

96-32998

DECLARATION OF
RESTRICTIONS -
PEORIA COUNTY

PREPARED BY AND
RETURN TO:

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FILED
PEORIA COUNTY
STATE OF ILLINOIS

4 Nov 96 11 38

Robert J. Quinn
RECORDER OF DEEDS

DECLARATION OF RESTRICTIONS

DOVER POINTE SECTION TWO

THIS DECLARATION OF RESTRICTIONS is made this 4th day of November, 1996, by DOVER POINTE ASSOCIATES, INC., an Illinois corporation, hereinafter referred to as the "Developer", for certain property, which shall hereinafter be referred to as the "Subdivision", and is legally described as follows:

Lots 55 - 88 inclusive, plus 66A, in Dover Pointe Section Two, a Subdivision of part of the Northeast Quarter of Section Thirty (30), Township Ten (10) North, Range Eight (8) East of the Fourth Principal Meridian, situated in Peoria County, Illinois, as shown by a Plat recorded the 4th day of November, 1996, as Document No. 96-32997 in Plat Book 6, Page 32 in the Office of the Peoria County Recorder of Deeds.

INDEX TO LOTS 55-88, INCLUSIVE, PLUS LOT 66A IN DOVER POINTE SECTION TWO

PIN Division of: 09-30-200-007

I. RESTRICTIONS:

1. **APPLICATION OF RESTRICTIONS.** All persons, corporations, trusts or other entities that now hold or shall hereafter acquire any interest in any part of the Subdivision shall be taken to agree to comply with the covenants, conditions, restrictions and stipulations contained herein as to the use of the Subdivision and the construction of residences and improvements therein, as hereinafter set forth.
2. **PROPERTY USE.** The Subdivision and all lots therein shall be used only for single-family residences. No portion of the Subdivision, improved or unimproved, shall be used for any commercial, manufacturing, professional, religious, fraternal, or other business purpose.
3. **CONSTRUCTION REQUIREMENTS.** The construction of residences on lots in the Subdivision shall be governed by the following specifications:
 - a. **Setback Lines.** The exterior walls of any building, garage, enclosed porch, swimming pool or other outbuilding shall not be erected or maintained closer to the front lot line than the setback lines shown on the plat of the Subdivision. Such structures shall also not be erected or maintained at any given point closer to the side or rear lot lines than ten percent (10%) of the respective width or depth of the lot at such point. Larger setbacks may be required by applicable zoning regulations.
 - b. **Footage Requirements.** As to residences of one level, the first floor living area shall have a total living area, exclusive of garage and basement, of not less than 1,750 square feet. Residences of more than one level shall have a total living area of not less than 1,100 square feet on the main level and not less than 2,250 square feet total. No residence shall exceed two and one-half stories in height.
 - c. **Permitted Exteriors.** No wall board, aluminum siding, sheet metal, tar paper, or roofing paper shall be used for any exterior wall covering or roofs. Aluminum may be used for gutters and downspouts, soffit and fascia boards. Stone, brick, wood, vinyl and stucco style materials, shall be permitted exteriors, provided such materials are of suitable quality, grade and coloration so as to conform and harmonize with other improvements in the Subdivision. No excessively bright colors or light shadings shall be permitted on the exteriors of any building in the Subdivision.
 - d. **Brick Requirement.** At least 50% of the front of every residence constructed in the Subdivision shall be brick. If the front of the residence includes garage doors, the square footage of the garage doors shall not be included when calculating the square footage of the front exterior for the purpose of determining whether 50% of the front consists of brick.

