

MISC. DRAWER 6

CARD 3408

VANDERBURGH COUNTY
BETTY J. HERMANN, RECORDER

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~~CARD 1608~~

~~VANDERBURGH COUNTY
BETTY J. HERMANN, RECORDER~~

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CONDITIONS, RESTRICTIONS, AND PROTECTIVE COVENANTS

The undersigned, Windsor Realty & Development, Inc., an Indiana Corporation, with its principal place of business being located in Vanderburgh County, Indiana, being the present owner and subdivider of all the real estate comprising the recorded subdivision known and designated as Wellington Acres, a subdivision located in Vanderburgh County, Indiana, as per plat thereof, recorded in Plat File Q Card # 60 + 78 in the office of the Recorder of Vanderburgh County, Indiana, does hereby make and adopt the following conditions, restrictions, reservations and protective covenants for the use and occupancy of the lots and the real estate comprising said subdivision, which conditions, restrictions, and reservations and protective covenants shall run with the land and shall be binding upon all of the owners of the lots and real estate in said subdivision, to-wit:

1. **ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee shall consist of three (3) members who shall be appointed from time to time by the Developer except as otherwise provided herein. Initially the Architectural Review Committee shall consist of Delfred W. Shanks, Drew F. Peyronnin, and Dorothy E. Shanks. From and after the date upon which the last lot in Wellington Acres is sold by Developer, its successors and assigns, the functions of the Architectural Review Committee as described herein shall be performed by the Board of Directors of the Association. A majority of the members of the Architectural Review Committee constitutes a quorum for the transaction of business and the decision of a majority is final.

The Architectural Review Committee shall have the power to regulate the external design, appearance, use and location of all structures, yard ornaments and other improvements upon a lot in such a manner as to preserve and enhance values in Wellington Acres and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography, and is authorized to determine whether the building and property set back lines are in conformity with applicable plat requirements. The Architectural Review committee shall also undertake such other duties and responsibilities as are assigned to it herein. In the event the Architectural Review Committee does not indicate in writing its approval or disapproval of plans submitted for review within a period of fifteen (15) days after submission, the Architectural Review Committee shall be deemed to have disapproved such plans. Plans for submission must include a site plan showing all improvements, spec. sheet, copy of appraisal and erosion control plan. Any future changes must be resubmitted to the Architectural Review Committee for review and approval.

The Architectural Review Committee shall have the right to exercise subjective judgment standards, but approval of submitted plans and specifications shall not be arbitrarily or unreasonably withheld by the committee.

The Architectural Review Committee shall have the right to establish standards as to the quality of workmanship and materials. Construction or remodeling of residences in the subdivision shall be limited to building contractors, electricians, and plumbing and heating contractors who have received approval of the Architectural Review Committee.

The Architectural Review Committee reserves the right to make on-site inspection of any and all structures during the construction period. If the construction standards as to size, materials and workmanship are at variance with the approved plans and specifications, the Architectural Review Committee may, at its option, halt construction of the structure until the same meets the approved plans and specifications.

2. **RESIDENTIAL USE.** All lots shall be used for residential purposes only. No residential lot shall have more than one (1) single family residence erected thereon. No resident on any lot shall be converted into a church or school or used for any such purpose. No lot shall be used for any commercial or business purpose. Home offices are exempt from this paragraph, but any business that increases traffic, requires off-site deliveries or any use requiring a special use permit, into the subdivision is forbidden. No home occupation shall be conducted or maintained on any lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of such lot and which is generally or regularly conducted at another location which is away from such lot. No signs of any nature, kind or description shall be placed, erected or permitted to remain on any lot advertising a permitted home occupation. Nothing contained herein shall be construed or interpreted to affect the activities of the Developer, and their nominees, successors or assigns, in the development and sale of the lots as a part of the development of the Subdivision.

3. **NO SUBDIVIDING.** No lot shall be further subdivided by the owner or owners for the purpose of creating two or more residential lots or adjust any lot or lots at their discretion.

