

7936 Frederick
Munster 46321

FILED

MAY 6 1991

RETURN TO: GLENN R. PATTERSON, ESQ.
SINGLETON, CRIST, PATTERSON,
AUSTGEN & LYMAN
SUITE 200, 9245 CALUMET AVENUE
MUNSTER, INDIANA 46321

Glenn R. Patterson
AUDITOR LAKE COUNTY

91021407

**FIRST AMENDED AND RESTATED
DECLARATION ESTABLISHING PARTY WALL
AND CREATING PROTECTIVE AND
RESTRICTIVE COVENANTS AND EASEMENTS**

WITNESSETH THIS AMENDED AND RESTATED DECLARATION, made this day by MICHAEL L. POE and GAIL R. POE (herein together the "Declarant").

WHEREAS, there was recorded on March 28, 1991, as Document No. 91014436 in the Office of the Recorder of Lake County, Indiana, that certain Declaration Establishing Party Wall and Creating Protective and Restrictive Covenants and Easements, which had inadvertently omitted therefrom the legal descriptions and common street addresses for Parcel A and Parcel B; and

WHEREAS, it is the intent hereby to correct the above-referenced clerical omission, and to in no way change or modify in any respect, the rights and interests granted and reserved therein;

WHEREAS, Declarant is the owner of the real estate commonly known as 236 Keilman Street, Dyer, Indiana, which real estate is legally described as follows:

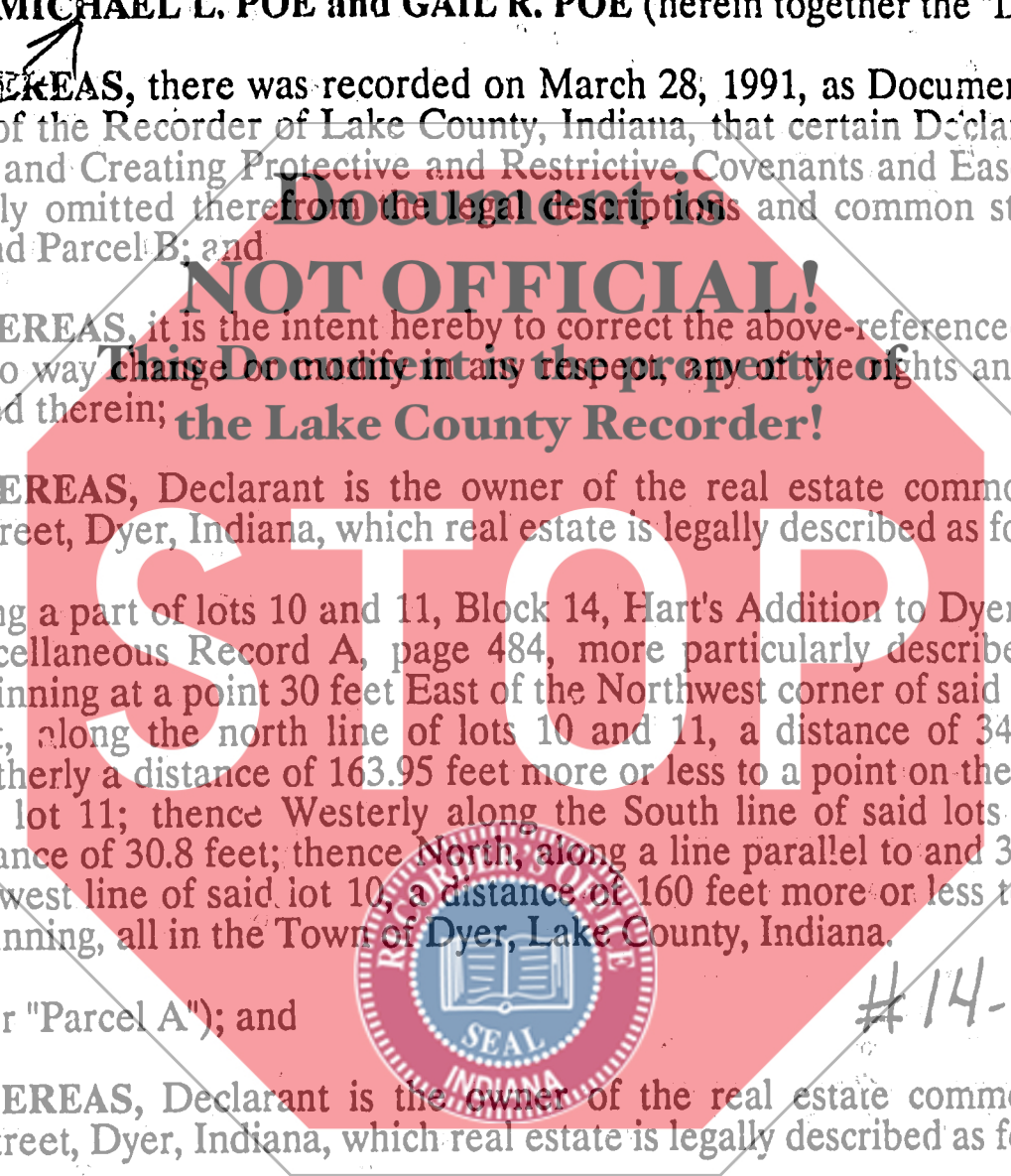
Being a part of lots 10 and 11, Block 14, Hart's Addition to Dyer, as shown in Miscellaneous Record A, page 484, more particularly described as follows: Beginning at a point 30 feet East of the Northwest corner of said lot 10; thence East, along the north line of lots 10 and 11, a distance of 34 feet; thence Southerly a distance of 163.95 feet more or less to a point on the South line of said lot 11; thence Westerly along the South line of said lots 10 and 11, a distance of 30.8 feet; thence North, along a line parallel to and 30 feet East of the west line of said lot 10, a distance of 160 feet more or less to the point of beginning, all in the Town of Dyer, Lake County, Indiana.

