

PC 1, Pg 220

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DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
WELLINGTON ESTATES, SECTION 2, PHASE "A"

This Declaration of Covenants and Restrictions is made this 4th day of March, 1992, by Weihe Development Corp. (hereinafter referred to as "Declarant").

Declarant is the owner of all of the real estate (hereinafter referred to as "Real Estate") described in Exhibit "A" hereto and intends by this Declaration and the recording of a subdivision plat of the Real Estate, to create a residential community and impose mutually beneficial restrictions for the orderly development of that community. Declarant further intends to provide for the preservation and enhancement of the property values and amenities in the aforementioned plat and residential community known as Wellington Estates, Section 2 Phase "A".

For the purpose of (i) establishing minimum standards pertaining to the development, use and maintenance of the Real Estate, and (ii) insuring stability of land and improvement values in Wellington Estates, Section 2 Phase "A", Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented used, improved and occupied subject to the provisions, agreements, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the lots situated therein.

The Owner or Owners of any lot subject to these Restrictions, and all other persons, (i) by acceptance of a deed from Declarant or from Declarant's successors, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such lot, or (ii) by the act of occupancy of any lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained.

1. Land Use. Lots may be used only for residential purposes and only one (1) single family dwelling, a private garage and other such outbuildings usual and incidental to the use of a residential lot may be constructed thereon. No lot or portion of any lot may be sold or subdivided such that there will be thereby created any greater number of lots in Wellington Estates, Section 2 Phase "A", than the number of original lots shown on the Plat recorded in the Office of the Recorder of Hamilton County, Indiana. No structure of any kind shall be used for the purpose of carrying on a business, trade or profession, nor shall anything be done thereon which shall be or become a nuisance.

This Instrument Recorded 3-13 1992  
Sharon K. Cherry, Recorder, Hamilton County, Indiana.

March 4, 1992

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9208674

2. Building Control. Prior to construction of any structure upon a lot, two sets of the building plans therefor, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and other data or information which may be requested, must be submitted to the Architectural Control Committee. The Architectural Control Committee shall review the plans and deliver one set of such plans marked "approved" or "disapproved" to the person or persons requesting such approval. The initial Architectural Control Committee is comprised of Allan H. Weihe, Joyce M. Weihe and Allen E. Hughes. The Architectural Control Committee is and shall be appointed by the Declarant or the Declarant's successor.

The Architectural Control Committee is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, and with architectural guidelines promulgated by the Architectural Control Committee, whether the building and property set-back lines are in conformity with the applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and lot drainage plan as specified in the approved final construction plans for Wellington Estates, Section 2 Phase "A".

No charge will be made to any purchaser of a lot for examination of plans or for giving approval for construction thereon. In the event the Architectural Control Committee does not indicate in writing its approval or disapproval of plans submitted for its review within a period of fifteen (15) days after submission of all requested data, the Architectural Control Committee is deemed to have approved such plans.

3. Building Location and Grade Line Elevation. No building may be erected between the building line shown on the Plat and the front lot line; and no structure or part thereof may be built or erected nearer than ten (10) feet or 10% of the lot width at the building line, whichever is greater, to any side yard line or nearer than twenty (20) feet to any rear lot line. A minimum grade line elevation, shown on the Plat, is hereby established for each lot and no grade line can be constructed lower than said minimum without the written consent of the Architectural Control Committee and any applicable governmental authority. Demonstration of adequate storm water drainage with both on lot and overall project drainage plans shall be a prime requisite of alternate grade line elevations.

4. Easements for Drainage, Sewage, Utilities and Access. Lots are subject to drainage easements, sewer easements and utility easements, either separately or in combination of the three (3) as shown on the Plat, which are reserved for the use of the lot owners, public utility companies and governmental agencies as follows: (a) Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public

drainage systems; and it shall be the individual responsibility of each land owner to maintain the drainage across his own lot. Under no circumstances shall such easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Declarant. Said easements are for the mutual use and benefit of the owners or its successor of all lots in Wellington Estates, Section 2 Phase "A". (b) Sewer Easements (SE) are created for the use of the appropriate authority providing either storm or sanitary waste disposal systems to serve Wellington Estates, Section 2 Phase "A" and the adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system. (c) Utility Easements (UE) are created for the use of all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, and wires, as well as for all uses specified in the case of sewer easements. All such easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure shall be built on any drainage, sewer, or utility easement.

