

INSTR. # 89 09840

8909840

COPY

COVENANTS AND RESTRICTIONS OF BEACON POINT

The undersigned, Beacon Point Inc., an Indiana Corporation, by Roger L. Kessler, its President, as contract purchaser of the real estate described in the Plat of Beacon Point, does hereby lay off, plat, and subdivide the same in accordance with the foregoing Plat of Beacon Point.

ARTICLE 1. GENERAL

1.1. Street Dedication. The streets shown and not heretofore dedicated are hereby dedicated to the public.

1.2. Single-Family Lots. Beacon Point is designed to contain one hundred four (104) single-family homes. No lot owner shall be allowed to construct more than one (1) single-family residence on any lot. No doubles, duplexes, multi-family, or other dwellings designed for occupancy by more than one family shall be permitted.

1.3. Garages. Each house constructed on a lot shall be required to include at least a two-car attached garage. Detached garages shall not be permitted, but one miscellaneous storage shed or other small outbuilding shall be permitted on each lot if placed in the rear yard only and within applicable building setback lines.

1.4. Minimum Area. Exclusive of garages, patios, balconies, etc., each house constructed on a lot shall contain not fewer than 1,600 square feet of enclosed, heated living area. Each house having one and one-half stories constructed on any lot shall contain not fewer than 1,200 square feet of enclosed, heated living area on the first floor. Each house having two full stories constructed on any lot shall contain not fewer than 850 square feet on the first floor.

1.5. Other Structures. No trailer, tent, shack, basement, garage, barn, or other outbuilding or temporary structure shall be used for temporary or permanent residential purposes on any lot in this subdivision. Above-ground swimming pools are hereby prohibited; however, such prohibition shall not include spas, hot tubs, and other such devices. Satellite dishes and other such detached antenna disks and receivers are hereby prohibited.

1.6. Prohibited Activity. No noxious or offensive trade shall be carried on upon any lot in this subdivision, and nothing shall be done thereon which shall become a nuisance to the neighborhood.

RECEIVED
FEB 11 1989
PLATON & ASSOCIATES
ATTORNEYS AT LAW
INDIANAPOLIS, IN

This Instrument Recorded 5-16 1989
Sharon K. Cherry, Recorder, Hamilton County, IN

1

1.7. Animals or Poultry. No animals, livestock, or poultry of any kind shall be housed, bred, or kept on any lot, except that family pets may be kept, provided that they shall not be kept, bred, or maintained for commercial purposes and that they shall not create or constitute a nuisance.

1.8. Utility, Drainage, Landscape and Non-Access Easements. Utilities Easements, shown on the Plat as "____", are reserved for the use of public utilities for installation and maintenance of water, sewer, gas, tile, electric, television, or telephone lines, poles, ducts, pipes, cables, etc., on, over, under and through said easements for local public use. Drainage Easements, shown on the Plat as "____", are reserved for the use of all lot owners in Beacon Point and all drainage swales shall be maintained by the respective lot owner so that water from any higher lot shall have adequate drainage along such swale. No swale may be blocked to prevent the flow of natural drainage, even if a specific easement for such swale is not shown on the Plat. No permanent or other structures other than drainage and utility facilities, drives, walkways, etc., shall be erected or maintained upon any easement shown upon the Plat and owners of lots shall take their titles subject to the rights of other lot owners in and to the above easements. Sanitary Easements, shown on the Plat as "____", are reserved for the installation and maintenance of sanitary sewer lines, mains, man holes, etc., on, over, under, and through said sanitary easements for local public use. Landscape Easements, shown on the Plat as "____", are reserved for the use by the purpose of maintaining, rebuilding, replacing, etc., any and all subdivision identification signs, masonry walls, fences, earthen mounds, and landscaping which shall be or shall have been installed or constructed by the undersigned within such Landscape Easement or Easements. No lot owner shall have the right to remove, add to, or modify the improvements, mounding, or landscaping located within the Landscape Easement without the prior written consent of the Architectural Control Committee.

1.9. Drainage Easement Maintenance. Within Drainage Easements, Wilfong Construction, Inc. ("Wilfong"), shall be responsible for the care, maintenance, repair, and/or replacement of actual structures in place such as sewer pipes, manholes, castings, etc., and each property owner as it pertains to his lot or sidewalks, and open areas within the lot and all rights-of-way adjacent thereto. Wilfong shall have access rights over and access such Easements.

1.10. Refuse Disposal. No lots shall be used or maintained as a dumping ground for rubbish, garbage, or other waste, all of which shall be no outside burning of trash, leaves, garbage, or debris within Beacon Point.

