

2004
11/17
10/16/04

Covenants and Restrictions of Wareham's Pond

200400004783
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HANVEND
01-21-2004 02:14 PM
DEC CIV RES 31.00

The undersigned, Beacon Development, Inc., owner of the real estate shown and described herein, does hereby certify that it has laid off, platted and subdivided and does hereby lay off, plat and subdivide, said real estate in accordance with the within plat, Beacon Development, Inc., shall be referred to as the Declarant. The following restrictions, limitations and covenants are hereby imposed upon and shall run with the land contained in such plat. This subdivision shall be known and designated as Wareham's Pond subdivision in Hamilton County, Indiana. All streets shown and not heretofore dedicated are hereby dedicated to the public.

There shall be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Wareham's Pond Community Association, Inc." which shall be referred to as the Association. All lot owners within Wareham's Pond Subdivision shall be members of the Association.

(I) The general purpose of the Association shall be to provide a means to maintain, repair and/or replace the area within the Subdivision for the purpose of storage of storm water designated as the Retention Area including storm sewer easements, as well as to provide a means to maintain, repair and/or replace entrance signs, fountain, irrigation system, street lights, Green Space Common Area and Landscape Basements. Common Area and Green Space means the drainage system, the Lakes, roadway pavers to the extent not maintained by public authority, any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one lot, and any areas of land shown on the plat, described in any recorded instrument prepared by owner or it's agents or conveyed to or acquired by the corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, the owners of lots.

(II) The Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy a uniform annual charge or assessment against the lots in the Subdivision as well as collecting and disbursing the assessment and charges.

(III) The Board of Directors of the Association shall fix the amount of the annual charge by the first day of January of each year, and written notice of the charge so fixed shall be sent to each member. The annual assessments may be increased each year not more than 5% above the assessments permitted for the previous year, on a cumulative basis, without a vote of membership. The annual assessments may be increased by more than 5% above the assessments permitted for the previous year by a vote of two-third (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby. The Board of Directors shall establish the dates the General Assessment shall become due and the manner at which it shall be paid.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, or maintenance of the Green Space Common Area and Landscape Easement, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Lot owners will be responsible for mowing the Landscape Easement on their lot. The Association will maintain all plant materials in the Landscape Easements and Common Areas.

Creation of the Lien and Personal Obligation of Assessments. Developer hereby covenants, and each owner of any lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (1) General Assessments, and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Notwithstanding anything contained in this section or elsewhere in this declaration, any sale or transfer of a residence unit or lot to a mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments which became due prior to such sale, transfer or conveyance, provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the residence unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter becoming due or from the lien therefor.

Limitations on Assessments Owed by Declarant. Notwithstanding anything to the contrary contained herein, the Declarant shall not be obligated to pay as to any and all Lots owned by it from time to time any assessments (whether regular annual assessments or special assessments) payable hereunder by Owners. Builder shall only be responsible for any assessments (whether regular annual assessments or special assessments) payable under the terms of contract with Declarant. The General Assessment shall commence with respect to assessable lots on the first day of the month following conveyance of the first lot to any Lot Owner who is not the Declarant or builder. The initial assessment on any assessable lot shall be adjusted according to the number of whole months remaining in the assessment year.

(IV) Any assessment not paid within 30 days after the due date may upon resolution by the board of directors bear interest from the due date at a percentage rate not greater than the current statutory maximum annual interest rate, to be set by the board of directors for each assessment year. The charges or assessments levied by the Association shall be used exclusively for the purpose of maintaining the Retention Area and Community Areas as set forth under Section (I).

The Declarant of the herein described real estate shall convey title to the Lakes and Common Areas to the Wareham's Pond Community Association, Inc. Each owner of a lot that abuts the Lakes shall be responsible at all times for maintaining so much of the bank of the Lakes above the pool level as constitutes a part of or abuts his lot and shall keep that portion of the Lakes abutting his lot free of debris and otherwise in reasonably clean condition.

No boats shall be permitted upon any part of the Lakes and no dock, pier, wall or other structure may be extended into the Lakes without prior written consent of the Board of Directors and such governmental authority as may have jurisdiction thereof. No swimming will be permitted in the Lakes except if and to the extent authorized by the Board of Directors. Each owner of a lot abutting the Lakes shall indemnify and hold harmless the Declarant, the Association and each other Owner against all loss or damage incurred as a result of injury to any person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Lakes by any Person who gains access thereto from, over or across such Owners Lot.

The Declarant shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lakes or the proximity of a Lot thereto, including loss or damage from erosion.