4. **COMMON MAINTENANCE EXPENSES.** Each and every owner of a lot in this subdivision shall have the responsibility for bearing his or her proportionate share of any maintenance expenses with respect to entrances into the subdivision and drainage maintenance, as provided for in the Home Owner's Association. The one time fee for each lot owner for the above mentioned expenses shall be One Thousand Dollars (\$1,000.00) paid to Wellington Acres Home Owner's Association. Additionally, the streets situated within the subdivision shall be considered a common maintenance expense until such time as the Board of Commissioners of Vanderburgh County, Indiana, or such other appropriate governmental body, accepts the streets of said subdivision for maintenance. It is understood by all lot owners that all common areas in Wellington Acres Subdivision will be conveyed to the Homeowners Association when eighty percent (80%) of the lots contained in this subdivision are sold. However, his or her proportionate share of upkeep and responsibility shall begin when the deed is conveyed. It is further understood and agreed to that one (1) lot equals one (1) share of obligation and financial responsibility regardless of size and/or location of the lot. All easements, as they pertain to any lot, are the responsibility of the lot owner to maintain dense vegetation, mow and keep unobstructed.

5. **LAKE OWNERS' COMMON MAINTENANCE EXPENSES AND RIGHTS.** Each lot owner whose lot abuts any lake located in the subdivision shall have the joint responsibility with all other lake lot owners for the maintenance and upkeep of any such lake. The responsibility for and decisions regarding the maintenance and upkeep of the lakes and dams shall be determined according to the majority rule of the owners of the lake lots which abut any lake in the subdivision. Lake privileges, including the use thereof, shall be for the immediate family and specific invited guests of the lake lot owners and may only be exercised in the presence of the lake lot owner as that term is defined herein. Although each lake lot owner's property line may extend into the lake property, the water covered area of each lake lot shall be considered a common area for the use and benefit of each lake lot owner. All dams are the responsibility of each adjoining lake lot owner connected to the common area.

6. **MAINTENANCE OF TRACTS AND IMPROVEMENTS.** The owner of any lot in the Subdivision 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; and, specifically each such Owner shall:

- a. Maintain dense vegetation and mow such portion of the lot upon which grass has been planted at such times as may be reasonably required, maintaining a stand of quality grass;
- b. Arrest any erosion that may occur;
- c. Remove all debris, rubbish and dead tree limbs within thirty (30) days;
- d. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Subdivision; and
- e. Keep the exterior of all improvements in such a state of repair and maintenance to avoid their becoming unsightly.

7. **MAILBOXES, MAILBOX POSTS, STREET LIGHTS, NAME PLATES AND ADDRESS IDENTIFICATION.** All mailboxes, mailbox posts, name plate and address identification will be of uniform design, as chosen by the Architectural Review Committee and the expense will be incurred by each lot owner. Each lot owner will install a dusk to dawn street light at a location approved by the Architectural Review Committee and be responsible for proper operations maintenance and expenses.

8. **STORAGE, REPAIR OR MATERIAL ALTERATION OF MOTOR VEHICLES, BOATS, CAMPERS, ETC.** Neither the repair or storage of inoperative motor vehicles, nor the material alteration of motor vehicles, shall be permitted on any lot within the Subdivision unless entirely within a garage. Storage shall also be provided for any maintenance or construction equipment or for any boats, campers or other recreational equipment or vehicles maintained or stored on any lot within the Subdivision during the off season or other similar prolonged periods of time.

9. **VEHICLE PARKING.** No vans, campers, motor homes, trucks, trailers or boats may be parked or stored overnight or longer on any lot in open public view. Each and every Owner in the Subdivision shall provide adequate off-street parking for all vehicles kept on the premises. Association Manager should be advised of any overnight visitors with any of the above listed vehicles.

10. **SIGNS.** No sign of any kind shall be displayed to the public view on any lot except signs displayed and maintained by the Developers during the development and sale of lots in the Subdivision. Signs may be located on the entry way, and one sign, which may be displayed on a lot at any time for the purpose of advertising the property for sale or for rent, or may be displayed by the property owner or a builder to advertise the property during construction and sale.

11. **FENCES AND EXTERIOR WALLS.** No fence or exterior wall shall be permitted upon lots in the subdivision; provided, however, that the developer shall have the authority to grant a written waiver of this provision with respect to a particular lot if the owner thereof commits himself to erect and maintain a particular type of fence and/or exterior wall in a manner which will enhance the appearance of the subdivision. And provided further that in the event of the installation of a swimming pool upon any lot requiring a fence by law, that no fence shall be constructed around said swimming pool of a height greater than six (6) feet.

12. **VEGETATION.** An Owner shall not permit the growth of weeds and volunteer trees and bushes on it's lot, and shall keep it's lot clear from unsightly growth at all times. Failure to comply with this Restriction shall authorize the Architectural Review Committee or the Association to cut the weeds and clear the lot of such growth at the expense of the Owner thereof and the Architectural Review Committee or the Association shall have a lien against the cleared lot for the expense thereof. This policy shall commence immediately upon transfer of deed to the Owner.

