

COPY

1206015374
RECORDED
03/22/2006 11:06:39
RECORDS
PATRICIA J CRICK
ALLEN COUNTY, IN 8552
Receipt No.
DCFD 3.00
TOSP 2.00
MISL 12.00
MISL 1.00
Total 18.00

FIRST AMENDMENT OF DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO THE PLAT OF THE VILLAS AT FOXWOOD , A SUBDIVISION IN ST. JOSEPH TOWNSHIP, ALLEN COUNTY, INDIANA

This Amended Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended To the Plat of The Villas at Foxwood, a Subdivision in St. Joseph Township, Allen County, Indiana, is made and entered into as of the 15th day of February, 2006, by Somers Land Development, LLC an Indiana limited liability company (the "Developer") by Glenn Conkling, its Managing Member, declares that it originally platted as the Developer the real estate shown and legally described in this plat ("Real Estate"), which original plat was recorded in Plat Cabinet F page 43 and Document No. 204088790 in the Office of the Recorder of Allen County, Indiana. The Developer is currently the owner of a majority of the Lots in the originally platted subdivision, which was designated and known as The Villas at Foxwood a Subdivision in St. Joseph Township, Allen County, Indiana (the "Subdivision"). Pursuant to the power of amendment of the Plat and the Covenants reserved in the Developer, as set forth in the original Covenants in Section 13.18, Sections 13.5, 13.6 and 14 of the original recorded Plat and Covenants is hereby deleted and replaced with the new Sections 13.5, 13.6 and 14, and henceforth, the Real Estate shall be subject to all of the terms and conditions of this First Amendment.

The Lots shall be subject to and impressed with the covenants, limitations, easements and restrictions hereinafter set forth. The provisions herein contained shall run with the land and shall inure to the benefit of the Owners of the Lots and the land included therein, and their respective legal representatives, successors, grantees, heirs and assigns.

13.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No Owner shall erect on a Lot, or grant to any person, firm or corporation the right, license, or privilege to erect or use, or permit the use of, overhead wires, cable, poles or overhead facilities of any kind for any utility service or for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing contained in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot that constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.

13.6 Surface Drainage and Surface Drainage Easements.

13.6.1 Easements Reserved by Developer. Easements for the installation,

AUDITORS OFFICE
Duty entered for taxation. Subject
to final acceptance for transfer.

MAR 22 2006

Shirley E. Shaw
AUDITOR OF ALLEN COUNTY 4372

maintenance, repair and removal of public and/or quasi-public utilities and sewer and drainage facilities, and floodway easements are reserved by Developer over, under and across the Subdivision, as shown on the recorded Plat thereof. Full ingress and egress shall be had by Developer at all times over the Subdivision for the installation, operations, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easements, or with the use, maintenance, operation or installation of such utility. The grade of the land in any such easement shall not be changed or altered by any Owner of any Lot, after the said grade has been established, without the approval of the Developer. All utility easements as dedicated on the Plat shall be left free from all permanent structures and the removal of any obstructions, whether temporary or permanent, shall be subject to the paramount right of the utility and/or sewer installation. Developer shall have the right to assign and transfer the easements and rights herein reserved to or for the benefit of any public or quasi-public utility. The Allen County Surveyor or any other proper public authority having jurisdiction over storm drainage, shall have the right to determine if any obstruction or interference exists with respect to any drainage easement, and shall have the right, but not the obligation, to repair and maintain, or to require the Lot Owner to perform such repair and maintenance, as shall be necessary for the drainage easements and drainage facilities to perform their intended functions.

13.6.2 Surface drainage easements as shown in the Plat are intended for periodic or occasional use as conductors for the flow of surface water and shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Developer, the Association, or a proper public authority having jurisdiction over storm drainage shall have the right to repair and maintain such easements, or to require such repair and maintenance to be properly performed by the Lot Owner at the Lot Owner's expense as shall be reasonably necessary to keep the conductors unobstructed and at the proper grade.