The Homeowner's Association shall maintain the entryways, the landscape easements, street lights, Green Space and all improvements and plantings thereon, and the maintenance costs thereof shall be assessed as a General Assessment against all lots. Grass, trees, shrubs and other plantings located on an entryway, Green Space or a landscaping easement shall be kept neatly cut, cultivated or trimmed as reasonable required to maintain an attractive entrance to Wareham's Pond or a part thereof or a planting area within Wareham's Pond. All entrance signs located on an entryway shall be maintained at all times in good condition appropriate to a first class residential subdivision.

To the extent not maintained by public authority, the Community Association shall maintain the roadway pavers and the maintenance cost thereof shall be assessed as a General Assessment against all lots.

Wareham's Pond Community Association, Inc. / Each Lot Owner shall automatically be a member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a person would realize upon his security and become a Lot Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Lot Owners, including those provisions with respect to the payment of Assessments. The Corporation shall have two classes of members.

CLASS A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class membership, and be entitled to one (1) vote for each lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. 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. There can be no split vote. Prior to or at

the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

CLASS B members shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each lot owned by them or it and five (5) votes for each single numbered parcel of land shown upon and identified as a lot on any recorded plat of the Real Estate.

The Class B membership shall terminate upon the first to occur of (a) resignation of the Class B member and written resignation of the Class B members as such is delivered to the resident agent of the Association; or (b) when all of the development area has been developed into lots and all such lots have been sold. Declarant shall each be entitled to one (1) Class A membership for each Lot of which it is an Owner on or after the termination of the Class B membership.

Unless the Class B member and at least two-thirds of the Class A members have given their prior written approval, the Association, the Board of Directors and the Declarant may not change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a residence by an act or omission change, waive or abandon any scheme of regulations or enforcement pertaining to the architectural design or the exterior appearance of the residences or maintenance and upkeep of the community area.

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veteran's Administration: Annexation of additional properties, dedication of the Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Front and side yard buildings setback lines are hereby established as shown on this plat, between which lines and the property lines of the street, there shall be erected or maintained no building or structure.

There are strips of ground shown on this plat and marked Drainage, Utility and/or Landscape Easements, reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, and landscaping subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures or fences are to be erected or maintained upon said strips of land, but Owners of lots in this subdivision shall take their titles subject to the rights of public utilities.

LAND USE. Lots may be used only for residential purposes as provided in the Declaration of Covenants and Restrictions. No portion of any lot may be sold or subdivided such that there will be thereby a greater number of houses in a Section than the number of original Lots shown on a Plat of such Section.

DEVELOPMENT REQUIREMENTS Street lights shall be placed in Wareham's Pond. The maintenance, operation and/or replacement of such lights is the responsibility of the Wareham's Pond Community Association. The building setback line shall be 20 feet. Streets in the subdivision shall have a width of 30 feet from back of curb to back of curb with 26 feet of pavement.

LOT DEVELOPMENT PLANS. Prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board. The Architectural Review Board may require as part of a Lot Development Plan, a report of a subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed Residence.

SIZE OF RESIDENCE. Except as otherwise provided herein, no residence may be constructed on any lot unless such Residence, exclusive on open porches, attached garage and basements, shall have a total floor area of 1,200 square feet.

BUILDING LOCATION AND FINISHED FLOOR ELEVATION. No building may be erected between the building line shown on a Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than ten (10) feet from another building or nearer than twenty (20) or thirty (30) feet to the rear Lot line whichever applies. A minimum finished floor elevation, shown on the development plan for each Section, has been established for each Lot and no finished floor elevation shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations.

DRAINAGE. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provide on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by Drainage Board. In such event, each Lot in the Parcel will be subjected to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade or surrounding Lots.

EXTERIOR LIGHTS. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

ELECTRIC BUG KILLERS. Electric bug killers, "Zapper" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other owners and shall only be operated when outside activities require the use thereof and not continuously.

ASSESSMENTS. The Board of Directors may make Assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity that is the responsibility of the Owner of a lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance of other activity.

FENCING. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Basement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Utility or Drainage Basement. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, and including limitations (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lakes. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line.

No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

No structure in this subdivision, without special approval from the Developer shall exceed two and one-half (2 1/2) stories or Thirty-Two (32) feet in height measured from finished grade to the underside of the eve line, and no structure other than an open porch shall be erected between the building line as designated on the plat and the property line of the street.

No boat, trailer, or camper of any kind (including but not in limitation thereof, house trailers, camping trailers, or boat trailers), or any disabled vehicle shall be kept or parked on any lot except within a garage or other approved structure. There shall be no continuous or permanent on-street parking within the project.