- e. **Garages.** Each residence constructed on a lot in the Subdivision shall contain an attached, enclosed garage adequate to store, at a minimum, 2 standard-sized passenger vehicles, or, as a maximum, 3 standard-sized passenger vehicles. Any such garage shall be in conformity with the attached residence as to exterior, architecture and location.
- f. **Sewer Requirements.** All residences shall connect with a sanitary sewer system in accordance with all applicable health codes.
- g. **Excavation.** All materials excavated from any lot in the Subdivision shall be removed from the Subdivision unless permission is otherwise granted in writing by the Developer.
- h. **Swimming Pools.** All swimming pools must be enclosed by fencing approved by the Developer and shall, in all respects, comply with applicable ordinances and building codes. All devices used in connection with the swimming pool, including the filter and circulating pump, shall be located inside the required fence and concealed from view. Only in-ground pools shall be permitted.
- i. **Driveways and Curb Cuts.** All driveways leading from the street to the garage must be of blacktop, concrete, or other materials permitted by the Developer. Curbs which are removed for the purpose of making a driveway entrance shall be replaced as far as the nearest construction or expansion joint to insure a smoothly joining entrance, with a radius of return of at least five (5) feet.
- j. **Sidewalks.** Sidewalks must be installed by and at the expense of a lot owner upon the earlier of (i) six months after completion of construction of a residence on the lot, (ii) when required by governmental authority, or (iii) within two years of completion of construction of residences on 80% of the lots constituting the Subdivision. Details as to sidewalk size, placement, and materials are to be supplied by the Developer, with all sidewalks to be in conformity with other sidewalks in the Subdivision.
- k. **Developer Approval.** No building, outbuilding, tower, satellite dish, or swimming pool shall be erected, placed, or altered on any lot in the Subdivision until the building plans, specifications and site plans of said improvements have been submitted to and approved by the Developer. No prior approval shall be required for satellite dishes not exceeding a 20" diameter placed in the rear of a lot and obscured from view by landscaping. The Developer, as part of the approval process, shall evaluate the proposed improvements as to conformity and harmony of external design with existing structures in the Subdivision and as to location of the building with respect to topography and finished ground elevation. A minimum of two (2) copies of all building plans, specifications, and site plans

shall be submitted before commencement of any construction on a lot. One copy of said building plans, specifications, and site plans shall be retained by the Developer. The Developer, at Developer's option, may require that samples of all exterior materials be submitted for examination prior to approval. If the Developer fails to give written approval or disapproval to such plans and specifications within thirty (30) days after same have been received by the Developer, the plans and specifications shall be deemed approved. All improvements shall be constructed in strict conformity with approved plans and specifications. Any changes during construction of the size or exterior of the building, either as to materials or colors, must be approved in writing by the Developer prior to continuation of construction.

4. **TEMPORARY STRUCTURES.** No trailer, basement, tent, shack, garage, barn or other outbuilding shall be at any time used as a residence, temporarily or permanently, in the Subdivision. No home shall be occupied as a residence until the exterior of such residence is completed in accordance with the approved plans and a certificate of occupancy (if required by a governmental agency) has been issued.
5. **REPLATTING.** No lot or lots as platted shall be divided so as to result in creating additional lots. Two (2) adjoining lots may not be used for the construction of one residence. However, the Developer, at Developer's sole discretion, may permit a portion of a lot to be added to an adjacent lot to create a larger lot, provided that the remainder of the one lot is of sufficient size to construct a residence upon it in accordance with the construction requirements detailed herein, and further provided that the location of the building setback lines shall be modified to reflect the new size of each lot.
6. **FOLIAGE REMOVAL.** No trees or other significant foliage, other than trees or foliage which are dead, hazardous, or reasonably impede construction of a residence or interfere with an easement, shall be destroyed or removed from any lot without the consent of the Developer.
7. **OFFENSIVE ACTIVITIES.** No noxious, hazardous, or offensive trade, object, or activity which may be or may become a nuisance, hazard or danger to the neighborhood, by sight, sound, odor, or otherwise, shall be performed or maintained on any lot or other part of the Subdivision.
8. **ANIMALS.** No animals other than domesticated house pets shall be kept or maintained within the Subdivision. Any pet runs or enclosures must be approved in writing by the Developer.
9. **PROPERTY MAINTENANCE.** All lot owners shall keep their property well maintained and in a presentable condition. In the event a lot presents a nuisance or an unattractive appearance because of accumulated debris, weeds or grasses, the Developer shall attempt to notify the owner of said lot in writing of the objectionable condition of