13. **NUISANCES.** No Owner shall cause or permit any nuisance to be maintained on any lot. No activity which violates any applicable statute, ordinance, regulation or law shall be conducted on any lot. No noxious fumes or odors shall be permitted to emanate from any lot. No noxious or offensive activity shall be carried upon on any lot nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood. Three-Wheelers, Off-Road Vehicles, Go-Carts and Barking Dogs will be considered a nuisance should they disturb the quiet enjoyment of the neighboring residences.

14. **LIVESTOCK AND POULTRY.** No animals, rabbits, livestock, fowl, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided, however, that they are not kept, bred or maintained for any commercial purpose, and do not exceed in the aggregate two (2) in number. The Owners of such permitted pets shall confine them to their respective lots in such a manner that they will not be a nuisance. No dog or cat shall be permitted to run loose. Any lot Owner owning a pet must exercise control over their animals at all times via leash or restraint, or must have installed around the subdivision lot an approved fence or an invisible fence to insure that their pets do not disturb or become a nuisance to any one in the subdivision.

15. **AIR CONDITIONERS.** All utility meters, air conditioners, compressors, television signal reception equipment and other like equipment shall not be visible from the street.

16. **OUTSIDE CLOTHES DRYING DEVICES.** Outside clotheslines and clothes hanging devices shall not be permitted.

17. **INCINERATORS AND GARBAGE CONTAINERS.** Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any lot. Any and all equipment, woodpiles, garbage cans, refuse or storage piles placed on any lot, whether

temporary or permanent, shall be walled in or otherwise concealed from the view of neighboring lots, roads, streets and open areas. When submitting final plans for approval, plans for all screening walls and enclosures must be approved by the Architectural Review Committee.

18. **SPECIFIC STANDARDS & TIME FRAME FOR CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS**. The following construction standards shall apply to any and all new residential buildings constructed upon any and all lots in the subdivision:

- a. **Size**. A residential structure of a ranch style shall contain at least two thousand five hundred (2,500) square feet of interior square footage, excluding any garage space and basement area. A residential structure of a bi-level style shall contain a minimum of two thousand five hundred (2,500) square feet of interior square footage, excluding any garage space, on the main level thereof, and shall contain in excess of three thousand two hundred (3,200) square feet of livable interior square footage, excluding any garage space or basement area. A residential structure of a tri-level style shall contain at least two thousand five hundred (2,500) square feet of interior square footage on any of two (2) levels, and shall contain in excess of three thousand five hundred (3,500) square feet of total livable interior square footage, excluding any garage space and basement area. Any residential structure with a two (2) story design shall contain one thousand eight hundred (1,800) square feet of interior square footage on the main level and shall contain in excess of three thousand five hundred (3,500) square feet of total livable interior square footage, excluding any garage space and basement area and bonus rooms.
- b. **Garages and Outbuildings**. Each residential structure constructed shall have not less than three (3) bays of garage space of which not less than two (2) bays shall constitute an attached garage. No garage door shall be visible from the street. All garage doors must be either side-load or rear-load unless waived by the Architectural Review Committee. No detached garage, trailer, mobile home, tent, shed, barn or other outbuilding of any type or kind shall be allowed upon lots in the subdivision; provided, however, a detached garage or building is built to be used as with a swimming pool. A detached garage must have a full width concrete drive and overhead doors accessible from the hard surface of drive. The detached buildings must conform to the design of the primary residence. No prefabricated storage sheds of either aluminum or steel design shall be permitted. Nothing but that listed here will be approved. Gazebos and other detached structures not mentioned above shall have approval when submitting the final plot plan for approval. Any subsequent improvements or structures shall be re-submitted to the Architectural Review Committee for approval.
- c. **Prohibited Structures**. No previously existing structures shall be moved onto any of the lots within the subdivision. All structures on said lots shall be newly erected thereon. Modular houses and log homes are prohibited.
- d. **Passageway**. No owner shall permit or authorize anyone to use any lot as a passageway or means of egress or ingress to or from any contiguous

property, nor shall any utility easements be granted, without the approval of the Developer or its appointee.