5. Easement for Wetland Conservation. The plat contains areas designated as "Wetland Area". There is hereby created an easement over and across such areas which easement inures to the benefit of the Wellington Estates Section 2, Property Owners Association, Inc. and the owners of all lots in Wellington Estates Section 2. The easement is reserved unto the Association and the owners of all of the lots in Wellington Estates Section 2 to protect and preserve the natural wetlands and associated forestry and riparian cover-type, as appropriate including prevention of loss from fill, grading, clearing, mowing, construction, land conversion, or use of herbicides with the exception of those herbicides recommended for use in future management.

6. Maintenance of Lots and Improvements. The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly, unsafe, and specifically, such Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris or rubbish;
- (C) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (D) Cut down and remove dead trees;
- (E) Where applicable, prevent debris and foreign material from entering drainage areas;

March 4, 1992

9208674

- (F) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
- (G) Regularly treat or cause to be treated, the lawn areas against weed and insect infestation.

7. Declarant's Right to Perform Certain Maintenance. In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, and after being notified by Certified Mail by the Declarant and given fourteen (14) calendar days, to correct the problem(s), Declarant shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the Lot owner, and such land owner shall have a lien against said real estate for the expense thereof. Neither the Declarant, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

8. All streets and alleys shown and not heretofore dedicated are hereby dedicated to the public.

9. Front and side building lines are established as shown on this plat between which lines and the property lines of the street no structure shall be erected or maintained.

10. FENCES, WALLS, AND SCREENING. The specific fence height restrictions are as follows:

- (1) Property fencing and walls above grade shall not exceed forty two inches (42") above grade unless otherwise approved by the Architectural Control Committee.
  - (2) The Architectural Control Committee will not ordinarily approve proposed fence which exceeds 42 inches in height unless the rear line of that Lot abuts a public right of way or easement or offers some other circumstances clearly unique to that lot.
  - (3) Patio screens/privacy fences shall not exceed six (6) feet in height, except for pools and other recreational fences as provided herein.
- b. Materials and Finish.
- (1) Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community.
  - (2) The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material.
  - (3) All fencing or screening should preferably have finished material on both sides. If only one (1) side has finished materials, finished side must face the adjoining property.

March 4, 1992

9208674

(4) Walls above grade should be constructed of natural stone masonry or attractive timber.

11. Size of Dwelling. The ground floor area of the main structure, shall be not less than 2400 square feet in the case of a one story structure, nor less than 1300 square feet in the case of a multiple story structure, provided no structure of more than one story shall have less than an aggregate of 2600 square feet of finished and livable floor area. The square footage of a residence as referred to on such plat shall not include porches, terraces, garages, carports, accessory buildings, or basements.

12. Garages and Driveways. Every house in the Real Estate must have at least a two (2) car garage, attached and of the same architectural design and materials as the house. All driveways must be paved with an all weather surface from their point of connection with the abutting street or road to a point of connection with the garage apron.

13. Exterior Construction.

(A) The finished exterior of every building constructed or placed on any Lot shall be of material to be approved by the Architectural Control Committee. Colors of homes and improvements are, generally, to be subdued, earthen tones or white and compatible with other structures in the immediate area. Before application of material, all exterior, veneer and roof material will be submitted and approved.

(B) All chimneys and flues must be of masonry construction.

#### GENERAL PROHIBITIONS

1. In General. No noxious or offensive activities shall be carried on any Lot, nor shall anything be done on any said Lots that shall become or be an unreasonable annoyance or nuisance.

2. Vehicle Parking. No trucks larger than 3/4 ton, campers, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be stored in an enclosed garage. No more than one vehicle used for commercial purposes shall be parked on any street or lot in Wellington Estates Section 2.

3. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs,

March 4, 1992

9208674

cats, and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective lots such that they will not be a nuisance.

5. Storage Tanks. Any gas, propane, or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of any caustic chemicals is prohibited.

6. Temporary Structures and Out Buildings. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence. No dwelling house constructed on any of the Lots shall be occupied or used for residential purposes of human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Declarant and such decision shall be binding on all parties. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of the same design and materials as the primary structure and follow the approval process outlined previously.

