etc.

**ARTICLE VI
SUBMITTAL AND APPROVAL OF PLANS**

- A. **Submittal of Plans:** No Dwelling Unit, or improvement thereof, shall be erected in the Development until the plans and specifications (including plot plans or other information requested by the Committee) for said improvements are submitted to and approved in writing by the Committee as to harmony of design and location in relation to surrounding structures and topography.
- B. **Approval of Plans:** Approvals or consents for plans required herein shall be deemed given if they are given in writing and signed, with respect to Declarant, by an authorized representative or agent thereof, or with respect to the Committee by a Committee member(s) authorized by the Board of Directors for granting said approval thereof. The failure of Declarant or Committee approval within ten (10) business days of submission shall be deemed a denial of such request.

**ARTICLE VII
BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER**

Whenever two or more contiguous Lots in the Development are owned by the same Owner, and said Owner proposes to use two or more of said Lots as a site for one (1) Dwelling Unit, said Owner shall apply in writing to the Committee for permission to use said Lots for this purpose. If permission is granted by the Committee and any other necessary governmental authority, the Lots constituting the site for said Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions and as to membership rights as outlined in Article XV so long as the Lots remain improved with one (1) Dwelling Unit. No two-family or multi-family dwellings shall be permitted in the Development.

**ARTICLE VIII
REMEDIES**

- A. **Available Remedies:** In the event of a violation, or threatened violation, of any of the provisions of this Declaration, Declarant, Owners, and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Declaration contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with this Declaration, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.
- B. **Government Enforcement:** The Hendricks County Plan Commission ("Commission"), its successors and assigns, shall have no right, power or authority to enforce this Declaration other than those terms which expressly run in favor of the Commission; provided further, that nothing herein shall be construed to prevent the Commission from enforcing any provisions of the Subdivision Control Ordinance, or any conditions attached to approval of the Plat and any subsequent sections approved thereafter.
- C. **Delay or Failure to Enforce:** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the terms of this Declaration shall be held to be a waiver by that party of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Declaration.

**ARTICLE IX
EFFECT OF BECOMING AN OWNER**

Any Owner, by the acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner, shall accept said deed and execute said contract subject to this Declaration and the Plat. By acceptance of said deed or the execution of said contract, the Owner acknowledges the rights and powers of interested parties with respect to the Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns. Said Owner shall covenant and agree with and consent to Declarant and with and to the Owners and subsequent Owners of each of the Lots to keep, observe, comply with and perform said agreements.

**ARTICLE X
TITLE**

The undesignated titles of the various Articles and Sections of these Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter, and vice versa.

BOOK 27 PAGE 150

**ARTICLE XI
DURATION AND AMENDMENT**

- A. **Duration of Declaration:** This Declaration shall be effective for an initial term of twenty (20) years from the date of its recordation by the Recorder of Hendricks County, Indiana, and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners of two-thirds (2/3) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all encumbrances created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.
- B. **Amendment of Declaration:** Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or any agency guaranteeing, insuring, or approving mortgages, or to change or modify this Declaration for amendments to the Plat or Article III Restrictions so long as Declarant owns any Lots within the Development or subsequent phases thereto; provided that Declarant shall not be entitled to make any amendment which will have a materially adverse effect on the rights of any Mortgagees, nor which will substantially impair the benefits of the Declaration to any Owner or substantially increase the obligations imposed by the Declaration on any Owner without the prior written approval of said Mortgagees and the Association.

The Declaration may be amended upon the approval of a majority of both (if applicable) classes of members of the Association.

**ARTICLE XII
SEVERABILITY**

This Declaration shall run with the land and shall be binding on all parties claiming under them. Invalidity or unenforcement of any of the provisions of this Declaration by Judgment, Court Order, or the Board of Directors shall in no way affect any of the other provisions which shall remain in full force and effect.

**ARTICLE XIII
DEDICATION OF STREET RIGHTS-OF-WAY**

All street rights-of-way shown on the plat and not heretofore dedicated to the public are hereby dedicated to the public.

**ARTICLE XIV
HOMEOWNERS' ASSOCIATION**

The Association shall be an Indiana not-for-profit corporation and shall operate in accordance with Articles XV through XVII of this Declaration.