(hereinafter "Parcel A"); and

WHEREAS, Declarant is the owner of the real estate commonly known as 238 Keilman Street, Dyer, Indiana, which real estate is legally described as follows:

Being a part of lots 11 and 12 in Hart's Addition to Dyer, as shown in Miscellaneous Record A, page 484 and being more particularly described as follows: Beginning at the Northeast corner of lot 12; thence South, along the East line of said Lot 12, a distance of 175.42 feet more or less, to the Southeast corner of said lot 12; thence Westerly along the South line of lots 12 and 11, a distance of 90.25 feet; thence Northerly, a distance of 163.95 feet more or less to a point on the North line of said lot 11; thence East, along the North line of lots 11 and 12, a distance of 86 feet to the point of beginning, all in the Town of Dyer, Lake County, Indiana.

(hereinafter "Parcel B"), which Parcel A and Parcel B are hereinafter together referred to as the "Parcel(s)" or the "Real Estate"; and



STATE OF INDIANA
LAKE COUNTY

#14-19-12+13

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WHEREAS, the Declarant desires to affirm the establishment of a party wall and the creation of protective and restrictive covenants and easements (hereinafter the "Restrictions") on the Real Estate, for the purpose of maintaining a fair and adequate value of the Real Estate, and to insure that Parcel A and Parcel B will each continue as desirable residential parcels.

NOW, THEREFORE, the undersigned hereby re-declare that the Real Estate shall be improved, held, used, occupied, leased, sold or conveyed subject to the Restrictions, which Restrictions shall run with the land and inure to and pass with the Real Estate, and will apply to and bind the heirs and successors in interest of the Declarant, and which Restrictions, as applicable to Parcel A and Parcel B are hereby re-declared to be imposed as mutual equitable servitudes in favor of the other Parcel, and which Restrictions are set forth in the following Articles:

ARTICLE ONE

DURATION

The Restrictions shall run with the land of the Real Estate and bind the Real Estate for a period of twenty (20) years from the date of recording hereof, after which time the Restrictions shall automatically continue for successive ten (10) year periods, unless, prior to the expiration of any such ten (10) year term, this Declaration is terminated, pursuant to Article Eleven hereof.