- e. **Construction Materials.** The construction of any building shall not expose cement block foundations above ground level. All exposed foundations shall be of brick veneer. All driveways must be concrete or asphalt and no chat or rock driveways shall be allowed.
- f. **Construction of Dwelling.** The construction of any dwelling shall be completed within one (1) year from and after the date of commencement of such construction, including installation of all landscaping, which was approved by the Architectural Review Committee when the initial plans were approved. During construction, the job site and lot shall be kept clean and free from all debris at all times. In the event, that any lot owner or contractor shall fail to comply with this restriction, the subdivision developer shall have the right to clear said lot free of debris and bill the said lot owner for the costs thereof, said costs to become a lien upon the lot but inferior to any mortgage thereupon until paid. If said bill is not paid within thirty (30) days, the said subdivision developer shall have the power to collect the same together with attorney fees incurred in connection thereof by legal action or otherwise. The builder or contractor primarily responsible for the construction of the dwelling upon each lot shall maintain, on-site during construction, a trash dumpster having dimensions of at least six (6) cubic yards, which must be emptied as necessary. This is the ultimate responsibility of the lot owner and not the builder.

During any construction, and during delivery or pickup of any equipment, materials, fixtures, furnishings or other items, no such materials or items shall be loaded or unloaded in the streets. All such loading and unloading shall be done within the boundaries of the Owner's lot.

In the event the streets within the subdivision are damaged as a result of any loading or unloading of any materials or items for or on behalf of the Owner, or as a result of any negligent acts or omissions during any construction, the lot Owner shall be responsible to promptly repair any such damage. In the event the lot Owner fails to make, or cause to be made, adequate and proper repair of any such damage, the Homeowner's Association shall have the right to make such necessary repairs, and the lot Owner shall reimburse the Homeowner's Association for the cost of such necessary repairs within thirty (30) days after the Homeowner's Association delivers an invoice for the cost of such repairs to the lot Owner.

- g. Each lot Owner understands any approved Builder before construction begins must sign and abide by and to Rule #5, as may be amended, (Erosion Control as set forth by the Indiana Department of Environmental Management) as follows:
 - i. All lots in this subdivision are subject to the Indiana Department of Environmental Management General Permit Rule 327 I.A.C. 15.5., *et seq.* This rule requires erosion control practices during

development and construction to minimize soil erosion, prevent sediment laden water from flowing from the building sites and that streets be kept free from transported soil from the building site.

- ii. An erosion control plan for the subdivision has been submitted to the Vanderburgh County Soil and Water Conservation District. Such plan requires individual lot owners, prior to construction commencement, to install a rock driveway to the building site. All deliveries and workers are to enter over the driveway. To minimize sediment laden discharges into the streets and drainage ways, sandbags, straw bales, and silt fences must be used on building sites.
 - iii. Adjoining lots shall not be used for any purpose. Appropriate erosion control practices shall be implemented immediately in the event of disturbance of vegetation on adjoining lots.
 - iv. Each lot owner in the subdivision agrees to assume the obligations and requirements of the erosion control General Permit Rule 327 I.A.C. 15-2, *et seq.*, as relates to their individual lot.
 - v. Slopes of zero percent to six percent shall be mulched and seeded with a cover crop, (i.e. rye, red top or wheat), within forty-five (45) days of soil disturbance, which must remain in place until final grading, seeding and shaping. Slopes of more than six percent shall be mulched and seeded and shall have silt fences, straw bales and/or erosion blankets in place within five (5) days of soil disturbance, which must remain in place until final grading and seeding and until final seeding has matured sufficiently to prevent erosion.
 - vi. Lot owners are responsible to insure that any contractors, subcontractors, builders, and workers comply with the erosion control plan and any amendments thereto filed with the County Drainage Board and the Soil and Water Conservation District, as well as with all applicable federal, state, and local erosion control laws, regulations or rules.
 - vii. In the event any lot owner or contractor fails to comply with the above requirements, the subdivision developer shall have the right to perform any necessary erosion control work and bill the said lot owner for the costs thereof, said costs to become a lien upon the lot but inferior to any mortgage thereupon until paid. If said bill is not paid within thirty (30) days, the subdivision developer shall have the power to collect the same together with attorney's fees in connection thereof by legal action or otherwise.
- d. Telephone, Cable and Electrical Service. All electric power, cable television and telephone service shall be carried underground from the public utility easement across the lot to each resident or other building. No overhead utility service will be permitted across any lot. No visible antennas, any wire pole to pole, or house to pole will be permitted.

19. **LIMITATION ON DEVELOPERS' LIABILITY** Notwithstanding anything to the contrary herein, it is expressly agreed, and each owner, by accepting title to a lot and becoming an owner, acknowledges and agrees that neither the Developer (including without limitation any assignee of the interest of the Developer hereunder) nor any director, officer, shareholder or partner of the Developer (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to any owner, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to this Declaration. If any judgment is ever levied against the Developer (or its assignee), the same is hereby agreed to be limited to the extent of the Developer's (or such assignee's) interest in the subdivision; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon any other assets of the Developer (or its assignee).