No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location of such building have been approved as to the conformity and harmony of external design with existing structures herein and as to the building with respect to topography and finished ground elevation by Developer or by their duly authorized representatives. If the Developer fails to act upon any plans submitted to it for its approval within a period of fifteen (15) days from the submission date of the same, the owner may proceed then with the building according to the plans as approved. Neither

Developer nor the designated representatives shall be entitled to any compensation for review of the plan pursuant to this paragraph. RH of Indiana, LP, the only approved builder in Wareham's Pond and who has contracted to purchase 161 lots, has submitted 8 floor plans and they have been approved by the developer and RH of Indiana is hereby exemplified from this paragraph.

The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the individual homeowner and/or a homeowner's association.

No satellite dishes greater than 24" in diameter are allowed in this subdivision. Satellite dishes 24" or less in diameter must be approved by the Architectural Review Board. No solar panels shall be permitted in subdivision without association approval. All mailboxes and mailbox posts shall be uniform in nature and be selected and installed by the builder. Geo-thermal heat pumps shall be of the closed loop type only.

No noxious, unlawful, or other offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

NATURE TRAIL. Declarant will install the Path at the approximate location depicted on the General Plan of Development. The Association shall operate and maintain the Path and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots. The Board of Directors may adopt such rules and regulations with respect to the use thereof as it may deem appropriate including but not limited to the prohibition of the use of the Path by bicycles, skateboards and motorized or non-motorized vehicles.

USE OF LOTS DURING DEVELOPMENT BY DECLARANT. Notwithstanding any provisions to the contrary herein or in any other instrument or agreement, Declarant of its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales Offices, during the period that it is engaged in the sale of lots in Wareham's Pond.

BY BUILDERS. Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Wareham's Pond may with the prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Director for such reasonable period as the Board of Directors may specify.

No animals, livestock, or poultry of any description shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for commercial purposes.

Builder will be required to install, or have installed, one electric light on the front elevation of

the house.

No lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and shall not be kept, except in sanitary containers. Trash shall not be burned in this subdivision.

Lot owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plans of Wareham's Pond.

It shall be the duty of the owner of each lot in the subdivision to keep the grass on the lot properly cut and to keep the lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so then the Developer may take such action as it deems appropriate in order to make the lot neat and attractive and the owner shall upon demand reimburse Developer for the expense incurred in so doing.

INSURANCE. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are the Common Expenses included in the Common Assessments made by the Association.

REPLACEMENT OR REPAIR OF PROPERTY. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such lot owner.

The foregoing covenants (or restrictions) are to run with the land and shall be binding on all parties and all persons claiming under them for a period of Twenty-five (25) years from the date of this plat, at which time said covenants, (or restrictions) shall be automatically extended for successive periods of Ten (10) years unless changed by vote of a majority of the then owners of the buildings covered by these covenants, or restrictions, in whole or in part.

Invalidation of any one of the foregoing covenants or restrictions, by judgment or court order shall in no way affect any of the other covenants or restrictions, which shall remain in full force and effect.

NON-LIABILITY OF DECLARANT. Declarant shall have no duties, obligations or liabilities

hereunder except such as are expressly assumed by Declarant, and no duty or, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, of any structure or part thereof erected, or maintained in violation hereof, is hereby dedicated to the public, and reserved to the several owners of the several lots in this subdivision and to their heirs and assigns.

Notwithstanding anything hereinabove to the contrary:

1. Annexation. Declarant shall have the right, from time to time, to subject additional real estate to the scheme of these covenants and plat whereupon such additional real estate shall become a part of Wareham's Pond Subdivision; provided, that such additional real estate is adjacent to the real estate referred to herein; provided, further, that no such addition shall be effective unless and until a supplement hereto is executed by Declarant and recorded in the Office of the Recorder of Hamilton County Indiana. Such annexation shall not require any approvals from or any other action of the lot owners or any other persons with an interest in the Subdivision.

2. Lakes. There shall be no swimming, skating, boating, fishing, in or on, or other recreational use of any lakes, pond, creek, ditch or stream within the Subdivision. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water within the Subdivision.

3. Professional Management. Declarant and/or the Association shall have the right to contract or agree with third parties and/or affiliates for professional management of the Association; provided, that no such contract or agreement shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination penalty, on written notice as provided therein, but in any event, with at least ninety (90) days prior written notice.

4. Architectural Review Committee. There shall be, and hereby is, created and established an Architectural Review Committee to perform all architectural review functions contemplated hereunder. The Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Declarant who shall be subject to removal by Declarant at any time with or without cause until the Class B votes are converted to Class A votes hereunder (the "Development Period"). After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The three persons appointed by the Board of Directors to the Architectural Review Committee shall consist of owners of lots but need not be members of the Board of Directors. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee upon a majority vote of the members of the Board of Directors.

