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Doris Tate, County Clerk and Recorder



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**WELLINGTON PARK ADDITION
TO THE CITY OF FORT SMITH, ARKANSAS
AMENDED PROTECTIVE COVENANTS AND BILL OF ASSURANCE**

These Protective Covenants and Bill of Assurance ("Covenants") for Wellington Park Addition to the City of Fort Smith, Arkansas are made by the property Owners ("Owners"). The Owners hereby impose the following limitations, restrictions, and uses on lots 1 through 50 of the subdivision known as Wellington Park Addition (the "Addition"), a platted subdivision filed of record in the Fort Smith District of Sebastian County, Arkansas on the 15th day of August, 2002 in Plat Book 1696C (the "Plat") as amended. The legal description for the said Addition is more particularly described on Exhibit "A" attached to the original covenants and a plat of the Addition is set out on Exhibit "B" attached to the original covenants. These Covenants shall run with the land for the period of time hereinafter set out and shall be binding upon all purchasers of lots in the Addition. These Covenants are for the benefit of and are limitations upon all owners and future owners in the Addition and have been designated as such in order to provide for the purpose of making the Addition desirable, uniform, and suitable for the uses herein specified.

These Covenants shall be binding upon all parties and all persons claiming under them through December 31, 2033, at which time they shall be automatically extended for an additional ten (10) years, unless by vote of at least two-thirds of the then owners of the lots in the Addition (the term "lots" being defined herein) it is agreed that these Covenants should be changed, amended, or terminated in whole or in part.

It shall be lawful for the Wellington Park Property Owners Association, an Arkansas non-profit corporation (hereinafter referred to as the "Association"), and any other person or persons owning a lot in the Addition to initiate proceedings at law or in equity against parties or persons violating or attempting to violate any of these Covenants and to recover damages for such violations. The invalidation of any one or more of these Covenants by a court order shall not invalidate any of the other provisions which shall remain in full force and effect.

ROBERT FRAZIER

Doc #: 7211429

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59

ARTICLE I

Concepts and Definitions

The following words, when used in these Covenants or any amendments or supplements thereto (unless the context shall otherwise clearly indicate or prohibit), shall have the respective concepts and meanings set forth below.

(A) "**Addition**" shall mean and refer to the property described in Exhibit "A" and as reflected on the plat set out on Exhibit "B" and any additions or amendments thereto.

(B) "**Association**" shall mean and refer to the entity which will have the power, duty, and responsibility for maintaining, administering, and enforcing, these Covenants and collection and disbursing the assessments and charges hereinafter prescribed. The Association shall be chartered and shall function as a non-profit corporation under the name of "Wellington Park Property Owners Association, Inc.", for the purposes set forth herein.

(C) "**Board**" or "**Board of Directors**" shall mean and refer to the Board of Directors of the Association elected in accordance with the provisions of the articles of incorporation and bylaws of the Association.

(D) "**Common Properties**" shall mean and refer to any and all areas of land together with all improvements located therein within the Addition which are known, described, or designated on the Plat as a common area as well as all public and private thoroughfares, or streets as designated on the Plat, sidewalks, gates and structures associated therewith, fencing, private or public utility easements along the roadways as reflected on the Plat or any other property (whether real or personal) intended for or devoted to the common use and enjoyment of the members of the Association.

(E) "**Lot**" or "**lot**" shall mean and refer to any plot or tract of land which is designated as a lot on the Plat attached hereto and labeled as Exhibit "B." No lot as set forth on Exhibit "B" may be further subdivided or split; provided, however, minor adjustments to lot lines or boundaries may be made from time to time to cure title problems or resolve problems related to encroachments so long as such adjustments are first approved by the Board.

(F) "**Member**" or "**member**" shall mean and refer to each owner of a lot.

(G) "**Owner**" or "**owner**" shall mean and refer to each and every person or business entity who or which is a record owner or subsequently becomes a record owner of a fee or undivided fee interest in any lot in the Addition. If more than one person or entity owns an interest in a lot, then the voting right and membership shall be divided among the parties as they see fit.

(H) "**Architectural Review Committee**" or "**ARC**" shall mean and refer to a committee of members and shall be elected by the Association at a regular scheduled business meeting. Each member of the Committee shall be generally familiar with residential and community development design matters and knowledgeable about the Owners' concern for a high level of taste and design standards within the Addition. Other matters pertaining to the governments and administration of the Committee is set forth in the Association's By-Laws.

(I) "Lawn and Beautification Committee" or "LBC" shall mean and refer to the members who shall be elected by the Association at a regular scheduled business meeting. Each member of the Committee shall be generally familiar with residential lawns, plants and shrubs of the community and possess knowledge of such and concern for a high level of taste and design standards within the Addition. Other matters pertaining to the governments and administration of the Committee is set forth in the Association's By-Laws.

ARTICLE II

Membership and Voting Rights in the Association

Section 1. Membership. Every owner of a lot shall automatically be, and must remain, a member of the Association in good standing.

Section 2. Voting Rights. The Association shall have one class of membership for purposes of voting. There shall be a total of fifty (50) votes. The owner of each lot (regardless of how many persons or entities own an interest in the lot) shall be entitled to one vote per lot. Notwithstanding the foregoing, the owner of a lot shall not be entitled to vote during any time in which the owner is found by the Board to be in violation of these Covenants.