20. **BUILDING SET-BACK LINES** Front, rear and side building set-back lines shall be in accordance with any applicable governmental rule, regulation, ordinance or code, and such building set-back lines shall further be subject to approval by the Architect Review Committee. Such decision by the Architectural Review Committee being final and binding.

21. **WATER AND DRAINAGE** The water from down spouts or other surface water drainage shall be directed to controlled drainage facilities and not to be drained into or guided to the sanitary sewer systems. The natural and man made drainage facilities of the subdivision shall not be obstructed, altered, damaged or otherwise changed by the owner of any lot and it shall be the obligation of the owner of each subdivision lot to keep and maintain the drainage facility located thereon clean, open, unobstructed and mowed.

- a. **Storm Water Drainage System**. The Home Owners Association shall be responsible, including financially, for the maintenance and repair of the entire storm water drainage system, its part, and easements within or attached to this subdivision and outside of county accepted roadways including:
- i. Mowing grass, controlling weeds, and maintaining the designed cover of the waterways, storage basins and easements in accordance with applicable ordinances;
 - ii. Keeping all parts of the storm water drainage system operating at all times as designed and as constructed; and free of all trash, debris and obstructions to the flow of water;
 - iii. Keeping all channels, embankments, shorelines, and bottoms of waterways and basins free of all erosion and sedimentation;
 - iv. Maintaining and repairing the storm water drainage system in accordance with the conditions described on the approved street and/or drainage plans on file in the County Surveyor's Office and/or the County Engineer's Office; and in compliance with the County Drainage Ordinance, as amended from time to time; and
 - v. Preventing all persons or parties from causing any unauthorized alterations, obstructions, or detrimental actions from occurring to any

part of the storm water drainage system and easements within or attached to this subdivision.

NOTICE: Any pipe, fence, wall, building, pool, patio, planting, stored material, excavation, fill or other construction, improvement, addition to, or alteration of the land within a drainage easement in this subdivision requires the prior written approval of the Vanderburgh County Drainage Board and Architectural Review Committee.

- b. **Private Sewage Systems.** Neither the Developer, nor its agents, successors or assigns, shall have any liability to an Owner or to any other person with respect to sewage on, over or under a lot or with respect to any sewage disposal system located or proposed to be located thereon. Such drainage and sewage disposal systems 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 an acceptance of a deed to a lot, shall be deemed to agree to indemnify, defend and hold Developer and its agents, successors and assigns free and harmless from any 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 or any sewage disposal system located, or to be located, thereon. Developer shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Developer, and duty of, or warranty by, Developer shall be implied by or inferred from any term or provision of this covenant.

22. **UTILITY TAP-IN FEES.** All utility tap-in and installation fees, whether for water, sewage, telephone, electric, gas, cable television, or any other, shall be the responsibility of the lot owner.

23. **ANTENNAS AND RECEIVERS.** No satellite receiver or down link shall be permitted on any lot, nor shall any exterior receiver greater than eighteen (18) inches be permitted thereon without the prior written consent from the Architectural Review Committee.

24. **OCCUPANCY OR RESIDENTIAL USE OF PARTIALLY COMPLETED DWELLINGS PROHIBITED.** No resident constructed on a lot shall be occupied or used for residential purposes or for human habitation until it has been substantially completed and a Certificate of Occupancy issued by the County Building Commissioner. The determination of whether a residence has been "substantially completed" shall be made by the Architectural Review Committee and the developer in their sole discretion, and such decision shall be binding on all parties affected thereby.

25. **LOT RESALE.** If the buyer decides not to build and wishes to sell his/her lot, the developer shall be given first option to purchase said lot at whatever price was paid originally, plus normal closing costs. The developer shall have fifteen (15) days to decide if he wants to exercise his option and must indicate his desire in writing. If he chooses not to exercise his option to purchase the said lot, then the lot owner may pursue whatever method he/she chooses for disposition of said property.

26. **ACCEPTANCE OF RESTRICTIONS.** The acceptance of a deed of conveyance to any lot in this subdivision by any person shall be construed to be an acceptance and an affirmation by said person of each and all of the conditions, restrictions, reservation, and covenants contained herein, whether or not the same be set out as specified in such conveyance.