1.11. Signs. No signs of any type or size shall be displayed to the public view on a lot except (a) such Beacon Point identification signs as shall be constructed by the undersigned at the entrance to the subdivision, (b) one professional sign of not more than one square foot, (c) one sign of not more than five square feet advertising property for sale or rent, and (d) signs used by builders or their authorized agents to advertise lots and houses during construction and sales periods.

1.12. Certain Vehicles Prohibited. Any motor or recreational vehicle or trailer, camper, or boat which is used for normal transportation shall not be permitted to remain on any lot except within a closed garage and shall not be regularly parked upon unpaved areas.

1.13. Fences and Walls. No fence or wall on any lot shall be constructed closer to any street than the front wall of the house constructed on said lot. No fence or wall on any lot shall be permitted to the extent that it shall be approved for such lot in connection with the construction of a house thereon. Notwithstanding the above restrictions, the undersigned reserves the right to construct entry signs, fences, walls, and other treatments comprising the Common Property, provided that no such construction shall interfere with drainage facilities or adversely affect surface water drainage on any lot. No fence or wall on any lot adjoining 146th Street shall be permitted except with the prior written consent of the undersigned or the Architectural Control Committee.

ARTICLE 2. ARCHITECTURAL CONTROL COMMITTEE

An Architectural Control Committee shall be established to carry out the functions set forth for it in these Plat Restrictions and Covenants.

2.1. The Architectural Control Committee shall be composed of 3 members who initially shall be appointed by the undersigned.

2.2. The members of said Architectural Control Committee shall serve until their incapacity, resignation or death. Upon the incapacity, resignation or death of a member of the Architectural Control committee, his successor shall be appointed by the remaining members of the committee within six (6) months of the incapacity, death, or resignation of a member.

In the event of the incapacity, resignation or death of a member of the Committee, and his successor is not appointed within six (6) months thereafter, the successor member shall be appointed by the owners of a majority of the lots in said subdivision.

2.3. The Architectural Control Committee shall have the sole and exclusive right to establish grades and slopes on all lots in said subdivision and to fix the grad at which any residence shall hereafter be erected or placed thereon so that the same may conform to the general plan of development. All such grades and slopes shall be established on the engineering plans submitted to and approved by the Architectural Control Committee.

2.4. In requiring the submission of detailed plans and specifications as herein set forth, the parties hereto have in mind the development of said subdivision as an architecturally harmonious, artistic and desirable residential subdivision, and in approving or withholding its approval of any detailed plans and specifications so submitted, the Architectural Control Committee, or its successors and assigns, may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent lots, its artistic and architectural merits, its adaptability to the lot on which it is proposed to be made, and such other matters as may be deemed to be in the interest and benefit of the owners of the lots in said subdivision as a whole.

2.5. All plans and specifications submitted to the Architectural Control Committee for consideration must be prepared by a registered architect or civil engineer, or by an experienced draftsman in form generally used by architects and engineers, except that proposals for exterior changes that generally would be made without the need for detailed plans and specifications, such as repainting a building with a different color scheme or replacing a mailbox and post with same style may be made without the submission of professionally prepared plans and specifications provided, however, that the Architectural control Committee reserves the right to require the proposer to provide the opinion of a professional architect, surveyor or engineer in support of any proposal before giving its approval.

2.6. The Architectural Control Committee approval or disapproval as required in these Covenants shall be in writing, and any determination made by the Architectural Control Committee in good faith shall be binding on all parties in interest. If the Architectural Control Committee shall fail to approve or disapprove, or requisition additional information with respect to any proposed plans and specifications within thirty (30) days after the same shall have been submitted to it for approval, such plans and specifications shall be deemed to have received the approval of said Committee.

2.7. Notwithstanding compliance with the foregoing minimum living area requirements, the Town of Westfield shall not issue an Improvement Location Permit for any dwelling upon any lot in this development, nor shall any dwelling be constructed unless

8909840

the building and site plans presented by the lot owner have been approved by and bear the stamp of approval of the Architectural Control Committee, or its duly authorized representative, which approval and stamp shall be substantially the following form, to wit:

THIS SITE AND BUILDING PLAN FOR LOT _____ IN BEACON POINT HAS BEEN APPROVED FOR PERMITS AND CONSTRUCTION BY _____ ONLY, AS THE BUILDING CONTRACTOR FOR THE LOT OWNER, ALL AS REQUIRED BY THE PLAT.