Section 3. Quorum, Notice and Voting Requirements. The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the articles of incorporation and by-laws of the Association, as the same may be amended from time to time. Subject to the provisions of Section 2 above and any other provision to the contrary set out in these Covenants, any action by or on behalf of the Association may be taken by the Board or with the assent given in writing and signed by members who collectively hold or control a majority of the outstanding votes of the Association.

ARTICLE III

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every member and each individual within a member's family shall have a nonexclusive right and easement of ingress, egress, access, use, recreation, and enjoyment in and to the Common Properties and their respective lot, such easement shall be appurtenant to and shall pass with the title of each lot, PROVIDED, HOWEVER, such easement shall not give such person the right to make alterations, additions, or improvements to any portion of the Common Properties.

Section 2. Title to the Common Properties. The Association shall hold such title to the Common Properties for an indefinite period of time, subject to any public or private easement rights as set forth on the Plat as is necessary to accomplish the purposes and effects of these Covenants. The Association shall have the right to design, redesign, reconfigure, alter, improve, landscape, and maintain the Common Properties.

Section 3. Extent of Members' Easements. The rights and easements created hereby shall be subject to the following provisions:

- (A) The Board shall prescribe reasonable regulations and policies governing, and to charge fees and/or deposits related to, the use, operation, and maintenance of the Common Properties and all lots.

(B) The Board, shall prescribe reasonable regulations, rules, and policies governing the operation and distribution of any utility services the Board contracts to provide including the charging of fees or deposits related thereto and the collection of such fees or deposits in a timely manner. 09 01 24

(C) The Board, on behalf of the Association, may enter into and execute contracts with any party for the purpose of providing maintenance, utility services, or such other materials or services consistent with the purposes of the Association and/or these Covenants.

(D) The Board shall suspend the voting rights of any member and suspend the right of any member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a lot owned by such member remains unpaid, and otherwise for any period deemed reasonable by the Board for any infraction of the then existing rules and regulations.

Section 4. Emergency Easement. A general easement is hereby granted to all police, fire, ambulance, and all other similar emergency agencies or persons to enter upon all streets, rights of way or Common Properties of the Addition in the proper performance of their duties.

ARTICLE IV

Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot within the Addition, hereby covenants and agrees by acceptance of a deed therefore, whether from the owner or some subsequent grantor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the lot), to pay to the Association the following matters:

(A) Regular assessments or charges for maintenance, yard and landscape maintenance (both in and on any of the Common Properties and on each lot) repairs, utility expenses, taxes and insurance on the Common Properties including private streets, gates, fencing, utility lines not dedicated to the general public, and sidewalks located within the Addition; provided, however, the owner of each lot shall be responsible for replacing dead or decaying plants within a landscaping area on an Owner's lot or sod in any grass area.

(B) Special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established, and collected by the Board from time to time as hereinafter provided.

(C) Special individual assessments levied against individual lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual owner, his or her family, guests or invitees and not caused by ordinary wear and tear, including, but not limited to, (i) maintenance and repair of sprinkler systems located on the lot; and (ii) replacement of plants or shrubbery within a landscaped area or sod within a grass area if the owner refuses to so act after reasonable notice has been given to the owner.

(D) Assessments and fines levied against individual lot owners for violation of rules and regulations pertaining to the Association and/or the Common properties. The regular, special

group, and special individual assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each lot against which each such assessment is made and shall also be the continuing personal obligation of the then existing owner of such lot at the time when the assessment fell due. 03119 25

Section 2. Purpose of Assessments. The assessments levied by the Board on behalf of the Association shall be used exclusively for the purposes of (i) maintaining the Common Properties and replacing, certain elements thereof when necessary; (ii) enhancing the natural environment, appearance, and beauty of the Addition; and (iii) promoting the health, recreation, safety, and general welfare of all members and residents of the Addition.

Section 3. Basis and Amount of Regular Maintenance Assessments.

(A) The Board shall determine the regular base assessments for each of the lots at least annually. Each lot (except with regard to special individual assessments) shall be assessed the same amount and in an equal uniform manner.

(B) The Board shall give notice to all members at least thirty (30) days in advance of the date all regular or special assessments are due. The Board may prescribe from time to time that the regular base assessments are to be collected on an annual, semi-annual, quarterly, or monthly basis, and accordingly, the Board shall prescribe the appropriate due dates. All regular base assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessments or special assessment under Sections, 3 and 4 hereof, shall be fixed in a resolution by the Board authorizing such assessment.

Section 4. Special Group Assessments. In addition to the regular assessments authorized by Section 3 hereof, the Board may levy in any fiscal year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement in the Addition.

Section 5. Rate of Assessments. Except as noted herein, regular and special group assessments shall be fixed at a uniform rate for all lots owned by members, unless otherwise approved by the Board. Should a special assessment be determined necessary by the Board, the rate of assessment shall be equal for all lots. The failure to pay the assessment by the owner of a lot within the required time period shall constitute a lien only against the lot assessed.

Section 6. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the lien; and Remedies of Association.