the lot, with said notice to be mailed by certified mail, if more current information is not available, to the address listed with the Peoria County Supervisor of Assessments for the mailing of tax bills for said lot. If the condition of said lot is not adequately improved within ten days of the mailing of such notice, the Developer may undertake any such reasonable acts as may be necessary to improve the condition of the lot. Any charges sustained by the Developer may be charged to the lot owner, and, at the option of the Developer, may constitute and be recorded as a lien against said lot. Such liens may be enforced against the owner's property as permitted by law. Such liens must be recorded within two years of the time the debt was incurred and, unless enforced, shall expire within 2 years of recording. Attorney's fees and court costs shall be recoverable for enforcement of such lien.

10. **VEHICLE STORAGE.** No passenger cars, recreational vehicles, trailers, vans, mobile homes, boats, or other objects of substantial size, whether operative or inoperative, may be parked or stored on a regular basis within the confines of the Subdivision unless same is enclosed and concealed from view within a garage on the owner's property. This provision, to the extent permitted by law, shall apply to those parts of the Subdivision dedicated as public roadways.
11. **SUPPLY STORAGE.** Except as necessarily incidental to construction of buildings and structures on lots, no new or used construction materials, supplies, unused machinery, or the like shall be kept or allowed to remain in the Subdivision unless stored inside a building and concealed from view.
12. **EASEMENTS.** Easements for public utility installation and maintenance are reserved as shown on the recorded plat. Said utilities shall be permitted access to the indicated easements for the purpose of serving individual lots, the Subdivision, and adjoining property with standard public utilities, including, without limitation, electric, gas, water, sewer, television cable and telephone service. No permanent buildings, structures, or other significant foliage shall be placed on said easements, but the easements may be used for gardens, shrubs, landscaping, and other purposes that do not interfere with the maintenance or use of the easements. In the event the Developer should elect to construct a fence along the perimeter of the Subdivision, affected lot owners shall grant an easement to the Developer for construction and maintenance of such fence, provided that any damage to the lot owner's property by such construction or maintenance shall be repaired by the Developer at the Developer's expense.
13. **COMMENCEMENT OF CONSTRUCTION.** Any individual or entity acquiring a lot from the Developer must commence construction within twenty-four (24) months after the conveyance of title, unless a written extension is granted by the Developer. If the Developer elects to grant any such extension, as a condition to any such extension Developer may demand reimbursement of any utility deposits which remain unrefunded due to failure to hookup a residence on such lot, with the right to any future refund for such lot to be assigned to the lot owner. All construction must be completed in

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accordance with approved plans, including all landscaping work, within nine (9) months after commencement of construction. In the event such construction is not commenced within the allotted time, the Developer shall have the absolute right, at its sole option, to repurchase the lot by repayment of the original purchase price, in cash, with no interest to have accrued thereon. In the event a dwelling is commenced but not completed within the allotted time, the Developer shall have the absolute right, at its sole option, to repurchase the lot for the original purchase price, plus 90% of the fair market value of the partially completed dwelling thereon. If an agreement cannot be reached as to the fair market value thereof, same shall be determined by arbitration by an arbitrator to be appointed by the lot owner, an arbitrator to be appointed by the Developer, and, if necessary, a third arbitrator to be appointed by the first two arbitrators, with a decision of the majority of arbitrators to be binding upon both the Developer and the lot owner. Costs of the arbitration shall be equally shared between the Developer and the lot owner.