27. **TERM AND AMENDMENT OR RESTRICTIONS.** These covenants are to run with the land and shall be binding upon all parties and persons claiming under them for a period of twenty-five (25) years from the date these conditions, restriction, reservations and covenants are recorded, after which time said conditions, restrictions, reservations and covenants shall automatically extend for successive additional periods of ten (10) years each, unless by vote of a majority of the then owners of lots in the subdivision it is agreed to change such conditions, restrictions, reservations and covenants in whole or in part. These conditions, restrictions, reservations and covenants may be amended at any time upon the written agreement of all of the owners of lots in the subdivision and compliance with applicable law. The Developer reserves the right to file any amendments that may be necessary to correct clerical or typographical errors in these covenants with the Federal Home Loan Mortgage Corporation regulations.

28. **ADDITIONAL RESTRICTIONS AND COVENANTS.** No property owner, without prior written approval of majority of the owners of lots in this subdivision, may impose any additional covenants and restrictions on any part of the land shown in this subdivision or convey to any party, other than the Evansville Area Plan Commission, additional easements other than are recorded on the primary plat.

29. **SEVERABILITY.** The invalidation of any of these restrictions, conditions or covenants set forth herein by judgment of court order, or otherwise, shall in no manner affect any of the other provisions, and such other provisions shall remain in full force and effect.

30. **ENFORCEMENT.** The Architectural Review Committee, Association, any Owner, Developer or the Zoning Authority shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this covenant and of any supplementary covenants, but neither, Developer, Architectural Review Committee, nor the Zoning Authority shall be liable for any damages of any kind to any person for failure to abide by, enforce and carry out any of the restrictions. Any party adjudged to have violated any of said restrictions shall be liable to the aggrieved party or parties for reasonable attorneys fees together with any damages, which attorney fees and damages shall be fixed by the court hearing such matter. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or an estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions. There shall be no rights of reversion or forfeiture of title resulting from violations of this covenant.

31. **HOMEOWNERS ASSOCIATION.** The Subdivision Developer shall hereafter cause to be incorporated an Indiana not-for-profit corporation to be known as "Wellington Acres Homeowners Association" (sometimes referred to as "Association") for the purposes as set forth in the By-laws of said Association defined in Exhibit "A" attached hereto, made a part hereof, and incorporated herein by reference.

WITNESS our hands and seals this 12 day of January, 2000

WINDSOR REALTY & DEVELOPMENT,
INC.

By: Delfred W. Shanks Pres.
Delfred W. Shanks, President

STATE OF INDIANA

)

) SS:

COUNTY OF VANDERBURGH

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BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared **Delfred W. Shanks**, President of Windsor Realty & Development, Inc., and who acknowledged and affirmed the execution of the foregoing instrument this 12 day of

January, 2000.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date first above written.

My Commission Expires:

November 2, 2007

My County of Residence is:

Vanderburgh County, Indiana.

Debra Sue Heneisen
Signature of Notary Public

Debra Sue Heneisen
Printed Name of Notary Public



THIS INSTRUMENT was prepared by Kahn, Dees, Donovan & Kahn, LLP; Kent A. Brassfield II, Esq.; Fifth Main Financial Plaza, 501 Main Street, Suite 305; P. O. Box 3646; Evansville, Indiana 47735-3646, at the specific request of the parties based solely on information supplied by one or more of the parties to this conveyance, and without examination of survey, title or abstract. The drafter assumes no liability for any errors, inaccuracy, or omissions in this instrument resulting from the information provided, the parties hereto signifying their assent to this disclaimer by their execution and acceptance of this instrument.

FOCI
10 Apr 2010 10:24

**ARTICLES OF INCORPORATION
OF
HOMEOWNERS' ASSOCIATION OF WELLINGTON ACRES SUBDIVISION, INC:**

The undersigned incorporator, desiring to form a corporation (hereinafter referred to as "Association") pursuant to the provisions of the Indiana Not-For-Profit Corporation Act, as amended (hereinafter referred to as "Act"), executes the following Articles of Incorporation:

**ARTICLE I
Name**

The name of the Association is "Homeowners' Association of Wellington Acres Subdivision, Inc."