(A) If any assessment or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall be considered delinquent and shall, together with any late charge and interest thereon at the maximum rate allowed under applicable law and costs of collection thereof, thereupon become a continuing debt secured by a self-executing lien on the lot of the non-paying owner which shall bind such lot in the hands of the owner and owner's heirs, executors, administrators, devisees, personal representatives, successors, and assignees. The Board shall have the right to reject partial payments of any unpaid assessment(s) and demand the full payment thereof. The personal obligation of the then existing owner to pay such assessment, however, shall remain the owner's personal obligation and shall not pass to owners successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be

unaffected by any sale or assignment of a lot and shall continue in full force and effect as a lien against the lot until satisfied in full. No owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the lot. 080726

(B) The Board may also give written notification to the holder(s) of a mortgage on lot of a non-paying owner of such owner's default in paying any assessment when such default has not been cured within 30 days of the original date due, provided that the Board has, theretofore, been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification.

(C) The Board may, at its election, retain the services of an attorney or other third parties to review, monitor, and collect unpaid assessments and delinquent accounts, and there shall also be added to the amount of any unpaid assessment or to any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bona fide first mortgage or deed of trust now or hereafter placed upon the lots subject to assessment.

ARTICLE V

General Powers and Duties of the Board of Directors of the Association

Section 1. Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors (sometimes referred to as the "Board").

(A) The Board, for the benefit of the Association, the Addition, and the owners, may provide and may pay for, out of the assessment fund(s) provided for in Article IV above, any or all of the following:

- (1) Care, preservation, and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property and fixtures for use in or on the Common Properties;
- (2) Yard and landscape maintenance within each lot;
- (3) Private trash and garbage collection service, if any, which pertain to the Common Properties only or the Addition as a whole or any part thereof;
- (4) Utility services (including water) to any or all of the lots and the billing and collection of all fees and costs associated therewith;
- (5) Taxes and insurance;
- (6) The services of any person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager hired by the Board;

(7) Legal and accounting services; and

(8) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of these Covenants or which in its opinion shall be necessary or proper for the operation or protection of the Association and the Addition or for the enforcement of these Covenants.

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(B) The Board shall have the following additional rights, powers and duties:

(1) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(2) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association; and

(3) To make reasonable rules and regulations for the operation of the Common Properties and delivery of any utility services to the Addition and to amend them from time to time.

Section 2. Maintenance Contracts. The Board shall have full power and authority to contract with any owner for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association.

Section 3. Liability Limitations. No member or the directors and/or officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. The Association, its directors, officers, agents, or employees, shall not be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portion thereof or for failure to repair or maintain the same. By granting certain rights in favor of the City, no right or cause of action is deemed to be created against the City as a result thereof.

Section 4. Reserve Funds. The Board may establish reserve funds that may be maintained and accounted for separately from other funds maintained for annual operating expenses.

ARTICLE VI

Use and Division of Lots

No lot may be divided or split. The Addition (and each lot situated therein) shall be constructed, developed, occupied and used as follows:

Section 1. Residential Lots. All lots within the Addition shall be used, known and described as residential lots and shall be used for residential purposes only. Only one (1) single family residential dwelling consisting of not less than the number of square feet of heated and cooled finished space set forth in Section 3 below, and the customary and usual necessary structures may be constructed on each

lot. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained on any lot. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade, or profession within the Addition, and/or within any lot. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations, and ordinances of the City of Fort Smith, Sebastian County, Arkansas, or any other governmental authority or political subdivision having jurisdiction over the Addition. 08 01 28

Section 2. Minimum Square Footage. Each single-family residence constructed on a lot shall contain a minimum of 1,475 square feet heated and cooled finished space. The decision by the Committee regarding the computation of the amount of square footage a residence contains shall be final.

Section 3. Owner's On-Going Maintenance Responsibilities. Except as provided otherwise in these Covenants, or by written agreement with the Board, all maintenance of each of the lots and all structures, landscaping, parking areas, and other Improvements thereon shall be the sole responsibility of the owner thereof, who shall maintain the lot in accordance with the community-wide standards adopted by the Association for the Addition. The Association shall, in the discretion of the Board, assume the maintenance responsibilities of such owner if, in the opinion of the Board, the level and quality of maintenance being provided by such owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board shall notify the owner in writing of its intention to do so, and if such owner has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Board shall proceed. The expenses of such maintenance by the Board shall be reimbursed to the Association by the owner, together with interest at five points above the prime rate charged by the Association's bank, or such other rate set by the Board, from the date of expenditure. Such charges shall be a default assessment and lien on the lot of the owner as provided in Article IV, Section 6 above.

ARTICLE VII

Easements

Section 1. In General. Other than primary service in the Addition and within platted easements, there shall be no above-ground service for utilities except those lines or poles that shall be approved, in writing by a majority vote of the ARC. The owner of each lot shall be responsible for the protection of underground facilities located on his or her lot and shall prevent any alteration of grade or construction activity that may interfere with said utility lines.

Section 2. Utility Easements. Underground service cables to all residents which may be located in the Addition shall run from the nearest service pedestal to the point of use and upon the installation of such service cable to a particular residence, the supplier of service shall thereafter be deemed to have an effective right of way easement covering a five (5) foot strip extending two and one-half (2 1/2) feet on each side of the service cable from the service transformer to the service entrance to the residence. This easement shall also be available to all of the suppliers of public utilities and quasi-public utilities.