**ARTICLE XV
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

- A. **Membership:** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. In addition, the Association, and/or its members therein, may be members in any one or more umbrella or joint homeowners' associations, if any, composed of associations and/or members from surrounding areas or community.
- B. **Classes of Membership:** The Association shall have two (2) classes of voting members:
1. **Class A:** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned, except for an Owner of two (2) Lots improved with one (1) dwelling unit per Article VII herein. When more than one person holds an interest in any Lot, all such persons shall be members; however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.
 2. **Class B:** The Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, including Lots owned in subsequent phases to the Development. Unless Declarant chooses to convert its class earlier, the Class B membership shall cease and be converted to Class A membership upon the occurrence of either of the following events, whichever occurs earlier:
 - a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
 - b. on December 31, 2004.
- C. **Board of Directors:** The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Declarant.

- D. Responsibility of the Association:** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the determination of Common Expenses, the collection of annual and special Assessments, if any, and the granting of any approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain casualty insurance, liability insurance, and such other insurance as it deems necessary or advisable. The Association by its Board of Directors may contract for management services and such other services as the Association deems necessary or advisable.

**ARTICLE XVI
INSURANCE**

- A. Public Liability Insurance for Common Property:** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Common Property, if any, as the Board of Directors shall deem appropriate.
- B. Owner's Responsibility for Loss:** Each Owner shall be solely responsible for liability and loss of or damage to his personal property located on his Lot, however caused.

**ARTICLE XVII
ASSESSMENTS**

- A. Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively for payment of Common Expenses. Each Owner covenants and agrees to pay the Association:
1. A Pro Rate Share (as hereinafter defined) of the general Assessments fixed, established, and determined from time to time as hereinafter provided.
 2. A Pro Rate Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.
- B. Pro Rate Share:** The pro rate share of each Owner for purposes of this paragraph shall be the percentage obtained by the fraction of one divided by the total number of Lots (1 / Total no. of Lots).
- C. Liability for Assessments:** The Assessment on each Lot shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association and shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any first mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer of a Lot shall relieve such Lot from liability for any Assessments, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed.
- D. Basis of Annual Assessments:** The Board of Directors of the Association shall establish an annual budget for each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for reserves for future repair and replacement of the Common Property or unexpected expenses. The Members of the Association, at a regular or special meeting of the Members with proper notice, shall approve the budget or revised budget by a vote of a majority of a quorum of Members present in person or by proxy. A copy of the approved budget shall be delivered to any Owner requesting same within a reasonable time.
- E. Basis of Special Assessments:** Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. A Special Assessment shall be imposed only with the approval of a majority of the Owners, and shall be due and payable on the date(s) determined by the Board of Directors.

F. Fiscal Year, Date of Commencement of Assessments, Due Date: The fiscal year of the Association shall be changed from time to time by action of the Board. The annual Assessment on each Lot may commence at any time following the month in which Declarant first conveys any Lot to an Owner.

Annual Assessments shall be due and payable, in full, as of the date which the Board of Directors determines, except that the Board of Directors may, from time to time, authorize the payment of such Assessments in quarterly or semi-annual installments. The Declarant shall not be required to pay an assessment on any vacant Lot which it owns.

In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following year, except that so long as the Declarant controls the Association, Declarant may, at its sole discretion, make up such deficit; provided, however, that Declarant shall be reimbursed by the Association for such limited deficits, together with interest until so reimbursed, from available surpluses in later years or through a Special Assessment.

G. Duties of the Association:

- 1. Books and Records:** The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and Special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner, at Owner's expense (or duly authorized representative of any Owner) at all reasonable times. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause necessary tax returns to be prepared and filed annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be delivered to the Owners or their designated representatives. Notices of the amounts of Special Assessments shall be sent promptly and, in any event, not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.
- 2. Certificate of Assessments:** Upon request, the Association shall promptly furnish to any Owner, prospective purchaser, title insurance company, or Mortgagee, a certificate in writing signed by an authorized representative of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

