

RECORDED
10/18/2000 14:54:37
RECORDER
PATRICIA J CRICK
ALLEN COUNTY, IN

Doc. No.	200064290
Receipt No.	29305
DCFD	3.00
MISL	20.00
MISL	1.00
Total	24.00

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Agreement, dated this ^{October} ~~6th~~ day of ~~September~~, 2000, by and between **WEIGAND PROPERTIES, LLC** ("Weigand"), **ZEKE, LLC, FEFFER ACQUISITIONS, LLC, and ORLIE and KATHALEEN BRAND, and MILLSTONE VILLAGE COMMUNITY ASSOCIATION, INC.** (referred to as "Association"). Weigand, the Association and its members, and Zeke, LLC, Feffer Acquisitions, LLC, and Orlie and Kathaleen Brand are sometimes referred to herein individually as a "party" or collectively as the "parties."

RECITALS:

WHEREAS, on June 9, 1997, the Association entered into a set of Declarations of Covenants, Conditions, and Restrictions ("Original Restrictive Covenants") with Northrop Park Land Association, Inc. ("Northrop") as part of Northrop's Application for Approval as a subdivision for non-residential purposes under the City of Fort Wayne's Subdivision Control Ordinance, said subdivision is known as the "Northrop Industrial Park";

WHEREAS, the Original Restrictive Covenants were duly recorded on June 16, 1997, with the Recorder of Allen County as Document No. 970031442 and are currently in full force and effect;

WHEREAS, on December 28, 1998, Weigand purchased the Northrop Industrial Park from Northrop subject to the covenants, conditions, and restrictions as set forth in the Original Restrictive Covenants;

WHEREAS, since Weigand's purchase of the Northrop Industrial Park, Weigand has sold certain lots in the Northrop Industrial Park to the following persons or entities: Zeke, LLC; Feffer Acquisitions, LLC; and Orlie and Kathaleen Brand;

WHEREAS, Weigand, Zeke, LLC, Feffer Acquisitions, LLC, and Orlie and Kathaleen Brand are all the owners of the lots in the Northrop Industrial Park, which consists of real estate more particularly, described on attached Exhibit A ("Real Estate"), and Weigand intends to continue to sell portions of the Real Estate for industrial uses as permitted in an IN-2 District under the City of Fort Wayne's Zoning Ordinance;

WHEREAS, the Association has members who own real property directly adjacent to the Northrop Industrial Park, and who have concerns about the potential noise, physical security, visual security, lighting, and odors associated with the current and future development in the Northrop Industrial Park;

AUDITOR'S OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.

OCT 17 2000


AUDITOR OF ALLEN COUNTY

00 11711
AUDITORS NUMBER

SEE PAGE 17 OF RECORD BOOK

Handwritten signature

Handwritten initials

WHEREAS, Weigand, Zeke, LLC, Feffer Acquisitions, LLC, Orlie and Kathaleen Brand, and the Association desire to amend the Original Restrictive Covenants by executing this Amended and Restated Declarations of Covenants, Conditions, and Restrictions ("Amended Restrictive Covenants") to enhance and improve the development of the Real Estate, to meet and address the concerns of the Association so that current and future industrial uses do not adversely impact the Association's members, particularly those who own real property directly adjacent to the Real Estate;

NOW, THEREFORE, in consideration for the mutual undertakings of the parties, Weigand, Zeke, LLC, Feffer Acquisitions, LLC, and Orlie and Kathaleen Brand, declare that the Real Estate shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to these Amended Restrictive Covenants expressly and exclusively for the use and benefit of the Real Estate and for each and every person or entity who now or in the future owns any portion or portions of the Real Estate.

1. **Revocation of the Original Restrictive Covenants**. The Original Restrictive Covenants are hereby revoked and are superseded by these Amended Restrictive Covenants.