Section 3. Fencing. Fencing is currently in place around the exterior of the entire Development and along the north side of lots 41 and 60. The fences shall be considered an element of the Common Properties and maintained as such. Otherwise, no fencing shall be permitted within the Addition. Subject to the general prohibition against fencing set forth in this section, any plans for fencing, whether on lot lines or surrounding patios, pools, or other areas of the lot must be submitted to, and approved by, the ARC prior to the construction thereof. In the approval of the fencing, the ARC shall give consideration to

the need for such fencing as expressed by the lot owner, the general prohibition against fencing as set forth as well as the location, height, material conformity with neighboring areas, and the obstruction of views. Notwithstanding the foregoing, no chain link fencing or metal poles will be allowed. 080129

Section 4. Approval of Easements. No portion of any lot shall be used for a driveway or passageway or easement of any type to service or benefit property or owners of property adjoining the Wellington Park Addition unless such usage is approved by two-thirds (2/3) of the voting members of the Association.

ARTICLE VIII

Architectural Review Committee - Approval of Plans, Control of Development Activities

Section 1. Submission of Plans. In order to maintain a beautiful and pleasing setting in a the Addition, two (2) sets of all building and site improvement plans and specifications (including color schemes, roofing materials, and exterior surfacing materials) must be submitted to the Committee for its approval prior to the commencement of construction or rebuilding any structure located on a lot. The Committee shall act to enforce the requirements of these Covenants in a reasonable manner. The Committee has the authority to maintain the architectural conformity of the Addition and, in consideration thereof, shall determine that the proposed construction shall not detract from the development and shall enhance the purpose of the development to provide a beautiful and pleasing setting in the Addition. Any deviation from the approved color scheme and exterior surface for each of the lots shall result in disapproval by the Committee. The Committee shall consider such matters as the proposed square footage, location, materials, exterior style and landscaping. The Committee will adopt rules or by-laws explaining the mechanics of its operation and providing for a twenty-one (21) day maximum time within which plans must be reviewed and approved or disapproved after submission and, if not approved or disapproved in that period, that the same shall be considered as automatically approved.

Section 2. Diversion of Drainage. All plans or schemes shall include plans for how surface water for the diversion of drainage shall be addressed, and the Committee, prior to the commencement of construction, must approve such plans.

Section 3. Garage and Detached Structures. Each dwelling unit constructed on any lot in the Addition shall have a private garage to accommodate a minimum of two (2) automobiles. No detached structure of any type may be built on a lot, such as a covered entertainment area, guesthouse, pool house, barn, or other structure.

Section 4. Temporary Structures. No trailer, mobile home, tent, construction shack, or other out building shall be erected on any lot in the Addition except for temporary use by construction contractors for a reasonable period of time and only in such location and for such time as may be designated by the Committee. All sports equipment (i.e., floor hockey goals, basketball goals/hoops, soccer goals, bikes and etc.) must be kept or stored inside of an owner's garage/dwelling when not in use.

Section 5. Setback Lines. The Committee shall have authority to establish all setback lines within the Addition recognizing that some of the lots will share a common wall with an adjoining lot. Measurements for set backs shall be made or determined from the centerline of the private or public street servicing the lot in question.

Section 6. Foundations/Fences. No concrete block foundation for any structure in the Addition may be exposed. Subject to the general prohibition against fencing set forth in Article VII, Section 4, any plans for fencing, whether on lot lines or surrounding patios, pools or other areas of the lot must be submitted

to, and approved by, the ARC Committee prior to the construction thereof. In the approval of the fencing, the ARC Committee shall give consideration to the need for such fencing as expressed by the lot owner, the general prohibition against fencing as set forth in Article VII, Section 4 as well as the location, height, material conformity with neighboring areas, and the obstruction of views. Notwithstanding the foregoing, no chain link fencing or metal poles will be allowed. 03/130

ARTICLE IX

No Offensive Trade or Activity

No obnoxious or offensive trade or activity including the discharge of firearms or fireworks shall be permitted on any lot, nor shall any activity be undertaken on any lot that shall become an annoyance or nuisance to the neighborhood. Home occupations in which customers or suppliers travel to or from a residence in the Addition are prohibited. The development of minerals of any kind or nature is prohibited within the Addition; provided, however, underground hydrocarbon minerals may be captured by wells located outside of the Addition.

ARTICLE X

Animals

Section 1. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot in the Addition for commercial purposes.

Section 2. Notwithstanding the provisions set forth above, dogs, cats, or other common household pets may be kept or raised within a dwelling and will be allowed as long as they are not kept, bred, or maintained for commercial purposes, they are not obnoxious or offensive, and they do not constitute a danger or nuisance to other residents within the Addition. Animals being walked and exercised must be on a leash and any and all animals droppings must be immediately retrieved and removed by the animals owner. Violations of this provision may be brought before the Board, and, after considering the same, the Board may order the violation to cease or be remedied in some fashion. The failure to heed the Association's directive shall result in a lien being filed against the property and the Board being able to take such other legal and/or equitable action as it deems necessary and proper.