H. Association Remedies for Non-Payment of Assessments:

- 1. Lien for Non-Payment of Assessment:** If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent.
 - 2. Initiation of Action by Association for Non-Payment of Assessment:** If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment may be increased by a late fee imposed as determined by the Board of Directors. The Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such late fee, costs, and attorneys' fees.
 - 3. Subordination of the Lien to Mortgage:** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, regardless of the recording date of said mortgage. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of any assessments or pro-rated assessment becoming due prior to the date of such sale or transfer. If and to the extent this paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail.
- i. Initial Assessments:** During the first year that the Declaration is recorded, the annual Assessment per Lot shall not exceed One Hundred dollars (\$100.00). This amount shall not reflect amounts of future annual Assessments since future Assessments shall be based on an annual budget and shall be for a full year.
- j. Quorum and Notice Required For Association Meeting:** Written notice of any Association meeting called for the purpose of approving annual or Special Assessments, amending this Declaration, election of the Board of Directors, or transacting other business for the benefit of the Association shall be sent to all Owners not less than thirty (30) days in advance of the anticipated meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast one-tenth of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called without notice other than announcement at the meeting, until such later time or date that a quorum shall be present in person or by proxy.

IN WITNESS WHEREOF, the undersigned has hereunto caused its name to be subscribed this 14th day of April, 1994.

HARVEST PROPERTIES

BY: Gregory A. Brazas
Gregory A. Brazas, President of
The Mackenzie Corporation, General Partner

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State, personally appeared Gregory A. Brazas, president of The Mackenzie Corporation, a general partner of Harvest Properties, an Indiana General Partnership, who acknowledged the execution of the foregoing Declaration of Covenants, Restrictions, and Assessments of Subdivision acting for and on behalf of Declarant, and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 14th day of April, 1994.

Jo E. Roach
Notary Public - Signature



Name Printed

JO E. ROACH, Notary Public
My Commission Expires: 8-3-95
Residing in Marion County

County of Residence: _____

My Commission Expires: _____

ENTERED FOR RECORD

APR 22 1994

Gregory Brazas 150-153
HENDRICKS COUNTY RECORDER

EXHIBIT "A"

LAND DESCRIPTION

A part of the East Half of the Northwest Quarter of Section 2, Township 15 North, Range 1 East of the Second Principal Meridian in Washington Township, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Northwest Quarter Section; thence South 88 degrees 31 minutes 29 seconds West on and along the North line of said Quarter Section 150.00 feet to the POINT OF BEGINNING of this description;

Thence South 00 degrees 08 minutes 22 seconds West parallel with the East line of said Quarter Section 550.00 feet;
thence North 88 degrees 31 minutes 29 seconds East parallel with the North line of said Quarter Section 150.00 feet to a point on the East line of said Quarter Section;
thence South 00 degrees 08 minutes 22 seconds West on and along the East line of said Quarter Section 588.25 feet;
thence North 80 degrees 40 minutes 23 seconds West 141.63 feet;
thence North 50 degrees 21 minutes 35 seconds West 300.00 feet;
thence North 39 degrees 38 minutes 25 seconds East 40.30 feet;
thence North 50 degrees 21 minutes 35 seconds West 160.25 feet;
thence South 88 degrees 28 minutes 25 seconds West 468.27 feet;
thence South 86 degrees 58 minutes 55 seconds West 359.97 feet to a point on the West line of the East Half of said Quarter Section;
thence North 00 degrees 04 minutes 12 seconds East on and along the West line of said Half-Quarter Section 788.64 feet to a point on the North line of said Northwest Quarter Section;
thence North 88 degrees 31 minutes 29 seconds East on and along the North line of said Quarter Section 1148.26 feet to the POINT OF BEGINNING and containing 23.78 acres, more or less. Subject to all legal Highways, Rights-of-Way and Easements of record.

This instrument prepared by: Gregory A. Brazas, P.O. Box 14297, Indianapolis, IN 46204-4297

141
BOOK 153
PAGE

**First Amendment of the
DECLARATION OF COVENANTS, RESTRICTIONS, AND ASSESSMENTS
OF
HARVEST RIDGE SUBDIVISION, PHASE ONE
HENDRICKS COUNTY, INDIANA**

WHEREAS, Harvest Properties, an Indiana General Partnership, ("Declarant") has developed real property located in Hendricks County, Indiana, commonly known as Harvest Ridge, Phase One, and as described in Exhibit "A" attached hereto and hereby made a part hereof, and