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ARTICLE TWO

GENERAL RESTRICTIONS AS TO USE

The Real Estate is presently improved with a duplex dwelling having a common party wall. Such existing dwelling shall be protected, preserved and maintained by the owners in accordance with these Restrictions. Further, the use of Parcel A and the use of Parcel B shall be solely and exclusively limited to that of single family residential use.

ARTICLE THREE

PARTY WALL AND EASEMENTS

A portion of the improvements erected on the Real Estate constitute a common wall and boundary between the Parcels.

The Declarant desires to settle all questions relating to the ownership and use of said common wall and the Declarant does declare said wall to be a party wall and the owner of each Parcel shall have the right to use it jointly. The Declarant does further declare as to said party wall as follows:

- A. No Parcel owner without the prior written consent of the other Parcel owner, shall extend the party wall or use the same in any manner that would impair the use of the same by the other Parcel owner.

- B. In the event it becomes necessary or desirable to repair or rebuild the whole or any part of the party wall, the expense thereof shall be borne equally by the Parcel owners, unless same shall be necessitated by the negligent or willful acts or omissions of one owner, in which event all of the expense thereof shall be borne by such owner.
- C. Any repair or rebuilding of the party wall shall be upon the same location, of the same dimensions, of the same or similar materials of equal quality as that used in the original party wall.

Each Parcel is hereby imposed with a mutual reciprocal easement over or through each Parcel for the benefit of the other Parcel for the following purposes:

- A. Any and all utility services facilities now or hereafter in the future existing, including, but not limited to, utility services for gas, electricity, water, sewer, telephone, communications and security to the extent that any of same are presently located on one Parcel and service the other Parcel.
- B. For the structural support of that portion of the building located on each Parcel.
- C. For the encroachment of more than one-half (1/2) of the party wall over and upon each Parcel, either presently or in the future for any reason, including, but not limited to, any such encroachment arising out of the reconstruction, repair or replacement of the party wall.
- D. For the use by one owner of the storm water sump pump drainage system located on the Parcel of the other owner in the event of the failure for any reason of such owner's own storm water sump pump drainage system, without any claim for the cost of operation, maintenance or repair thereof by the owner of the other Parcel.

ARTICLE FOUR
EXTERIOR BUILDING MAINTENANCE AND PRESERVATION

The owner of each Parcel shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear. Said owners shall, as to the exterior of the residence (including, but not limited to, windows, doors, siding, roofing and driveway and sidewalk pavement), maintain and preserve the design, color scheme and concept of the original construction. Further, the owners shall, as to the exterior portions of the building that require painting or staining, repaint or restain the same at least every five (5) years, unless otherwise agreed upon by such owners. The exterior color scheme shall be maintained in its original state unless the owners agree upon a different scheme.

ARTICLE FIVE
OWNER'S OBLIGATION TO REBUILD

If all or any portion of the improvements on the Real Estate are damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to rebuild, repair or reconstruct in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be

undertaken within two (2) months after the damage occurred and such reconstruction shall be diligently pursued until completed. The proceeds of any casualty insurance payable to the owner or its mortgagee is hereby pledged to be held in trust for the sole purpose of reconstructing the building and shall be used solely for such purpose.

ARTICLE SIX

USE RESTRICTIONS

No sign of any kind shall be displayed to public view except signs advertising the property for sale or rent.

No animals, livestock or poultry of any kind shall be raised, bred, or kept on the Real Estate, except for ordinary house pets.

No rubbish, trash or garbage, or other waste materials shall be kept or permitted on the Real Estate except in sanitary containers located in appropriate areas concealed from public view.

No trailers, tents, shacks, boats or recreational vehicles shall be stored on the Real Estate unless the same are stored wholly within the confines of the existing garages.

Each residence shall be occupied by not more than four (4) persons.