5. Amendments.

5.1. By the Association. Except as otherwise provided hereunder, amendments hereto shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than ninety percent (90%) in the aggregate of all votes entitled to be cast by all Owners if the proposed amendment is considered and voted upon on or before twenty (20) years after the date hereof, and not less than seventy-five percent (75%) of such votes if the proposed amendment is considered and voted on after twenty (20) years from the date hereof. In any case, provided, however, that any such amendment shall require the prior written approval of Declarant so long as Declarant or any entity related to Declarant owns any Lot or Residence Unit within the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner provided the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions hereof. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication or mortgaging of Common Area, and amendment hereof.

(v) Mortgagees' Vote on Special Amendments. No amendments hereto shall be adopted which changes any provision hereunder which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103 (d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions hereof.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no

Mortgagee so notified objects to such proposed amendment within thirty (30) days after the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

5.2 By the Declarant. Declarant hereby reserves the right, so long as Declarant or any entity related to Declarant owns any Lot or Residence Unit within and upon the Real Estate, to make any technical amendments hereto, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant, including without limitation: to bring Declarant or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors herein or any amendment or supplement hereto; provided, however, that in no event shall Declarant be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted hereunder to any Owner or substantially increases the obligations imposed hereunder on any Owner.

6. Recording. Each amendment hereto need be executed only by Declarant in any case where Declarant has the right to amend this Declaration pursuant to Paragraph 5.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Declarant pursuant to Paragraph 5.1(iv) shall contain Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and no amendment shall become effective until so recorded.

7. Animals. Without the written approval of the Architectural Review Committee: no animals of any type shall be housed outside of the interior of homes within the Subdivision with the effect, among other things, that no doghouses, dog pens and/or other animals facilities similar thereto shall be permitted outside of homes within the Subdivision.

8. Vehicle Parking. No vehicles shall park within any of the streets within the Subdivision except on an occasional and infrequent basis. No more than two (2) otherwise permitted vehicles shall be kept or parked outside of the garage area of homes except on an occasional and infrequent basis. Compliance with the covenants set forth in this paragraph shall be at the sole and absolute discretion of the Association.

(the next page is the signature page hereto)

OWNER and SUBDIVIDER - Beacon Development, Inc., Jennifer Shea, Vice-President

by Jennifer Shea Jennifer Shea

State of Indiana) ss: County of Hamilton) Before me, the undersigned, & Notary Public, in and for said County and State, personally appeared Jennifer Shea, Vice-President of Beacon Development, Inc., who acknowledged the execution of the foregoing instrument as their voluntary act and deed for the purposes therein expressed.

Witness my hand and Notarial Seal this 21st day of January 2004. Notary Public of

Peter Shattuck My Commission expires 7-22-2008. County Hamilton

This instrument prepared by Beacon Development, Inc.,

Jennifer Shea
Jennifer Shea

Jennifer J Hayden
HAMILTON County Recorder IN
IN 200607106 AMD
12/28/2006 16:04:52 1 PGS
Filing Fee: \$13.00

*1600
10092002*

AMENDMENT TO
COVENANTS AND RESTRICTIONS OF WAREHAM'S POND

In the Covenants and Restrictions of Wareham's Pond, recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number #200400004783, the following sentence is to be struck from the instrument:

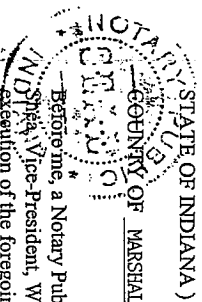
"RH of Indiana, LP, the only approved builder in Wareham's Pond and who has contracted to purchase 161 lots, has submitted 8 floor plans and they have been approved by the developer and RH of Indiana is hereby exemplified from this paragraph."

The following sentences are to be added to the instrument:

"Any builder in Wareham's Pond who has contracted to purchase lot(s) must submit its floor plan(s) to the developer. Upon the plan(s)' approval, the builder is hereby exempt from this paragraph."

Wareham's Pond Community Association

Jennifer Stief
Jennifer Stief
Vice-President



_____) SS:

—Before me, a Notary Public in and for said County and State, personally appeared Jennifer Stief, Vice-President, Wareham's Pond Community Association, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and notorial seal this 20 day of December, 2006.

My Commission Expires: 6/4/14

Amy Sustaita
NOTARY PUBLIC
AMY SUSTAITA

A resident of Stark County
Printed Name _____

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law

Jennifer Shea
Jennifer Shea

This Instrument was prepared by Beacon Development, Inc., P.O. Box 517, Westfield, IN 46074.