WHEREAS, Declarant recorded restrictive covenants as part of the development of Harvest Ridge, Phase One which covenants dated April 12, 1994 were recorded in the Office of the Recorder of Hendricks County, Indiana on April 22, 1994 in Miscellaneous Record 141, page 145-153 as Instrument No. 8733, in the Office of the Recorder of Hendricks County, Indiana ("Original Declaration"); and

WHEREAS, Declarant is simultaneously amending the Declarations for Harvest Ridge Sections 1, 2, and 3, and upon the recording of these amendments, each section will have essentially identical Declarations; and

WHEREAS, The Mackenzie Corporation ("Mackenzie"), (a general partner of Declarant) is or will soon record a similar Declaration as part of its development of Harvest Ridge, Section 4, an adjacent parcel of real estate, and it has always been the intent of the developer that all sections of Harvest Ridge (Sections 1, 2, 3, and 4) be governed by an identical set of covenants and that the four sections be perceived as one overall development; and

WHEREAS, the current Lot Owners of the Harvest Ridge Homeowners Association, Inc. have reviewed and at least a majority of them have approved of this Amendment.

NOW THEREFORE, Declarant hereby amends the Original Declaration as follows so that, upon recording of the Amendments of Harvest Ridge, Sections 1, 2, and 3, and the recording of the Declaration of Harvest Ridge, Section 4, the development will consist of one subdivision consisting of 202 +/- Lots governed by the same Declaration:

The following referenced paragraphs are hereby removed entirely and replaced with the following paragraphs. (For convenience purposes, the addition of words are marked in *italics*. The deletion of a word(s) is marked with "*").

Article I:

The definition of terms are as defined in the Original Declaration, except as follows:

"Committee" shall mean the Development Control Committee, * who shall be subject to removal by the Declarant as long as Declarant owns a Lot, at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment by the * Board of Directors.

"Development" or "Property" shall mean Harvest Ridge, Sections One, Two, Three, and Four, a 202 +/- lot residential subdivision located in the Town of Avon, Indiana.

"Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Property. *

"Plat" shall mean the various subdivision plats of the Development identified as the Final Plats of Harvest Ridge, Sections 1, 2, 3, and 4 and recorded * in the Office of the Recorder of Hendricks County, Indiana. *

Article III.A:

3. **Driveways and Off-Street Parking Spaces:** There shall be a minimum of two (2) off-street parking spaces in each driveway. All driveways shall be constructed upon initial construction and completed prior to occupancy, weather permitting, with concrete or asphalt material. A driveway shall not, without Committee approval, exceed in width, the side boundaries of the garage it serves and must be a minimum width equal to the interior width of the garage door it serves. No additional parking shall be permitted on a Lot other than in the existing driveway.
8. **Fences:** All fences shall be approved by the Committee prior to construction, and, except those located at the entrance of the Development and Common Areas, must meet the following standards, unless approved otherwise by the Committee:

(The remainder of the paragraph a. through f. is unchanged).

14. **Storage Sheds:** Committee approval shall be required for all storage sheds, dog houses, pet kennels, gazebos, or similar type structures, including location of structures on the Lot. Such structures shall not encroach into side or front yards, and no aluminum or sheet metal structures are allowed. The size of any storage shed shall never exceed 8 feet by 10 feet in width and length and 9 feet in height and shall be limited to one shed per Lot. The Committee shall further approve that the paint color and shingles of the shed are similar to the house on the same Lot.
15. **Satellite Dishes:** No large (as determined by the Committee) satellite dishes shall be permitted in the Development.

Article VIII:

B. Government Enforcement: The Hendricks County Plan Commission or similar Town of Avon agency ("Commission"), its successors and assigns, shall have no right, power or authority to enforce this Declaration other than those terms which expressly run in favor of the Commission; provided further, that nothing herein shall be construed to prevent the Commission from enforcing any provisions of the Subdivision Control Ordinance, or any conditions attached to approval of the Plat and any subsequent sections approved thereafter.

ARTICLE XI:

A. Duration of Declaration: This Declaration shall be effective for an initial term until December 31, 2016 and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners of two-thirds (2/3) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.

B. Amendment of Declaration: Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, * so long as Declarant owns any Lots within the Development or subsequent phases thereto. *

The Declaration may be amended upon the approval of a majority of both (if applicable) classes of members of the Association.