**ARTICLE II
Purpose**

This nonprofit corporation is a *mutual benefit* corporation for the property owners of the real estate commonly known as Wellington Acres Subdivision, being also that real estate described as per plat thereof, recorded in Plat File O, Page 60, in the Office of the Recorder of Vanderburgh County, Indiana (the "Subdivision"). The purposes for which the Association is formed are:

Section 1. Enforcement of Covenants. To enforce the Conditions, Restrictions, and Protective Covenants affecting lots in the Wellington Acres Subdivision, which Conditions, Restrictions and Protective Covenants are recorded as Instrument Number 2000R-00001086 in the Office of the Recorder of Vanderburgh County, Indiana, as the same may be modified, amended, or supplemented from time to time (the "Covenants"). In this regard, to take such actions as may be necessary to enforce Covenants including, but not limited to, without lending the generality of this authority, to cut grass or weeds, to maintain a lot, to keep it clean, to move illegal vehicles and signs, to incur expenses in doing such and assess and collect such expenses against the lot owner who violates such Covenants.

Section 2. Maintenance. To maintain the common areas, lakes, dams and spillways in the Subdivision except to the extent such maintenance is the responsibility of the respective lot owners as set forth in the Covenants.

Section 3. Collection of Funds. Establish, levy, assess and collect from each of the owners in the Subdivision any charges or assessments made against members or others as required to carry out the purposes of the Association as stated in these Articles and the Code of By-Laws of the Association.

Section 4. Real and Personal Property. Acquire by gift, purchase or otherwise and own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association, including the commons areas.

Section 5. Preserve Residential Character. To engage in all reasonable efforts to protect, preserve, and enhance the residential character and value of the property owned by the members in the Subdivision and to engage in such other activities as may be to the mutual benefit of the members.

Section 6. Contracts. To enter into contracts for the performance of any of the purposes of the Association.

Section 7. Powers, Rights and Duties. To have and exercise any and all powers, rights, duties and privileges which are given to the Association in the Covenants, these Articles of Incorporation, and/or the Code of By-Laws of the Association.

Section 8. All Other Lawful Purposes. To exercise and enjoy any and all other powers, rights and privileges granted by the Indiana Nonprofit Corporation Act of 1991, and Acts amendatory, to corporations organized thereunder. Notwithstanding any other provision of these Articles, the Association shall not carry on any other activities not permitted to be carried on by a corporation which would prevent the Association from being considered a "homeowners association" under §528 of the Internal Revenue Code of 1986 (or the corresponding provision of any other United States Internal Revenue law).

ARTICLE III **Period of Existence**

The period which the Association shall continue is perpetual.

ARTICLE IV **Resident Agent and Principal Office**

Section 1. Resident Agent. The name and address of the Association's Resident Agent for service of process is:

John Knapp
2220 Oldbury Way
Evansville, Indiana 47725

Section 2. Principal Office. The post office address of the principal office of the Association is:

2220 Oldbury Way
Evansville, Indiana 47725

ARTICLE V **Directors**

Section 1. Number of Directors. The initial Board of Directors is composed of three (3) members; *provided*, however, that the exact number of directors shall be prescribed from time to time in the Code of By-Laws of the Association; PROVIDED HOWEVER THAT

UNDER NO CIRCUMSTANCES SHALL THE MINIMUM NUMBER OF DIRECTORS BE LESS THAN THREE (3).

Section 2. Directors. The names and post office addresses of the initial Board of Directors are:

<u>Name</u>	<u>No. and Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Ben Klipsch	2221 Oldbury Way	Evansville	Indiana	47725
John Knapp	2220 Oldbury Way	Evansville	Indiana	47725
Cliff Martin	13115 Kettleshill Walk	Evansville	Indiana	47725

ARTICLE VI
Incorporator

The name and post office address of the incorporator of the Association is as follows:

<u>Name</u>	<u>No. and Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
John Knapp	2220 Oldbury Way	Evansville	Indiana	47725

ARTICLE VII
Statement of Property and Value

A statement of the property and an estimate of the value thereof to be taken over by the Association at or upon its incorporation is as follows:

NONE

ARTICLE VIII
Membership Requirements

Section 1. Members. The Association is not-for-profit and shall have no capital stock. Each owner of a lot or building site in the Subdivision shall automatically be a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his or her lot or building site, at which time the new owner of such lot or building site shall automatically become a member of the Association. Any person or entity which owns more than one (1) lot or building site shall have one (1) vote for each lot or building site owned; provided, however, if one (1) or more lots or part of one (1) or more lots as originally platted in the Subdivision are combined for use as a single building site, the owner or owners of such building site shall be entitled to only one (1) vote with respect thereto regardless of the fact that such building site consists of one (1) or more lots or part of one (1) or more lots as originally platted in the Subdivision. No person or entity other than an owner of a lot or building site in the Subdivision shall be a member of the Association; provided, however, each director on the board of directors of any corporation which is the owner of a lot or building site in the Subdivision shall be a member of the Association, although said corporation shall have only one (1) vote per

lot or building site owned. If more than one person owns a lot or building site, each such person shall be considered a member of the Association, but all of whom together shall have only one (1) vote per lot or building site.