14. **OUTDOOR LIGHTING.** All lot owners, upon completion of construction of the residence, shall install in the front area of their lot suitable, Developer-approved, lighting for night illumination of the frontage area of their lot unless adequate street lighting is otherwise provided.
15. **FENCING.** Except as to a fence along the perimeter of the Subdivision that may be constructed by the Developer, no enclosures or fences shall be constructed along or within the borderline of any lot without the written permission of the Developer. The Developer may unilaterally approve fences required by applicable ordinances necessary to enclose outdoor, in-ground swimming pools. No other type of fence shall be constructed on any lot without the written approval of the Developer and all lot owners within the Subdivision owning lots contiguous to the lot which is the site of the proposed fence.
16. **AMENDMENT OF RESTRICTIONS/PLATS.** Until the Developer divests himself of all interest in all lots of the Subdivision, the Developer shall retain the right to amend, modify or annul any of the Restrictions detailed herein or on the Plat of the Subdivision by a written instrument to be recorded in the Office of the Recorder of Deeds, Peoria County, Illinois. Upon the sale of all of the Developer's interest in the Subdivision, these Restrictions may be amended by the affirmative vote of two-thirds of the total lot owners in the Subdivision, with the collective owners of each lot to have one vote in regards to any such issue. However, after the Developer's sale of any lot, no amendment of these Restrictions or the Plat of the Subdivision shall significantly impede or alter the continued development of the Subdivision in accordance with the general intent of the Developer as expressed herein.
17. **ENFORCEMENT OF RESTRICTIONS.** Any lot owner in the Subdivision shall be entitled to prosecute, in any proceeding in law or equity, any owner violating or attempting to violate any of the restrictions or covenants contained herein, to either prevent said owner from committing said violation or to recover damages for such violation.

18. **INVALIDATION OF RESTRICTIONS.** Invalidation of any portion of these Restrictions by judgment or Court order shall not affect any remaining Restrictions, which shall remain in full force and effect and be construed, as closely as possible, with the original intent of the Developer.
19. **CERTIFICATE OF COMPLIANCE.** Upon receipt of a written request by the owner of any lot, plus payment of a reasonable fee if so required, the Developer will issue a Certificate of Compliance stating that the building or buildings on said lot comply with these Restrictions, if such is the fact to the best of the Developer's knowledge. Such Certificate shall be conclusive evidence of satisfactory compliance with these Restrictions, except said Certificate shall not be conclusive as to matters of survey.
20. **LIMITATION OF LIABILITY.** In no event shall any action or inaction by the Developer in regards to the Developer's powers or duties expressed herein constitute or give rise to any liability against the Developer, provided such action or inaction does not constitute fraud or gross negligence.
21. **DETENTION POND.** All lot owners in the Subdivision acknowledge that lot 66A is designated as a detention pond on the plat of the Subdivision. Such lot may not be used for residential construction or recreational purposes, but shall be for erosion control purposes and the control of storm sewer water runoff. It is further acknowledged that after formation of the Homeowner's Association, it is the intent and right of the Developer to deed title to said lot 66A to the Homeowner's Association, with the Homeowner's Association to properly maintain such lot and keep the detention pond and related equipment in proper working order.
22. **ASSIGNMENT OF RIGHTS BY DEVELOPER.** The Developer shall have the right to sell, assign, transfer, or convey the rights of the Developer. Any such transfer shall be in writing and recorded in the office of the Recorder of Deeds, Peoria County. The Developer may, from time to time, appoint a designated agent to act for the Developer, and shall, upon request, furnish satisfactory evidence concerning the appointment and authority of said representative. If all lots in the Subdivision have not been sold at the time of formation of the Homeowners Association, upon the formation of the Homeowners Association and the recording of written authorization from the Developer, all rights, duties, and obligations of the Developer herein contained shall be transferred to such Homeowners Association unless certain rights are specifically retained. The Developer, in such written transfer of rights, duties, and obligations may retain specific rights, including, without limitation, the right to approve construction plans and grant extensions for commencement of construction. Upon the sale of all lots in the Subdivision except lot 66A, such transfer of all such rights, duties and obligations shall be automatic, provided, however, there shall be no transfer of the Developer's right to collect utility deposits.