Article XV.B:


2. Class B: The Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned. * Unless Declarant chooses to convert its class earlier, the Class B membership shall cease and be converted to Class A membership upon the occurrence of either of the following events, whichever occurs earlier:
- a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
 - b. on December 31, 2004.

No other changes are made to the Original Declaration.

IN WITNESS WHEREOF, the undersigned have hereunto caused their name to be subscribed this 2nd day of January 1997.

HARVEST PROPERTIES

BY:


Gregory A. Bruzas, President of
The Mackenzie Corporation, General Partner

As an officer of the Association, I further represent that these changes were presented to the members (Lot Owners) of the Association, and that at least a majority of them approved of this First Amendment. The documentation evidencing this approval shall be maintained with the records of the Association.

HARVEST RIDGE HOMEOWNERS ASSOCIATION, INC.

BY:


Mark McCrockin, President

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State, personally appeared Gregory A. Bruzas, president of The Mackenzie Corporation, a general partner of Harvest Properties, an Indiana General Partnership, who acknowledged the execution of the foregoing First Amendment of the Declaration of Covenants, Restrictions, and Assessments of Harvest Ridge Subdivision, Phase One acting for and on behalf of Declarant, and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 2nd day of January, 1997.



DONNA L. WHEELER, Notary Public
My Commission Expires: 11-19-97
Residing in Marion County

Donna L. Wheeler

Notary Public -Signature

Name Printed

County of Residence: _____

My Commission Expires: _____

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State, personally appeared Mark McCrocklin, the President of Harvest Ridge Homeowners Association, Inc. who acknowledged the execution of the foregoing First Amendment of the Declaration of Covenants, Restrictions, and Assessments of Harvest Ridge Subdivision, Phase One acting for and on behalf of the Corporation and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 2nd day of January, 1997.



DONNA L. WHEELER, Notary Public
My Commission Expires: 11-19-97
Residing in Marion County

Donna L. Wheeler

Notary Public -Signature

Name Printed

County of Residence: _____

My Commission Expires: _____

BOOK 158 PAGE 359

EXHIBIT "A"

LAND DESCRIPTION

A part of the East Half of the Northwest Quarter of Section 2, Township 15 North, Range 1 East of the Second Principal Meridian in Washington Township, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Northwest Quarter Section; thence South 88 degrees 31 minutes 29 seconds West on and along the North line of said Quarter Section 150.00 feet to the POINT OF BEGINNING of this description;

Thence South 00 degrees 08 minutes 22 seconds West parallel with the East line of said Quarter Section 550.00 feet;
thence North 88 degrees 31 minutes 29 seconds East parallel with the North line of said Quarter Section 150.00 feet to a point on the East line of said Quarter Section;
thence South 00 degrees 08 minutes 22 seconds West on and along the East line of said Quarter Section 588.25 feet;
thence North 80 degrees 40 minutes 23 seconds West 141.63 feet;
thence North 50 degrees 21 minutes 35 seconds West 300.00 feet;
thence North 39 degrees 38 minutes 25 seconds East 40.30 feet;
thence North 50 degrees 21 minutes 35 seconds West 160.25 feet;
thence South 88 degrees 28 minutes 25 seconds West 468.27 feet;
thence South 86 degrees 58 minutes 55 seconds West 359.97 feet to a point on the West line of the East Half of said Quarter Section;
thence North 00 degrees 04 minutes 12 seconds East on and along the West line of said Half-Quarter Section 788.64 feet to a point on the North line of said Northwest Quarter Section;
thence North 88 degrees 31 minutes 29 seconds East on and along the North line of said Quarter Section 1148.26 feet to the POINT OF BEGINNING and containing 23.78 acres, more or less. Subject to all legal Highways, Rights-of-Way and Easements of record.

Also known as the 50 (or 49 per anticipated replat of Lot 27) lots of Harvest Ridge, Section One, numbered 1 through 50, inclusive.

9700000034
Filed for Record in
HENDRICKS COUNTY IN
JOY BRADLEY
On 01-02-1997 At 11:19 am.
AMCO 18.00
Vol. 158 Pg. 356 - 360

This instrument prepared by: William T. Raza, Attorney, P.O. Box 34297, Indianapolis, IN 46234-0297