ARTICLE XI

Parking/Motor Vehicles and Motorized Recreation Vehicles

It is the intent and purpose of these Covenants to restrict the parking of all motor vehicles or motorized recreation vehicles to the designated garage for each lot. Unless otherwise provided, all motor vehicles and motorized recreation vehicles shall be parked in a garage unless in use. Except as set forth below, all guests and invitees of each lot's owner shall only park in the driveway area of the lot he or she is visiting. There shall be no parking on any of the interior streets of the Addition for a period of time exceeding four (4) hours per day. Moreover, on lots 47, 48, and 49 as well as lots 2, 3, and 4 of the Addition there shall be no parking on the driveways for any period of time in as much as these are common driveways shared by others. Under no circumstances may commercial vehicles or work vehicles be parked in the driveway or on an interior street overnight.

Motor vehicles and motorized recreational vehicles including, but not limited to, motorbikes, motorcycles, scooters, mopeds, trail bikes, and any other similar mechanical device emitting noise, smoke

or other environmental pollutants shall not be operated within the Addition except for the sole and exclusive purpose of ingress and egress to and from lots. The roadways within the Addition shall not be used by such vehicles for recreational purposes. The purpose of this restriction is to reduce noise and other pollution so as to permit maximum enjoyment of the surroundings in the Addition. This restriction shall not apply to equipment normally used for lawn or garden maintenance so long as said equipment is operated in the ordinary and usual manner intended. } |

ARTICLE XII

Signs

Unless approved in writing by the Committee, signs shall be prohibited on all lots except that one sign, not exceeding six (6) square feet in size, advertising a particular lot for sale shall be permitted.

ARTICLE XIII

Additional Design and Construction Criteria

Section 1. Storage of Construction Materials. Construction materials may be stored within the building setback lines of a lot for thirty (30) days prior to the commencement of construction. Following commencement of construction, construction is to be completed within a reasonable period of time.

Section 2. Garbage; Dumping. Dumping is prohibited in the Addition. All trash, garbage or other waste shall be kept at all times in sanitary containers located within the garage of each residential unit. All lots shall be maintained in a neat and orderly condition at all times.

Section 3. Accessory Buildings. Under no circumstances shall accessory buildings or storage units be constructed or placed on any lot.

Section 4. Antenna, Aerial and Other Devices. All antenna or other types of aerial transmitting or receiving devices (including without limitation, radio or television transmitting or receiving antenna) shall be approved by the ARC Committee. The approval of antenna may be denied if, in the sole discretion of the Committee, the antenna or other receiving device would impede the view or otherwise distract from the overall image of the Addition.

Section 5. Appearance of Lot. All owners shall be required to keep their lot in a clean and sanitary condition whether or not they have constructed a residence on the Lot. All open areas on lots shall be kept mowed to a height of not more than four (4) inches. The LBC Committee shall promulgate rules and regulations regarding the maintenance of lots and adequate enforcement mechanisms in the event a lot is not properly maintained.

Section 6. Mailboxes. All mailboxes shall be located within ten (10) feet of the driveway servicing the lot.

ARTICLE XIV

Sprinkler System/Landscaping

Each owner will be required to maintain, repair, and replace, as need be, the landscaping (including plants

and bedding materials) placed on the owner's lot. In addition, owner hereby grants and agrees to respect the easement for the private sprinkler system which has been installed in the Addition and which services each lot. Each owner will be required to maintain, repair and replace that portion of the overall sprinkler system located on the owner's lot due to neglectful action on the home owners. This obligation shall include the repair and replacement of sprinkler heads as need be. Owner understands that the sprinkler system is for the use and benefit of all property owners within the Addition and that it is the owner's responsibility to promptly water and otherwise maintain the landscaping for proper visual affect and to protect the property values of the lot owner and those lots around lot.

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ARTICLE XV

Insurance

Section 1. Public Liability Insurance. Each owner shall purchase comprehensive public liability insurance and shall maintain such insurance in full force and effect at all times. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Arkansas having a financial rating by Best's Insurance Reports of class VI or better. The minimum amounts of coverage shall be \$100,000 for any one accident or occurrence, and \$100,000 for property damage. The Owner shall pay the premiums for all required insurance coverages. Such policy shall insure against any damage or injury occurring at his, her, or its lot or Common Properties appurtenant to his, her, or its lot or any part thereof. Provided, however, such insurance shall not insure against loss caused by injuries to owners, members of their households, or invitees occurring on their own lot. Such policy shall contain a severability of interest endorsement that shall preclude the insurer from denying the claim of a condominium Owner because of negligent acts of the Association or other owners.

Section 2. Fire and Extended Coverage Insurance. A blanket fire and hazard insurance policy shall be purchased by each owner and shall be maintained in force at all times, the premium thereon to be paid by each owner. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Arkansas having a financial rating by Best's Insurance Reports of class VI or better and shall insure against loss from fire and other hazards as may be appropriate, and shall insure the owner's lot(s) and all improvements upon the lot on which such owner's lot is constructed and all personal property owned by the owner for not less than one hundred percent (100%) of the full insurable replacement cost value thereof. Such policy shall contain vandalism and malicious mischief coverage together with such other coverage, endorsements, and adjustment clauses as may be appropriate. Such policy shall name the respective mortgagees of the owners, as their respective interests may appear, and shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by any insured or an insured's mortgagee. Each owner, not less than annually and more often if required by the Board, shall provide the Board with proof of such insurance coverages.