BEACON POINT ARCHITECTURAL CONTROL COMMITTEE

By: _____

2.8. The Architectural Control Committee, in addition to those remedies granted to it by law, such as the pursuit of court-ordered injunctions and other judicial relief, shall have the right in the event of any action or condition which the Architectural Control Committee or their successors and assigns determined to be in violation of these restrictions, to enter the property upon which violation is deemed by it to exist and to summarily abate and remove, at the expense of the owner thereof, the structure or condition deemed by it to be in violation hereof, and said Architectural Control Committee or their successors and assigns shall not by reason thereof be guilty in any manner of trespass for such entry, abatement or removal, or liable for damages by reason thereof, to any person whomsoever. Any failure to enforce these restrictions shall not be deemed a waiver thereof or any acquiescence in, or consent to, any continuing, further or succeeding violation thereof. If, in the opinion of the Architectural Control Committee, by reason of the shape, dimensions or topography of a particular lot in the subdivision, enforcement of these restrictions with respect to size of structure would constitute a hardship, the Architectural Control Committee may permit a variation which will, in its judgment, be in keeping with the maintenance of this subdivision as a desirable subdivision.

2.9. Beacon Point may contain certain open space lying within the plat and certain landscaped areas lying within the public rights-of-way. In addition, landscape easement areas may be imposed on a portion of certain lots located in Beacon Point. The Architectural Control Committee shall have the right to enter onto such open space, landscaped areas and landscape easement areas described above which are located in Beacon Point. In addition, the Architectural Control Committee shall provide weekly trash collection service if same is not provided by the municipal government.

8909840

In order to provide the funds necessary to pay for the services described in this paragraph, as well as other provisions of these Restrictions and Covenants, The Architectural Control Committee shall be empowered to levy, assess and collect from each and every lot owner in said Beacon Point, such sums as may be approved by a vote of not less than 75% of the owner occupants of residences in Beacon Point. Any amount so assessed or levied shall become a lien on each lot. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the Architectural Control Committee, or a majority of the members thereof, may cause to be filed with the Hamilton County Recorder a Notice of Lien describing the lot and the amount due and executed in accordance with the formalities then required to record a lien against real estate. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to the payments which became due prior to such sale or transfer period. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

2.10. The Architectural Control Committee has the power to expend its money on the reasonable care and proper maintenance of the open space, landscaped areas and "easement areas" in Beacon Point Subdivision, and such other community services approved by majority of the lot owners in Beacon Point.

2.11. Any and all of the rights, powers, duties, and obligations which, in this instrument are assumed by, reserved to or given to the Architectural Control committee may be assigned or transferred to any one or more corporations or associations which will agree to assume said rights, powers, duties and obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its acceptance of such rights, powers, duties and obligations, which instrument shall be recorded and such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by said Architectural Control Committee. In the event of such assignment or transfer, the assignor or transferor and its successors and assigns or said Architectural Control Committee, shall thereupon be released from all the rights, powers, duties, and obligations in this instrument reserved to or given to and assumed by said Architectural Control Committee. The right of assignment hereby

8909840

reserved to the Architectural Control Committee is so reserved to the end that the rights, powers, duties and obligations reserved or given to it may be assigned to an association or corporation formed by the owners of lots in said subdivision or in said subdivisions together with contiguous subdivisions, for the purpose of accepting said assignment; and such assignment may be made at such time as the Architectural Control Committee may determine. Whenever in this instrument reference is made to said Architectural Control Committee, such reference shall be deemed to include the successors and assigns of said Committee.

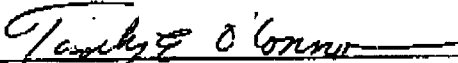
ARTICLE 3. MISCELLANEOUS

3.1. Private Enforcement. The right to enforce the within provisions, restrictions, and covenants by injunction, together with the right to cause the removal by due process of law of any septic tank, absorption bed, or structure erected or maintained in violation thereof, is hereby dedicated and reserved to the Architectural control Committee and the owners of the several lots in this subdivision, their heirs and assigns, who shall be entitled to such relief without being required to show any damage of any kind to any such owner or owners by or through any such violation or attempted violation. Such provisions shall be in full force and effect until January 1, 2013, at which time said covenants shall be automatically extended for successive periods often (10) years each unless by vote of a majority of the then owners of the lots, it shall be agreed to change the covenants in whole or in part. Invalidation of any of the covenants by judgment of court order shall in no way affect any of the provisions hereof, which shall remain in full force and effect.

3.2. Binding Effect. The within covenants, limitations and restrictions shall run with the land and shall be binding on all parties and persons claiming under them.

IN WITNESS WHEREOF, Beacon Point Inc. has caused this Plat of Beacon Point, together with all dedications and restrictive covenants, to be executed this 15th day of 10th, 1987.

By: 
Roger L. Kessler
President

By: 
Timothy E. O'Connor
Vice President

8909840

STATE OF INDIANA)
) SS:
COUNTY OF MARION (

Before me, a Notary Public in and for said County and State, personally, appeared Roger L. Kessler and Timothy E. O'Connor who acknowledged the execution of the above and foregoing Plat of Beacon Point.