7. Signs. No sign of any kind shall be displayed to the public view of any lot except that one sign per builder and one per Realtor of not more than six (6) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

8. Prohibition of Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any Lot.

9. Building Completion. Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon any Lot shall be completed within one year after the commencement of the building process. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If said structure is not completed or repaired within such time, then the Declarant may re-enter, take possession of said Lot, without notice, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds to the owner of said Lot at the time of sale.

10. Assessments. The Declarant, its successors or assigns may make assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity which is the responsibility of a lot owner hereunder but which

March 4, 1992

9208674

such lot owner has not undertaken as required hereunder. Any such assessment shall be assessed only against those lot owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the main tenancy or other activity.

11. Lien for Assessments. Each owner of a 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 assessments as the same becomes due in the manner herein provided. All such assessments, together with interest thereon and costs of collection thereof as herein provided, shall be a lien upon the lot against which each such assessment is made until paid in full. Such assessments shall also be the personal obligation of the owner of the lot at the time when the assessment became due and payable. Any assessment not paid within thirty (30) days after the date the same became due and payable shall bear interest from the due date at a percentage rate not greater than eighteen percent (18%) per annum to be established by the Declarant. The Declarant or any member thereof shall be entitled to institute in any court of competent jurisdiction such procedures, at law or in equity by foreclosure or otherwise, to collect the delinquent assessment plus any expenses or costs, including attorney's fees, incurred by the Declarant, its successors or assigns or such member in collecting the same. If the Declarant, its successors or assigns has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the Declarant may accelerate payment and declare the entire balance of said assessment due and payable in full. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot or otherwise.

The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage covering such lot and to any valid tax or special assessment lien on such lot in favor of and governmental taxing or assessing authority. Sale or transfer of any lot shall not affect the assessment lien. The sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments which thereafter become due from the lien thereof.

The Declarant, its successors or assigns shall, upon demand at any time, furnish a certificate in writing that the assessments on a lot have been paid or that certain assessments remain unpaid, as the case may be. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid. Any easement granted herein or any property shown on the Plat as dedicated and intended for acceptance by the local public authority and devoted for public use shall be exempt from the assessments, charge and lien created herein.

March 4, 1992

9208674

12. Enforcement. The right to enforce each of the foregoing restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to the Declarant and the owners of the lots in Wellington Estates, Section 2 Phase "A", their heirs and assigns, who are entitled to such relief without being required to show any damage of any kind to the Declarant, any owner or owners or such Commission by or through any such violation or attempted violation. There shall be no rights of reversion or forfeiture of title resulting from any violations.

13. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

14. Non-Liability of Declarant. Declarant shall not have any liability to a lot owner or to any other person or entity with respect to drainage on, over or under a lot. Such drainage shall be the responsibility of the owner of the lot upon which a residence is constructed and of the builder of such residence; and an owner, by acceptance of a deed to a lot, shall be deemed to agree to indemnify and hold harmless the Declarant from and against any and all liability arising from, related to, or in connection with drainage on, over and under the lot described in such deed.

15. General Provisions. This Declaration may be amended at any time by the owners of at least two thirds of the Lots in Wellington Estates, Section 2 Phase "A". Each such amendment must be evidenced by a written instrument signed and acknowledged by the owners or owner concurring therein, setting forth facts sufficient to indicate compliance with this paragraph, and recorded in the Hamilton County Recorders Office. As used herein, the term "Lot" means a lot depicted on the Plat. This provision does not authorize an amendment to this Declaration that would eliminate or change the rights of the Class C members of the Association unless at least two-thirds (2/3) of Class C members approve such amendment.

16. Common Areas

a. The parcels of land or interests in land designated on the Plat as "Common Area" together with all improvements constructed thereon (Hereinafter Common Area) shall be owned by Wellington Estates, Section 2 Homeowners Association, Inc., an Indiana Not for Profit Corporation (hereinafter Association). Every member of the Association shall have a non-exclusive right and easement of enjoyment in common with all members of the Association, in and to the Common Area, which shall be appurtenant to and shall pass with title to every lot in the form of a right to and obligation of membership in the Association subject to the following provisions:

March 4, 1992

9208674



- (1) the right of the Association to promulgate reasonable rules and regulations governing the use of the Common Areas;
  - (2) the rights of Declarant as provided in this Declaration;
  - (3) all other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
  - (4) the easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area for the benefit of its members; and
  - (5) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon the approval of two thirds (2/3) of the membership of each class of members of the Association.
- b. **Delegation of Use.** Any owner may delegate, in accordance with the By-Laws and any reasonable and non-discriminatory rules and regulations promulgated from time to time by the Association and subject to the rights of others as set forth in this Declaration, his or her right of enjoyment of the Common Area to family members, to a lessee, or contract purchaser of his Lot or to guests.
- c. **Certain Obligations and Access Rights to the Common Area**
- (1) The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control for the exclusive benefit of the Owners as provided herein, of the Common Area, and for the maintenance of the same in good, clean, attractive, safe, and sanitary condition, order and repair.
- d. **Membership.** Initially, to satisfy the requirements of the Indiana Not-For-Profit Corporation Act, the five (5) persons who serve as incorporators of the Association shall be the members (the "Initial Members"). Those persons shall be named in the Articles of Incorporation. The Initial Members shall remain members of the Association until three (3) persons have become Class A or Class B members, at which time the Initial Members shall cease to be members unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association and shall become such a member by the acceptance of a deed to a lot in Wellington Estates, Section 2 Apart from the Initial Members, membership in the Association

March 4, 1992

9208674

shall be appurtenant to and may not be separated from ownership of any Lot.

- e. **Classes of Membership and Voting Rights.** The Association shall have three (3) classes of voting membership: Class A: Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. Class B: The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier;
- (a) when the total number of votes outstanding in the Class A membership is equal to the number of votes outstanding in the Class B membership; or
  - (b) on January 1, 2000.

Class C: The class C members shall be any owners of lots in Wellington Estates, Section 1, a subdivision in Hamilton County, Indiana, as per plat thereof recorded in the Office of the Recorder of Hamilton County, in plat book 15, pages 32-33, so long as such owner has filed with the Association a Notice of Election of Membership in a form proscribed by the Association and originally set out as Exhibit "B" hereto.

- f. **Board of Directors.** The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association.
- g. **Professional Management.** No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years.
17. **Covenant for Maintenance Assessments.**

a. **Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) Regular Assessments for maintenance, repairs, and ordinary operating expenses; (2) Special Assessments for (a) capital improvements and operating deficits and (b) for special maintenance or repairs as provided and (3)

March 4, 1992

9208674

any Insurance. Such assessments shall be established, shall commence upon such dates, and shall be collected as hereinafter provided. All such assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien on the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner. The lien created by past due assessments shall run with the land and pass with title.

b. **Purpose of Regular Annual Assessments.** The Regular Annual Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents, for the improvement, maintenance, and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the Regular Annual Assessments shall be set aside or otherwise associated in a reserve fund for the purpose of providing repair and replacement of the Common Area and other capital improvements which the Association is required to maintain.

c. **Maximum Regular Annual Assessments.**

- (1) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Annual Assessment on any Lot conveyed by Declarant shall be \$200.00 per Lot. Adjacent lots are held in common ownership shall be assessed as one lot.
- (2) From and after January 1 of such year, the maximum Regular Annual Assessment may be increased each calendar year not more than 10% above the maximum Regular Monthly Assessment for the previous year without a vote of the membership.
- (3) From and after January 1 of such year, the maximum Regular Annual Assessment may be increased each calendar year by more than 10% above the maximum Regular Annual Assessment for the previous year, with the approval of two thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this propose.
- (4) The board of Directors from time to time may fix the Regular Annual Assessment, without any vote of the membership, at any amount not in excess of the maximum.

9208674

March 4, 1992

d. **Special Assessments for Capital Improvements and Operating Deficits.** In addition to the Regular Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the association may from time to time incur, provided that any such assessment shall have the assent of two thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.

e. **Notice and Quorum for Any Action Authorized Under Section d.** Written notice of any meeting for the purpose of taking any action authorizing a special assessment shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. The lack of a quorum can be a problem unless the President or Secretary of the Association sends a proxy to the members with the notice and provides a date in advance of the meeting for the proxies to be returned. Then if not enough proxies have been returned for a quorum, the President or Secretary shall call owners and arrange to pick up proxy or confirm attendance at meeting. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be more than sixty (60) days following the preceding meeting.

f. **Uniform Rate Assessment.** Regular Annual Assessment and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

g. **Date of Commencement of Assessments; Due Dates.** The Regular Assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Declarant. Weihe Development Corp. does not pay the Assessment on lots it has not sold.