ARTICLE SEVEN

INSURANCE

Each owner shall hold harmless the other owner from all claims or judgments arising from the use of those areas shared by the owners, unless the claim, demand or judgment is caused by the negligence of that other owner. Further, each owner shall maintain all risk insurance for the full replacement cost as to the residence owned. Evidence of such insurance in the form of a Certificate of Insurance shall be furnished to the other owner upon written request.

ARTICLE EIGHT

RIGHT OF FIRST REFUSAL

In the event that the owner of either Parcel shall receive from any third party a bona fide offer to purchase the Parcel owned by such owner and described herein at a price on terms acceptable to such owner, such owner shall give written notice of such price and terms to the other owner and such other owner shall have ten (10) days thereafter in which to execute a written agreement for the purchase of such Parcel at such price and on such terms as contained in said bona fide offer. If the owner after notification shall fail to execute such agreement within such ten (10) day period, the selling owner shall thereafter be free to sell such Parcel to the third party making the offer on the same terms and conditions set forth in such offer and if such Parcel is so sold to such third party then all rights of the other owner under this Article shall forthwith terminate. If such Parcel is not sold to the third party making the offer, then the right of first refusal shall revive and shall be effective as to any subsequent bona fide offer from any third party.

ARTICLE NINE

ARBITRATION

Except as provided in Article Ten, any dispute, controversy or disagreement arising out of or related to this Declaration shall be resolved by the submission of same to arbitration under the rules and regulations of the American Arbitration Association. Any owner of a Parcel may notify the other of its desire to arbitrate, and if within ten (10) days after written notice of such desire to arbitrate is served upon the other owner, the owners have not agreed upon an impartial arbitrator, either or both owners may ask the American Arbitration Association to submit a list of five (5) persons eligible to serve as arbitrators. If within ten (10) days from the receipt of such list, the owners have not agreed on a single arbitrator from such list, such arbitrator shall be appointed by the American Arbitration Association. The arbitrator's decision shall be final and binding upon all owners, and there shall be no appeal of said decision except as may be allowed by Indiana law. The costs of such arbitration shall be shared equally by the owners unless the arbitrator shall specifically find that the conduct of the losing owner was arbitrary and unreasonable in which event the entire cost of the arbitration may be assessed against such owner.

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In the event of any violation or threatened violation by any person of any of the Restrictions the result of which would be to cause irreparable damage and are of an emergency nature, the owners of either Parcel, or their respective successors or assigns will have in addition to the right of arbitration provided in Article Nine the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the alleged violation will be given twenty-four (24) hours prior to commencing action to the owner allegedly responsible for such violation or threatened violation.

ARTICLE ELEVEN

TERMINATION AND MODIFICATION

This Declaration and the Restrictions contained hereby may be terminated, extended, modified or amended only with the unanimous consent of all persons owning an interest in the fee simple title to the Real Estate and all mortgages of record on the title to the Real Estate.

No termination, extension, modification or amendment will be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded in the office of the Recorder of Lake County, Indiana, by the foregoing described persons.

ARTICLE TWELVE

NOTICES

All notices, statements, demands, approval or other communication to be given under or pursuant to this Declaration will be in writing, addressed to the respective Parcel addresses set forth above, and will be delivered in person, or by certified mail, return receipt requested, postage prepaid, or by telegram or cable charges prepaid.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the _____ day of _____, 1991.

Michael L. Poe
MICHAEL L. POE

Gail R. Poe
GAIL R. POE

STATE OF INDIANA }
COUNTY OF LAKE } SS:

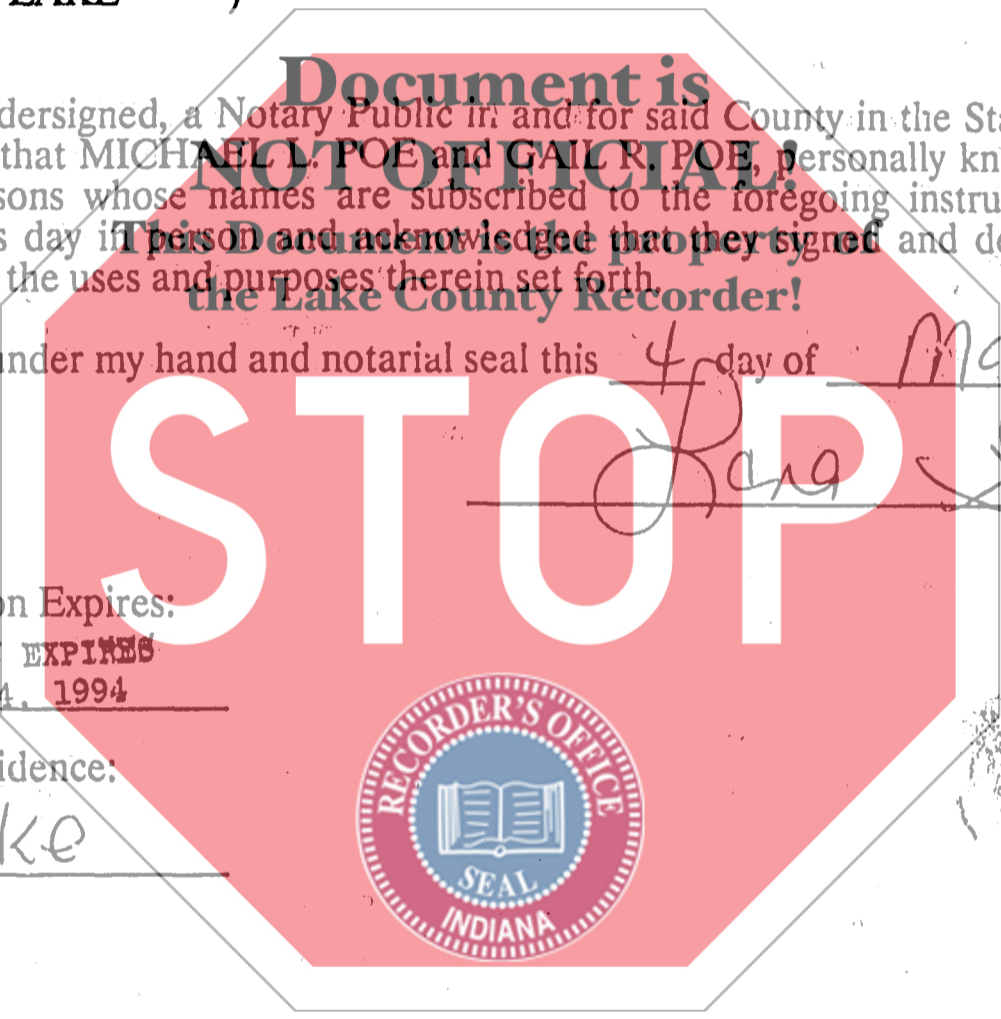
The undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that MICHAEL L. POE and GAIL R. POE, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument for the uses and purposes therein set forth.

Given under my hand and notarial seal this 4 day of May, 1991.

Lana R. [Signature]
Notary Public

My Commission Expires:
MY COMMISSION EXPIRES
SEPTEMBER 14, 1994

County of Residence:
LAKE



This Instrument prepared by Glenn R. Patterson, Esq., Singleton, Crist, Patterson, Austgen & Lyman, Suite 200, 9245 Calumet Avenue, Munster, Indiana 46321

WHEREAS, the Declarant desires to affirm the establishment of a party wall and the creation of protective and restrictive covenants and easements, (hereinafter the "Restrictions") on the Real Estate, for the purpose of maintaining a fair and adequate value of the Real Estate, and to insure that Parcel A and Parcel B will each continue as desirable residential parcels.