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II. HOMEOWNERS ASSOCIATION

1. **MEMBERSHIP IN ASSOCIATION.** Upon its formation, all lot owners in the Subdivision shall become members of the DOVER POINTE SECTION TWO HOMEOWNERS ASSOCIATION (hereinafter referred to as the "Association"). Membership in the Association shall run with the land, and any conveyance of an interest to property in the Subdivision shall be deemed a conveyance of the associated membership in the Association.
2. **FORMATION OF ASSOCIATION.** The Association shall be formed the earlier of:
a) the sale of all of the Developer's interest in the Subdivision, or b) the sale of 75% of the total lots in the Subdivision, plus written approval by the Developer for formation of the Association. The Association shall not be deemed formed until written notice of the formation of the Association has been recorded in the Office of the Peoria County Recorder of Deeds and indexed to each lot in the Subdivision.
3. **POWERS AND DUTIES OF ASSOCIATION.** Once formed, the Association shall have the following powers and duties:
 - a. **Litigation.** The Association shall specifically have the authority to bring suit to enforce compliance with any of the restrictions pertaining to the Subdivision in its own name and on its own behalf.
 - b. **Maintenance.** The Association shall be responsible for the care, maintenance, and upkeep of any common areas and entryways of the Subdivision, with said areas to include, without limitation, such areas as may hereinafter be subject to easements in favor of the Developer or the Association for maintenance of Subdivision signs, landscaping, or common areas. After conveyance of title to the Association, the Association shall be responsible for the mowing, maintenance and upkeep of lot 66A. Said lot, and the detention pond and equipment therein, shall be kept in presentable condition and in proper working order.
 - c. **Construction Approval.** Upon written grant of authority from the Developer, the Association shall be responsible for the approval of construction in the Subdivision in accordance with the restrictions and the issuance of certificates of compliance.
 - d. **Assessments.** The Association shall be authorized to assess fees against the lot owners in the Subdivision for the operational costs and projects of the Association in accordance with the guidelines hereinafter established.
 - e. **Ownership of Property.** The Association may own property in its own name. The Association shall accept conveyance of lot 66A from the Developer.

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- f. **Full Powers.** Upon written grant of authority from the Developer, the Association shall have all rights otherwise reserved to the Developer.
4. **ORGANIZATION AND OPERATION OF THE ASSOCIATION.** Once formed, the Association may establish guidelines and by-laws for operation of and membership in the Association. The Association may elect to be organized and operate as a not-for-profit corporation or any other type of legal entity.
5. **INITIAL MEETING AND ORGANIZATION OF ASSOCIATION.** Notice of the initial meeting of the Association shall be provided by the Developer by either the delivery or mailing of notice, regular mail, to each lot owner in the Subdivision, or by the posting of a notice of the meeting in at least three conspicuous locations in the Subdivision at least 14 days prior to the meeting. Any such notice shall detail the date, time and place of the initial meeting of the Association, with said meeting to be held within 45 days of the initial mailing or posting of the notice. If notice is given by posting, said notices shall remain posted for at least 14 days. The Developer may conduct the initial meeting until such time as the first election of trustees. If the Developer should fail to schedule the initial meeting of the Association after such time as when the Association should have been formed, the initial meeting can be scheduled by any individual lot owner in the Subdivision by following the procedures noted herein.
6. **VOTING RIGHTS.** In regards to all Association matters, one vote may be cast by the collective owners of any lot in the Subdivision. Ownership of lot 66A shall not result in a right to cast a vote based on such ownership. In the event any lot has been divided, the respective owners of such divided lot may cast a percentage of one vote, with said percentage to relate to the portion owned of the originally platted lot. Voting in Association matters may be done in person or by written proxy for specific issues, or general proxies provided same, on their face, expire within six months of execution.
7. **ELECTION OF TRUSTEES.** At the initial meeting of the Association, each lot owner shall be entitled to cast one vote for each lot owned for the election of Trustees of the Association. Those three individuals receiving the highest total of votes shall be elected as Trustees of the Association. The Trustees shall have the following rights and duties:
- a. **Budgets.** The Trustees shall formulate a budget based on the estimated annual expenses of the Association for maintenance of common areas and operational costs with a reasonable reserve.
- b. **Assessments.** The Trustees shall provide for the assessment of fees to each lot owner in an amount necessary to provide the funds required pursuant to the budget.
- c. **Employment.** The Trustees shall employ, on behalf of the Association, such maintenance or service personnel as may be required to provide services to the