The Board of Directors shall fix an increase in the amount of such assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the

March 4, 1992

9208674

Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

h. **Effect of Nonpayment of Assessments; Remedies of the Association.** If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then Owner, his or her heirs, devisees, successors and assigns. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include 18% interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the Court. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment for his Lot.

i. **Subordination of the Lien to Mortgage; Sale or Transfer.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and except as herein above provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association.

9208674

March 4, 1992



WELLINGTON ESTATES, SECTION 2 PHASE "A"

Exhibit "A"

I, the undersigned, a registered land surveyor in the State of Indiana, hereby certify that the within plat represents a survey and subdivision of part of the Northwest Quarter of Section 18, Township 18 North, Range 5 East and part of the Northeast Quarter of Section 13, Township 18 North, Range 4 East (being BLOCK "A" of WELLINGTON ESTATES, per plat thereof recorded as Instrument 8750576 on pages 32 and 33 in Plat Book 15), in Noblesville Township, Hamilton County, Indiana, the combined perimeter of which is described as follows:

Beginning at the Southwest corner of the Northwest Quarter of Section 18, Township 18 North, Range 5 East; thence North 89 degrees 26 minutes 05 seconds East (assumed bearing) on the South line of said Northwest Quarter 417.31 feet; thence North 03 degrees 26 minutes 42 seconds West 121.38 feet; thence North 33 degrees 08 minutes 58 seconds East 177.20 feet; thence North 44 degrees 13 minutes 55 seconds East 50.00 feet; thence North 29 degrees 39 minutes 59 seconds East 209.13 feet; thence North 44 degrees 08 minutes 21 seconds West 163.08 feet; thence North 01 degrees 08 minutes 55 seconds West 398.90 feet to the South line of Wellington North, Fourth Section, a subdivision in Hamilton County, Indiana, the plat of which is recorded on pages 173 through 175 of Plat Book 5 in the Office of the Recorder of Hamilton County, Indiana; thence South 89 degrees 35 minutes 55 seconds West on said South line 143.13 feet to the Southeast corner of Lot #74 in said subdivision; thence South 89 degrees 23 minutes 17 seconds West continuing on the South line of said subdivision 262.17 feet to the Southeast corner of Lot #72 in said subdivision; thence South 02 degrees 36 minutes 35 seconds East 141.00 feet; thence South 00 degrees 31 minutes 29 seconds West 121.05 feet; thence South 19 degrees 53 minutes 03 seconds West 99.79 feet; thence North 85 degrees 24 minutes 47 seconds West 87.20 feet to the West line of said Northwest Quarter; thence South 00 degrees 02 minutes 58 seconds West on said West line 251.62 feet to the Northeast corner of BLOCK "A" in WELLINGTON ESTATES, a subdivision in Hamilton County, Indiana, the plat of which is recorded on pages 32 and 33 of Plat Book 15 in said Recorder's Office; thence North 89 degrees 57 minutes 02 seconds West on the North line of said BLOCK "A" 1.00 foot (one foot) to the Northwest corner of said BLOCK "A"; thence South 00 degrees 02 minutes 58 seconds West on the West line of said BLOCK "A" 50.00 feet to the Southwest corner of said BLOCK "A"; thence North 89 degrees 57 minutes 02 seconds East on the South line of said BLOCK "A" 1.00 foot (one foot) to the West line of the aforesaid Northwest Quarter; thence South 00 degrees 02 minutes 58 seconds West on said West line 352.81 feet to the place of beginning, containing 11.067 acres, more or less, in Section 18, Township 18 North, Range 5 East and all of BLOCK "A" of Wellington Estates as previously platted.

9208674

ARCHITECTURAL GUIDELINES  
OF  
WELLINGTON ESTATES, SECTION 2, PHASE "A"

Any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Architectural Control Committee before any work is undertaken. The Architectural Control Committee has established and may from time to time revise guidelines for construction and placement of structures in Wellington Estates, Section 2. Approval of plans and specifications for structures proposed in Wellington Estates, Section 2, shall only be given by the Architectural Control Committee after the Committee has found that such plans conform to the Architectural Guidelines for Wellington Estates, Section 2. Any addition, exterior alteration or change to an existing building shall be compatible with the design character of the original building. Any new detached structures shall be compatible with the existing structure.