Section 2. Rights, Preferences, Limitations, and Restrictions of Classes. The members shall have the rights, preferences, limitations, and restrictions set forth in the Code of By-Laws and governing instruments of the Association.

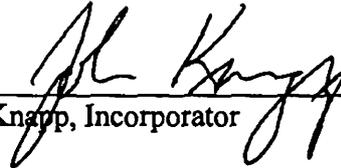
ARTICLE IX
Provisions for Regulation of Business
and Conduct of Affairs of Association

Other provisions consistent with the laws of the State of Indiana for the regulation and conduct of the affairs of the Association and creating, defining, limiting or regulating the powers of the Association, the Directors or the members are as follows:

- a. The affairs of the Association shall be managed initially by a board of three (3) Directors.
- b. Amendment of these Articles shall require the affirmative vote of not less than sixty-seven per cent (67%) of the votes entitled to be cast by all the members of the Association.
- c. No part of the net earnings of the Association shall inure to the benefit of or be distributed to its members, Directors, officers or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein, pursuant to duly adopted resolutions of the Board of Directors and except, also, that a member may receive principal and interest on monies loaned or advanced to the Association.
- d. No part of the activities of the Association shall be the carrying on of propaganda or otherwise attempting to influence legislation and the Association shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.
- e. The Association reserves the right to alter, amend or repeal any provision contained in these Articles in any manner now or hereafter prescribed by the provisions of the Act or any other pertinent enactment of the General Assembly of the State of Indiana and all rights and powers conferred hereby on members, Directors and officers of the Association are subject to such reserved right.
- f. The Directors shall be vested with the power to adopt the initial By-Laws of the Association.
- g. The Association shall have all general rights, privileges and powers permitted and granted to not-for-profit Associations under the Act or any other pertinent enactment of the General Assembly of the State of Indiana.

- h. Upon the dissolution of the Association, the Association's assets shall be distributed pro rata to the members of the Association, based on the number of votes held by the members.

IN WITNESS WHEREOF, the undersigned, being the sole incorporator designated in Article VII, executes these Articles of Incorporation and certifies to the truth of the facts stated this 26 day of April, 2010.



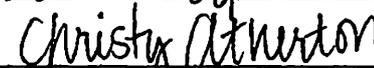
John Knapp, Incorporator

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that John Knapp personally appeared before me, acknowledged the execution of the foregoing Articles of Incorporation and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 26 day of April, 2010.

My Commission Expires
9-16-12
Notary Public residing in
Vanderburgh County, Indiana



Signature of Notary
Christy Atherton

Printed Name of Notary

THIS INSTRUMENT Was Prepared by Kahn, Dees, Donovan & Kahn, LLP, Kent A. Brasseale II, Attorney at Law, 501 Main Street, Suite 305, Post Office Box 3646, Evansville, Indiana 47735-3646.

State of Indiana
Office of the Secretary of State

CERTIFICATE OF INCORPORATION

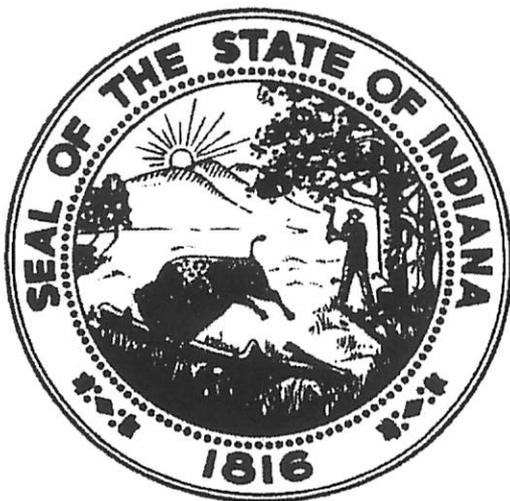
of

**HOMEOWNERS' ASSOCIATION OF WELLINGTON ACRES SUBDIVISION,
INC.**

I, TODD ROKITA, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above Non-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Nonprofit Corporation Act of 1991.

Indiana Secretary of State
Packet: 2010042800436
Filing Date: 04/28/2010
Effective Date: 04/28/2010

NOW, THEREFORE, with this document I certify that said transaction will become effective Wednesday, April 28, 2010.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, April 28, 2010.

A handwritten signature in black ink that reads "Todd Rokita".

TODD ROKITA,
SECRETARY OF STATE

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