common areas of the Association, and to employ and retain on behalf of the Association such legal, accounting, or other professional services as may be required by the Association.

- d. **Preparation of By-Laws.** The Trustees shall formulate and propose, as part of the initial organization of the Association, general by-laws and guidelines for the Association.
- e. **Payment.** The Trustees shall pay the bills of the Association and maintain accounts and books and records in accordance with standard accounting practices.

8. **PROVISIONS RELATING TO TRUSTEES.** Unless and until the Association adopts new by-laws, each Trustee shall be elected for a period of two years, provided, however, that the two Trustees receiving the fewest number of votes at the initial meeting of the Association shall be elected for a term of one year, with their successors to be elected for two year terms. The Trustees shall provide for at least an annual meeting of the Association to be held at a reasonable time and place, which meeting shall include the election of new Trustees, with notice of said meeting to be made by delivering or mailing such notice, regular mail, to all lot owners or by conspicuously posting notice of said meeting for 14 days in advance of the meeting in at least three places in the Subdivision. Trustees shall not be entitled to receipt of compensation for their acts as Trustees, nor shall any Trustee receive compensation for professional advice provided to the Association. Absent fraud or gross negligence, no Trustee shall be personally liable for any act or failure to act on behalf of the Association.

9. **ADOPTION OR AMENDMENT OF BY-LAWS.** The Association may adopt or amend the By-laws of the Association upon the affirmative vote of three-fourths of all lot owners in the Subdivision.

10. **ASSESSMENTS.** The Association shall be empowered to assess each individual lot for said lot owner's proportionate share of the budget established by the Trustees. Assessments against each lot in the Subdivision shall be in equal amounts regardless of a lot's size except that no assessment shall be made against lot 66A. Owners of any divided lot shall pay an assessment for such divided lot equal to a standard lot assessment times the proportionate amount of the divided lot owned. Regardless of the budget established by the Trustees, the amount of the annual assessment charged to the lot owners may not exceed the sum of \$150.00 per year, adjusted for inflation, unless the amount of the annual assessment is approved by at least three-fourths of the lot owners in the Subdivision.

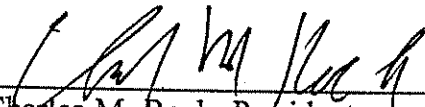
11. **LIENS.** Any amount assessed against an individual lot which remains unpaid thirty days after said assessment becomes due may, at the option of the Association, become a lien against the lot by placing notice of record with the Peoria County Recorder of Deeds. In order to become a valid lien, said lien must be placed of record within two years of the

time said amount claimed became due, with the lien to expire two years after recording of same. Payment of said lien may be enforced by foreclosure of lien, or any other method permitted by law, and the Association may recover reasonable attorney's fees and court costs incurred in recovery of amounts due.

12. **MERGER OF ASSOCIATIONS.** If the Developer shall elect to develop contiguous subdivisions which shall be called subsequent sections of Dover Pointe, upon written demand from the Developer the Association shall merge with the homeowners association for such subdivisions. Absent such written demand, upon receipt of written approval of fifty percent of the lot owners in the Subdivision, the Association may merge with homeowners associations for contiguous subdivisions.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE AFFIXED THEIR SIGNATURES ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

DOVER POINTE ASSOCIATES, INC.

By: 
Charles M. Rock, President

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