1. FENCES, WALLS, AND SCREENING. It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties will be taken into consideration by the Declarant when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. Front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure.

The Committee discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the the Committee or its representative after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences or screens will be submitted to Architectural Control Committee for approval.

a. Height restriction. The Committee is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by the proliferation of fences of excessive height. The Architectural Control Committee, therefore, may approve rear perimeter fences up to four (4) feet in height which otherwise meet these guidelines. The Architectural Control Committee will give consideration, to a variance in this height limit where the rear line of the lot abuts a major arterial roadway or other clearly unique circumstances exist. The use of six (6) foot fences around small patio areas of a backyard of a home in order

March 4, 1992

9208674



to secure privacy for the immediate patio area will be permitted.

2. GARAGE DOORS. Every effort possible will be made to put on rear or end, or in the case of all plan, the inside will be acceptable. Any ell or front facing doors will have to have door design approved.

3. No heat pumps, air conditioning units, or gas meters will be installed on front of house.

4. If storm doors or windows are installed they must be painted. No unfinished aluminum storm windows or doors will be allowed.

5. All gutters and down spouts other than copper, will be painted.

6. All roof and fireplace flashing other than copper, will be painted.

7. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to the rear of the house.

8. STREET CLEANING. Builder or Buyer is required to finish cleaning in front of his house upon completion and rough clean the street periodically during construction.

9. MAILBOXES. All mailboxes installed at the street to service lots in Wellington Estates, Section 2 shall be uniform and shall be of a type, color, and manufacture approved by the Committee. Such mailboxes shall be installed by the builder or lot owner posts approved as to type, size, and location by the Committee.

10. LANDSCAPING. To be furnished with house and completed before closing. Each home shall include a minimum of \$1000.00 worth of plantings and landscape. This allowance includes labor and exclusive of sod. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit, but no later than May 30th of the following spring. Trees, hedges, and shrubs which restrict visual lines for vehicular traffic shall be cut back or removed. Special landscaping beyond that normally associated with single family residence must be approved by Architectural Control Committee prior to installation.

11. SWIMMING POOLS. Only permanent in ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

9208674

March 4, 1992

12. TENNIS COURTS, RACQUETBALL COURTS, PADDLE BALL COURTS, ETC. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational facilities or sporting facilities will be permitted, providing that all fencing shall be vinyl coated variety and that all views of adjacent properties in Wellington Estates, Section 2 be screened by evergreens of at least 6' in height. All lighting must be of a baffled variety so as to minimize the effect on other properties in Wellington Estates, Section 2.

13. PLAY EQUIPMENT. Children's play equipment such as sandboxes, swing and slide sets, temporary swimming pools having a depth less than 24 inches, playhouses and tents shall not require approval by the Committee provided such equipment is not more than six (6) feet high, maintained by the Lot Owner in good repair (including painting) and every reasonable effort has been made by the Lot Owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Architectural Control Committee.

14. SOLAR HEATING SYSTEMS. The Architectural Control Committee will carefully review solar heating plans to insure that their use and location have a minimum detrimental effect on adjoining properties. Geothermal heat systems are acceptable however, the closed loop variety must be used.

15. MISCELLANEOUS. All exterior lighting shall be directed in such a manner as not to create annoyance to adjacent properties. Lot Owners shall keep garage doors closed at all times except during the times of actual use of the garage facility.

16. LIABILITY. Neither the Declarant, Architectural Control Committee nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according hereto. Further, neither, the Declarant or Architectural Control Committee shall be deemed by virtue of any action of approval or disapproval, to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

17. INSPECTION. The Architectural Control Committee may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

18. EXTERIOR ANTENNAS. Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any Lot Owner on the exterior of a house or on a lot.

19. SATELLITE DISHES. Satellite receiving dishes or antennas may be allowed by the Committee so long as their placement on the lot does not make such dish or antenna visible from the street at the front of the lot. Committee encourages landscaping screens to buffer dishes and antennas.

March 4, 1992

9208674

This Instrument Recorded 3-13 1992  
Sharon K. Cherry, Recorder, Hamilton County, Indiana