13.6.3 Each Lot is served by a sanitary sewer that is connected to and discharges into the sanitary sewer system of the City of Fort Wayne (the "City"). The City, by ordinance, regulation or resolution (collectively the "Enforcement Laws"), prohibits the discharge of storm water of any kind or nature whatsoever into the sanitary sewer system, and prohibits the connection of any sump pump into the sanitary sewer serving the Lot. Any sump pump, down spout, drain or any other conductor that discharges storm water must be connected to a drainage outfall pipe (hereinafter the "Outfall") so that it does not discharge storm water into the sanitary sewer. Each Lot Owner covenants and agrees to permit the City, the Developer, or any other entity that has the legal authority by law, contract or otherwise to enforce the Enforcement Laws, including any of their agents or representatives (collectively the "Enforcement Entities") to inspect all aspects of the installation of the Outfall, and to verify and confirm that the Outfall in no way discharges storm water into the sanitary sewer which serves the Real Estate. The Enforcement Entities are granted a license to enter upon and inspect the Lot and any improvements located thereon for the purpose of inspecting and verifying compliance with the foregoing. The Lot Owner agrees that there is no adequate remedy at law or in equity as relates to the proper installation and maintenance of the Outfall, and, therefore, the Enforcement Entities shall each have the right of specific performance against the Lot Owner, and its successors and assigns in interest, to require the proper installation and maintenance of the Outfall and inspections thereof. In the event a Lot Owner should fail to install an Outfall, or improperly installs an Outfall, then the Enforcement Entities shall each have the right, but not the obligation, to enter upon the Lot, install the Outfall, or perform the repair and maintenance, and to recover all of their costs, expenses and attorney fees. The Enforcement Entities shall each have the right to claim a lien upon the Lot, and to recover personally from the Lot Owner, for all of their costs, expenses and attorney fees incurred as a result of any default or breach of this covenant, but any such lien shall always be subject and subordinate to any duly recorded first mortgage on the Lot, and the lien shall not become effective against bona fide purchasers for value without notice thereof, unless and until duly recorded in the Allen County Recorder's Office.

Section 14. CLUB MEMBERSHIP, OPERATING FUND ASSESSMENT. There are plans for the construction of a bathroom and swimming pool within Foxwood, which facilities will be owned and operated by The Communities of Foxwood Association Inc., and which will be available exclusively (except as set forth in 14.1 thereof) for use by the Members of the The Communities of Foxwood Association Inc.. Upon the substantial completion and issuance of a

certificate of occupancy for the bathhouse and swimming pool The Communities of Foxwood Association Inc., through its Board of Directors, shall establish a Club Operating Fund.

14.1 All Lot Owners in The Villas at Foxwood and all Lot Owners in Chapman's Bridge shall be entitled, at their option, to membership and usage of the bathhouse and swimming pool, and shall pay as a part of such membership the same Club Assessment as the The Communities of Foxwood Association Inc.. Members. Such Club Assessment shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of Owner of such Lot, and may be collected in accordance with the provisions of this section.

14.2 All Lot Owners within Foxwood (including all existing and future sections), The Forest at Foxwood (including all existing and future sections), The Villas at Foxwood, and Lot Owners in Chapman's Bridge that elect to be a member pursuant to Section 14.1 above, shall be charged a Club Assessment, with respect to the operation and maintenance of said facilities. .

14.3 Except for the first annual Club Assessment, the due date for subsequent Club Assessments shall be established by the Board of Directors of the The Communities of Foxwood Association Inc.. All Club Assessments shall be determined by and paid to the The Communities of Foxwood Association Inc., and the The Communities of Foxwood Association Inc., shall be responsible for carrying out the purposes of such Club Assessments. All members shall be subject to all rules and regulations governing Membership and use as may be established by The Communities of Foxwood Association Inc., from time to time.

14.4 The amount of the initial annual Club Assessment shall be not less than \$250.00, nor more than \$300.00.

14.4.1 Commencing prior to the substantial completion of the bathhouse and swimming pool, the Board of Directors of The Communities of Foxwood Association Inc., shall establish a budget for the fiscal year and shall determine therefrom the annual Club Assessment for each Lot required to meet said budget. Such budget and Club Assessment for each fiscal year shall be established by the Board of Directors of The Communities of Foxwood Association Inc.. The Board of Directors shall mail to all The Communities of Foxwood Association Inc., members a copy of a proposed budget and notice of the proposed Club Assessment.

14.4.2 The Club Operating Fund shall be used exclusively for the purpose of operating and maintaining said bathhouse and swimming pool as well as all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Board of Directors of The Communities of Foxwood Association Inc..

IN WITNESS WHEREOF, Somerset Land Development, LLC an Indiana limited liability company, by its duly authorized Managing Member, Glenn Conkling, Owner of the Real Estate has signed this document on this 15th day of February, 2006.

Developer
Somerset Land Development, LLC



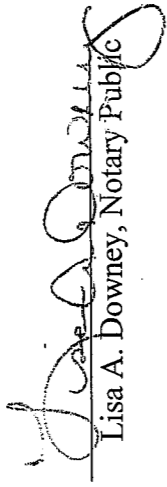
By: Glenn Conkling
its, Managing Member

STATE OF INDIANA)
)§
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 15th day of February, 2006, personally appeared Glenn Conkling, known to me to be the duly authorized Managing Member of Somerset Land Development, LLC, and acknowledged the execution of the above and foregoing as his voluntary act and deed and on behalf of said corporation for the purposes and uses set forth in this document.

Witness my hand and notarial seal.

My Commission Expires:
November 04, 2011


Lisa A. Downey, Notary Public

This instrument was prepared by Lisa Downey