NOW, THEREFORE, the undersigned hereby re-declare that the Real Estate shall be improved, held, used, occupied, leased, sold or conveyed subject to the Restrictions, which Restrictions shall run with the land and inure to and pass with the Real Estate, and will apply to and bind the heirs and successors in interest of the Declarant, and which Restrictions, as applicable to Parcel A and Parcel B are hereby re-declared to be imposed as mutual equitable servitudes in favor of the other Parcel, and which Restrictions are set forth in the following Articles:

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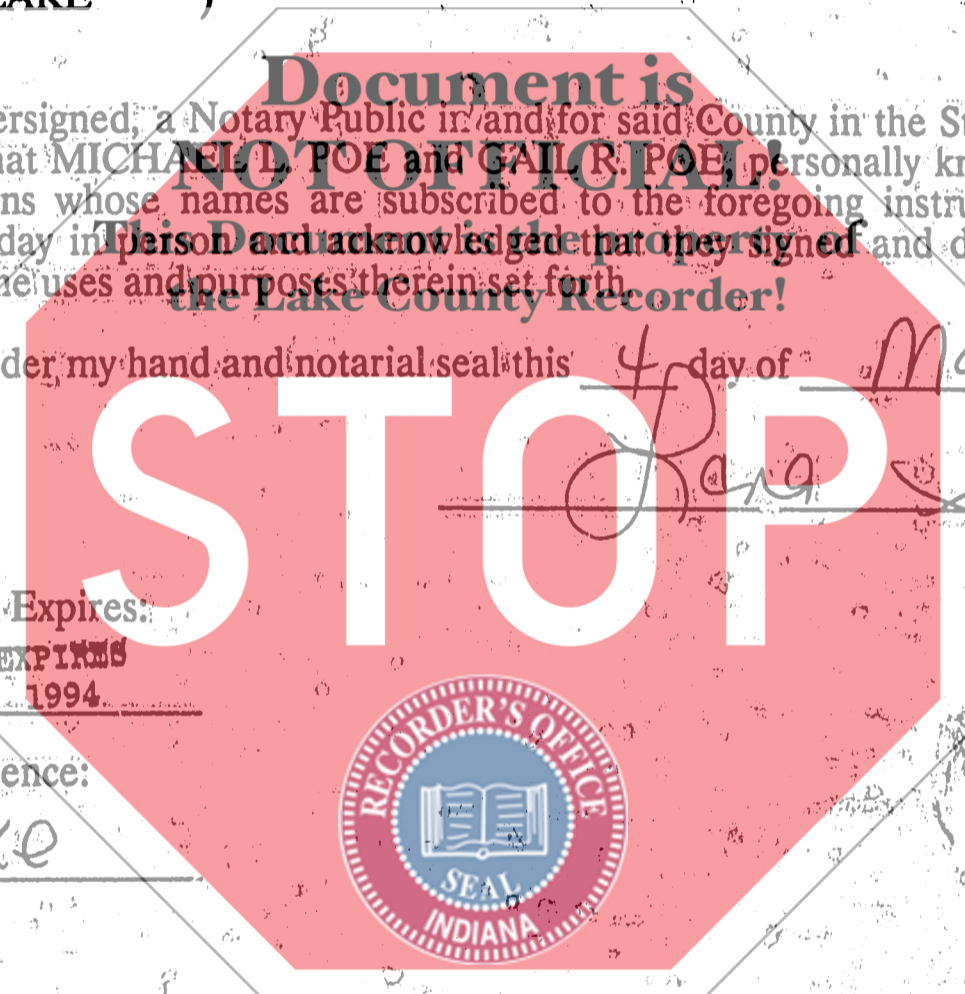
Michael L Poe
MICHAEL L. POE

Gail R Poe
GAIL R. POE

STATE OF INDIANA }
COUNTY OF LAKE } SS:

The undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that MICHAEL L. POE and GAIL R. POE, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument for the uses and purposes therein set forth.

Given under my hand and notarial seal this 4 day of May, 1991.



Rena R. [Signature]
Notary Public

My Commission Expires:
MY COMMISSION EXPIRES
SEPTEMBER 14, 1994

County of Residence:
Lake

This Instrument prepared by Glenn R. Patterson, Esq., Singleton, Crist, Patterson, Austgen & Lyman, Suite 200, 9245 Calumet Avenue, Munster, Indiana 46321