Section 3. No Liability of Association. Under no circumstances shall the Association be liable for the damage to or destruction of any lot or lots, any of the Common Properties or personal property, or any portion thereof, located in the Addition.

ARTICLE XVI

Damage or Destruction

Section 1. Board as Association as Attorney in Fact. Each and every owner hereby irrevocably constitutes and appoints the Association acting by and through the Board as such owner's true and lawful attorney-in-fact in such owner's name, place, and homestead for the purpose of dealing with any

improvements on the Common Properties upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XVI below. Acceptance by any grantee of a deed or other instrument of conveyance from a previous owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Board acting on behalf of the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact. 880133

Section 2. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Common Properties in the Addition, the Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Properties so damaged or destroyed. "Repair and reconstruction" as used in this Article XV shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

Section 3. Repair and Reconstruction. As soon as practical after obtaining estimates, the Board shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the owners, the Board acting by and on behalf of the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Article III, Section 4 above, levy, assess, and collect in advance from all owners, without the necessity of a special vote of the owners, a special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

Section 5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the special Assessments provided for in Article III, Section 4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the owners in proportion to the contributions each owner made as a special Assessment to the Association under Article III, Section 4 above, or, if no special Assessments were made, then in equal shares per lot, first to the mortgagees and then to the each of the owners, as their interests appear.

Section 6. Decision Not to Rebuild. If owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and sixty-seven percent (67%) of the persons or entities holding first mortgages on a lot (based upon one vote for each mortgage owned) agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Addition shall be restored to its natural state and maintained as an undeveloped portion of the Common Properties by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per lot first to the mortgagees and then to each of the owners,

as their interest appear.

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Section 7. Damage or Destruction Affecting Lots. In the event of damage or destruction to improvements located on any one or more lots, the owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within ninety (90) days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than forty-five (45) days, then the Board may, after notice and hearing if the same is provided for in the bylaws of the Association, impose a fine of not less than \$50 per day on the owner of the lot until repair and reconstruction is commenced, unless the owner can prove to the satisfaction of the Board that such failure is due to circumstances beyond the owner's control. Such fine shall be a default assessment and lien against the lot as provided in Article IV, Section 6 above.

ARTICLE XVII

Condemnation

Section 1. Rights of Owners. Whenever all or any part of the Common Properties shall be taken or conveyed in lieu of and under threat of condemnation by the Board acting as attorney-in-fact for all owners under instructions from any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice of the taking, but the Association, by and through its Board, shall act as attorney-in-fact for all owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 2. Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Properties on which Improvements have been constructed, then, unless within sixty days after such taking owners representing at least sixty-seven percent (67%) of members of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Properties to the extent lands are available there for, in accordance with plans approved by the Board and the ARC. If such Improvements are to be repaired or restored, the provisions in Article XV above regarding the disbursement of funds in respect to casualty damage or destruction that is to be repaired shall apply. If the taking does not involve any Improvements on the Common Properties, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares.

Section 3. Complete Condemnation. If all of The Addition is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by these covenants shall terminate, and the portion of the condemnation award attributable to the Common Properties shall be distributed as provided by Article XV, Section 5 above.

ARTICLE XVIII

Enforcement of Covenants

Section 1. Violations Deemed a Nuisance. Every violation of any of these Covenants is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants shall

be available.

Section 2. Compliance. Each owner or other occupant of any part of the Addition shall comply with the provisions of these Covenants as the same may be amended from time to time.

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Section 3. Failure to Comply. Failure to comply with these Covenants shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws shall be given to the delinquent party prior to commencing any legal proceedings.

Section 4. Who May Enforce. Any action to enforce these Covenants may be brought by the Board in the name of the Association on behalf of the owners. If, after a written request from an aggrieved owner, none of the foregoing persons or entities commences an action to enforce these Covenants, then the aggrieved owner may bring such an action.

Section 5. Remedies. In addition to the remedies set forth above in this Article XVII, any violation of these Covenants shall give to the Board on behalf of the owners or the Association, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of these Covenants. If the offense occurs on any easement, walkway, Common Properties, or the like, the cure shall be at the expense of the owner or other person responsible for the offending condition.

Section 6. Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

Section 7. No Waiver. The failure of the Board, or any aggrieved owner to enforce these Covenants shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of these Covenants at any future time.

Section 8. No Liability. No member of the Board, the Committees, the Association, or any owner shall be liable to any other owner for the failure to enforce any of these Covenants at any time.

Section 9. Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of these Covenants, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of these Covenants or the restraint of violations of these Covenants, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees as may be incurred, or if suit is brought, as may be determined by the court.

ARTICLE XIX

Resolution of Disputes

If any dispute or question arises between members or between members and the Association or the Committees relating to the interpretation, performance or nonperformance, violation, or enforcement of these Covenants, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

ARTICLE XIX

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Principles of Interpretation

Section 1. Severability. These Covenants, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of these Covenants found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any part hereof.

Section 2. Construction. In interpreting words in these Covenants, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 3. Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of these Covenants.

Section 4. Registration of Mailing Address. Each member shall register his, her, or its mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a member shall be personally delivered to or sent by mail, postage prepaid, addressed in the name of the member at such registered mailing address or by e-mail when authorized by the owner.