WITNESS my hand and Notarial Seal this 15 day of MAY
1989.

Signature: Kathleen M. Flynn
Notary Public

Printed: Kathleen M. Flynn

My Commission Expires:

October 5, 1990

My county of Residence is:

Marion



This Instrument Recorded 5-16 1989
Sharon K. Cherry, Recorder, Hamilton County, IN

PREPARED BY ROGER L. KESSLER ATTORNEY

8909840

I, the undersigned Registered Land Surveyor, hereby certify that the included plat correctly represents a subdivision of a part of the Southeast Quarter of Section 13, Township 18 North, Range 3 East in Washington Township, Hamilton County, Indiana, described as follows:

A part of the Southeast Quarter of Section 13, Township 18 North, Range 3 East described as follows:

Begin at a point 811.1 feet West and 895.8 feet North of the Southeast corner of the Southeast Quarter of Section 13, Township 18 North, Range 3 East; run thence West, deed (South 88 degrees 38 minutes 02 seconds West measured) parallel with the South line of said Southeast Quarter 1347.60 feet to an iron stake (5/8" Re-Bar); thence South, deed (South 00 degrees 27 minutes 08 seconds East measured) parallel with the East right-of-way of the C.I. & L. R.R. (Monon R.R.) 895.6 feet, deed (895.58 feet measured) to the intersection with the South line of said Southeast Quarter; thence West, deed (South 88 degrees 38 minutes 02 seconds West measured) on and along said South line 409.0 feet, deed (412.09 feet measured) to intersection with said East right-of-way line; thence North, deed (North 00 degrees 27 minutes 08 seconds West measured) on and along said right-of-way 1984.0 feet, deed (1988.87 feet measured) to an iron stake (1/2" Iron Pipe); thence East, deed (North 88 degrees 31 minutes 48 seconds East measured) along a fence line 1755.3 feet, deed (1755.96 feet measured) to an iron stake (1" Iron Pipe); thence South, deed (South 00 degrees 45 minutes 17 seconds East measured) along a fence line 1096.40 feet to the place of beginning, containing 52.65 acres, more or less, deed (52.623 acres, more or less measured), subject to all legal highways, rights-of-way, easements and restrictions of record.

This subdivision consists of 104 lots numbered consecutively from 1 to 104. The size of the lots and width of the streets are shown in feet and decimal parts thereof.

Certified: January 5, 1989



10986/METES

David J. Stoepplworth
David J. Stoepplworth
Registered Land Surveyor
No. 0474

DULY
Subject
1624 Mary 1084
Hamilton County
Filed # _____

This instrument recorded 5-16-1989
Sharon K. Cherry, Recorder, Hamilton County, IN

8909840

8925367

FIRST AMENDMENT TO COVENANTS AND RESTRICTIONS OF BEACON POINT

This First Amendment to Covenants and Restrictions of Beacon Point is executed this 8th day of November, 1989, as an amendment to those certain Covenants and Restrictions of Beacon Point Subdivision as filed with the Recorder of Hamilton County on May 16, 1989, as Instrument Number 89-09840. This First Amendment is as follows:

Article 1, General; Section 1.3, Garages, set forth on page 1 of the initial Covenants and Restrictions of Beacon Point is restated in full providing that:

1.3. Garages. Each house constructed on a lot shall be required to include at least a two-car attached garage. Detached garages shall not be permitted, and miscellaneous storage sheds or other small outbuildings shall not be permitted on any lot.

All other terms and conditions of the Covenants and Restrictions of Beacon Point as originally filed shall remain in full force and effect without amendment.

Date 11/8/89

Roger L. Kessler, President Beacon Point Inc.



This Instrument Recorded 11/8/89 Sharon K. Cherry, Recorder, Hamilton County, IN

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana and a resident of Marion County, Indiana, personally appeared Roger L. Kessler, the President of Beacon Point Inc., an Indiana Corporation, who acknowledged execution of the foregoing Amendment to Covenants and Restrictions of Beacon Point Inc. as such officer for and on behalf of said Corporation.

Witness my hand and Notarial Seal this 8 day of November, 1989.

My commission expires: CHRISTINE K. SAGE NOTARY PUBLIC STATE OF INDIANA MARION COUNTY MY COMMISSION EXP. 10/15/1992

Christine K. Sage Notary Public

This instrument was prepared by Roger L. Kessler, attorney at law.

Return to: Roger L. Kessler 8395 Keystone Crossing, Suite 203 Indianapolis, Indiana 46240

INSTR. # 89 25367