Section 5. Notice. All notices or requests required shall be in writing. Notice to any member shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, or the Committees shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the Board or the Committees, at such address as shall be established by the Association from time to time by notice to the members. General notices to all members or any classification thereof need not be certified, but may be sent regular first class mail, hand delivered or e-mail.

Section 6. Waiver. No failure on the part of the Association, the Board, or the Committees to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board or Committees fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice-President of the Board on behalf of the Association, or by the Chairman of the Committee on behalf of the Committees.

Section 7. Limitation of Liability. Neither the Association, the Committee; nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under these Covenants if the action or failure to act was made in good faith. The Association shall indemnify all of the Committee members, all officers, agents, and employees of the Board as well as Board members with respect to any act taken in their official capacity to the extent provided in these Covenants and by law and in the Articles and Bylaws of the Association.

Section 8. Conflicts Between Documents. In case of conflict between these Covenants and the Articles of Incorporation or the Bylaws, these Covenants shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In case of

conflict between these Covenants and any design guidelines promulgated by the Committees, the design guidelines shall control.

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IN WITNESS WHEREOF, The Wellington Park Property Owners Association, by vote on December 7, 2006, have caused these amended covenants to be executed by its board.

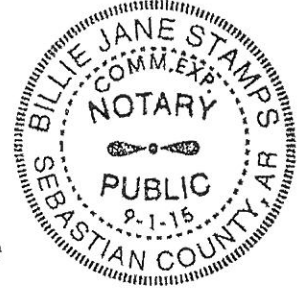
080138

By: Kim Frazier
Kimberly J. Frazier
President

Subscribed and sworn before me this 6th day of March, 2007

Billie Jane Stamps
Notary Public

Notary Seal

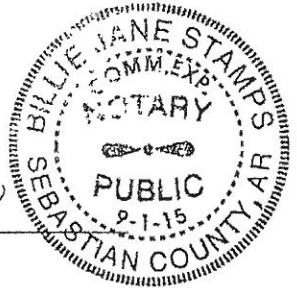


By: Willis Edmiston
Willis Edmiston
Vice President

Subscribed and sworn before me this 6th day of March, 2007

Billie Jane Stamps
Notary Public

Notary Seal

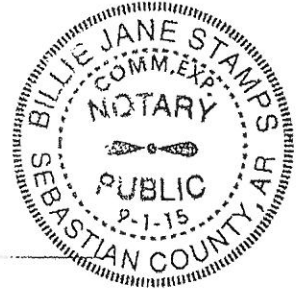


By: Kitty Stamps
Kitty Stamps
Secretary

Subscribed and sworn before me this 6th day of March, 2007

Billie Jane Stamps
Notary Public

Notary Seal

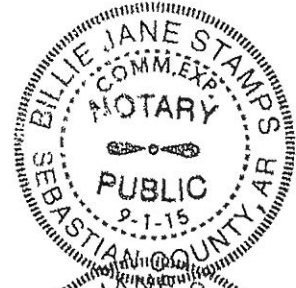


By: Claude Rush
Claude Rush
Treasurer

Subscribed and sworn before me this 6th day of March, 2007

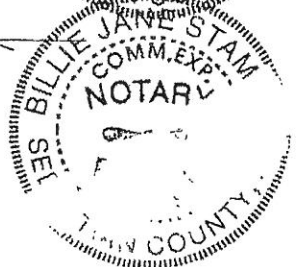
Billie Jane Stamps
Notary Public

Notary Seal



By: Wayne Hancock
Wayne Hancock
Board Member

3/6/07
Billie Jane Stamps
NOTARY PUBLIC



REPORT TO THE BOARD AND ASSOCIATION MEMBERS

From: The Architectural Review Committee
Wellington Park

The ARC met on September 7, 2006 with two members present (Dave Parrish and Sara Edmiston). Rebecca Harrison was out of town.

The following items are in process:

1. Extension of the fence at the sides of the main gate. Cagle Iron has been asked for an estimate. This will correct a problem in which the brick portion of the fence is too low. The estimate and design will be brought before the board and association members.
2. Drainage of rain water on the south of the property. Willis and Sara Edmiston met with an engineer from the City (Kim Frazier set up the meeting but was ill) to discuss the problem. He made some suggestions and agreed to provide us with the original drainage plan for the property (this was received and forwarded to the board). Again, further discussion is needed and an estimate sought to correct a potentially serious problem of flooding invading the utility boxes.
3. The City Engineer recommended that a gate be cut in the south fence to allow for access to the drainage outlets and also for the ground crew to cut back vines. This will only involve cutting the existing fence and installing hinges and security locks. An estimate will be obtained.
4. An estimate will be obtained at the same time for staining the fence for future budget information.

The ARC wants to remind the Association Members that there are a number of things which must be cleared with the committee and Board before being undertaken. We are living in a compact area and everything we do impacts our neighbors. In order to keep the property lovely and also an enjoyable place, please contact the ARC BEFORE:

1. Painting any part of the house exterior or fence.
2. Changing any brick or stonework.
3. Moving or painting mailboxes.
4. Adding storm doors, screens, shutters or flower boxes attached to house.
5. Adding fencing of any type.
6. Tiling porches, sidewalks or driveways or changing their colors with any material.
7. Changing or adding sidewalks, walking paths etc.
8. Changing or extending patios or driveways.
9. Enclosing porches with either screens or windows.
10. Changing windows or doors.
11. Adding any type of awning to any window or door.
12. TV discs or antennae placed on any outside area.
13. Locating BBQ grills or any other type of cooking equipment on front or front porch of house.
14. Planting of trees or changing, adding or removing flower beds.

15. Construction of ANY storage facility, patio cover, car port, garage, etc.
16. Placing any impediment to the reasonable use of lawn mowers by maintenance crew.
17. Attaching any items to fence which can reasonably be thought to cause damage.
18. Adding weathervanes to roofs.

NOTE: These are examples and there may be others which have not arisen but which would need approval as well.

The information above is believed by the ARC and the Board to be consistent with the covenants in effect at the time of build-out and does not merely reflect the amended covenants under consideration by the Board. It is, however, also covered in the amended covenants to be presented at the next meeting.

* The ARC realizes that some owners have been given information which is in direct conflict with the existing (and proposed) covenants by persons representing the developers and/or builders. Any discrepancies in this information will be given prompt attention if the owner will contact the ARC. The initial contact or questions may be made by telephone or email but the formal request MUST be in writing and in duplicate. The ARC will meet to discuss any problem or request and may visit the site and speak to surrounding neighbors about the issue before making a recommendation.

The ARC in no way wishes to prevent any owner from the full use and enjoyment of a given property but is required by covenant to keep the overall property in compliance. We ask your consideration and assistance in this effort and thank you in advance for any help you can give.

Dave Parrish 4017 Hunter Way 478-6677 (daveparrish@msn.com)
Rebecca Harrison 4109 Hunter Way 782-7770 (ronandreb@aol.com)
Sara Edmiston 8404 Hannah Court 452-3334 (wedmiston@sbcglobal.net)

Submitted by: Sara Edmiston

Cc: WPPOA Board
WPPOA Members (owners)

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**AMENDMENT TO WELLINGTON PARK ADDITION TO THE
CITY OF FORT SMITH AMENDED PROTECTIVE COVENANTS
AND BILL OF ASSURANCE**

(August 23, 2021)

KNOW ALL MEN BY THESE PRESENTS:

In accordance with the provisions of the original Wellington Park Addition to the City of Fort Smith, Arkansas Protective Covenants and Bill of Assurance filed May 28, 2003, Document No. 7104500 in the Sebastian County Clerk and Recorder's office ("Original Covenants"), and the Wellington Park Addition to the City of Fort Smith, Arkansas Amended Protective Covenants and Bill of Assurance filed March 8, 2007, Document No. 7211429 in the Sebastian County Clerk and Recorder's office ("Amended Covenants"), the Amended Covenants are hereby amended as follows:

WITNESSETH:

Legal Description of Property bound by Covenants:

**Lots 1 through 61, Wellington Park, Part of SW/4 SE/4 of
Section 30, T-8-N, R-31-W, Fort Smith, Sebastian County,
Arkansas.**

WHEREAS, by a majority of more than 2/3s of all Lot Owners, the following Article was added to the Amended Covenants.

ARTICLE VI, Section 4, entitled 'No Rentals'

"Only homeowners and their immediate families (or, if a business entity, the person or persons who own 50% or more of the business entity) may reside in their Wellington Park properties. No rental of home or property is allowed with the exception of any owner or entity who is renting a home as of the effective date of this Covenant Amendment. He/She may continue to rent as long as he/she holds title to the property, with this exception expiring upon transfer of ownership. Should said owners purchase additional properties in Wellington Park after said date, those properties will not qualify for this exemption."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §§
COUNTY OF SEBASTIAN)

On this 8th day of September, 2021, before me, a Notary Public, duly commissioned, qualified and acting within the State and County aforesaid, appeared in person the within named Jerry Horn, Joane Simmons, Laura Bogner and Janie Stamps to me personally known, who stated that they were the Officers listed above of Wellington Park Addition Property Owners Association. and were duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said Wellington Park Addition Property Owners Association and further stated and acknowledged that he had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

Janie Stamps

Notary Public

My Commission Expires:

9-1-25

The ARC wants to remind the Association Members that there are a number of things which must be cleared with the committee and Board before being undertaken. We are living in a compact area and everything we do impacts our neighbors. In order to keep the property lovely and also an enjoyable place, please contact the ARC BEFORE:

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 2. Changing any brick or stonework.
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- NOTE: These are examples and there may be others which have not arisen but which would need approval as well.

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The ARC realizes that some owners have been given information which is in direct conflict with the existing (and proposed) covenants by persons representing the developers and/or builders. Any discrepancies in this information will be given prompt attention if the owner will contact the ARC. The initial contact or questions may be made by telephone or email but the formal request MUST be in writing and in duplicate. The ARC will meet to discuss any problem or request and may visit the site and speak to surrounding neighbors about the issue before making a recommendation.

The ARC in no way wishes to prevent any owner from the full use and enjoyment of a given property but is required by covenant to keep the overall property in compliance. We ask your consideration and assistance in this effort and thank you in advance for any help you can give.