2. **Land Use and Building Location**. The Real Estate shall be used only for those uses permitted in an IN-2 District (General Industrial) under the City of Fort Wayne's Zoning Ordinance, except as modified below:

a. Any building, structure or parking area for Lots 2 through 5 shall have the following set backs:

(1) Buildings shall have a rear setback of 100 feet from the property line of the adjacent Association property owners;

(2) Employee parking shall have a rear setback of 50 feet from the property line of the adjacent Association property owners;

(3) Non-passenger vehicle parking, loading and unloading, and storage shall have a rear setback of 150 feet from the property line of the adjacent Association property owners if the area is located in front of or is separated by the main building or structure;

(4) Non-passenger vehicle parking, loading and unloading, and storage shall have a rear setback of 200 feet from the property line of the adjacent Association property owners if the area is located in rear of or is not separated by the main building or structure;

These building line setbacks shall be incorporated into an amended secondary plat for the Northrop Industrial Park that is approved by the Plan Commission or Plat Committee, or any duly authorized, designated representative of either, and recorded with the Allen County Recorder.

b. The height of any structure or other land use shall not exceed fifty (50) feet.

c. The Real Estate shall not be used as a fuel yard, including bulk storage of petroleum products for local distribution and a petroleum products terminal for extensive storage and regional distributing purposes.

3. **Nuisances**. No noxious or offensive activity shall be carried on upon any lot of the Real Estate nor shall anything be done thereon which may be or become an annoyance or nuisance to the members of the Association.

All smoke, dust, dirt, toxic gases, and fumes or noxious odor shall be confined to the Real Estate and shall not affect any member of the Association.

4. **Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot. No animals, livestock or poultry shall be kept, bred or maintained for any commercial purpose.

5. **Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept on the Real Estate, except in sanitary containers. No incineration, burial or other form of on-site method of disposal will be permitted on the Real Estate. All other equipment for the storage or disposal of garbage or refuse shall be kept in a clean and sanitary condition and shall be used so that it does not adversely affect the Association's members.

6. **Protective Screening.**

6.1 Weigand agrees to establish a protective screening plan as shown on attached Exhibit B ("Protective Screening Plan"), which is incorporated herein by reference. The intent and purpose of this Protective Screening Plan is to shield and minimize the impact of current and future development in the Northrop Industrial Park from the adjacent Association property owners. The Protective Screening Plan shall be maintained by Weigand and its successors or assigns. The Protective Screening Plan shall be constructed and maintained so as to: (a) act as sound buffer for any loud traffic or machine operations; (b) serve as a visual barrier and to maintain and preserve the adjacent Association property owners' privacy; (c) prevent any glare or lights from shining onto the adjacent Association property owners' yards and residences; (d) to prevent access from the Northrop Industrial Park to the adjacent Association property owners' land; and (e) to preserve the residential nature and character of the adjacent Association property owners' land.

6.2 Weigand shall construct the Protective Screening Plan, as shown on Exhibit B, as lots in the Northrop Industrial Park adjacent to the Association property owners are developed and so that the Protective Screening Plan meets the following specifications: (a) the base of the screening mound shall be 34 feet wide; (b) the screening mound shall have slopes of 1.5 to 1; (c) the top of the screening mound shall be 4 feet wide; (d) the screening mound shall be 10 feet high; (e) the top of the screening mound shall be planted with white pines that will be 4 feet to 5 feet tall at planting and planted on 10-foot centers; (f) on the Northrop Industrial Park side of the screening mound, Weigand shall plant 18-inch to 24-inch Pyracantaj Hawthorn bushes on 9-foot centers; (g) the slopes of the screening mound shall be planted with rye/crown vech cover.

6.3 Weigand hereby acknowledges the above goals and specifications and agrees that the Protective Screening Plan will be built and maintained in accordance with this paragraph 6.

7. **Enforcement.** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. These covenants shall run with the land and shall be enforceable by the Association or any of its members. In the event any party, or any successor in interest or assign, violates or attempts to violate these Amended Restrictive Covenants, the Association shall have the right to enforce the same through injunctive relief, recognizing that monetary damages would be insufficient to adequately compensate the Association or its members. The Association or any of its members or any other owner of any lot or parcel of the Real Estate shall be entitled to enforce these Amended Restrictive Covenants

against the title holder of the lot or parcel which is in violation of the Amended Restrictive Covenants, and the prevailing party of any action commenced to enforce the Amended Restrictive Covenants shall be entitled to reasonable costs and attorneys' fees.

Weigand agrees that these Amended Restrictive Covenants shall be deemed to be part of every future conveyance, contract, and transaction for the sale of the Real Estate, or any portion thereof and shall be recorded with the Allen County Recorder. These Amended Restrictive Covenants shall be binding on the parties and any and all successors and assigns. These Amended Restrictive Covenants shall inure to the benefit of and be enforceable by the Association, its members, the property owners adjacent to the Real Estate, and their legal and personal representatives, grantees, successors, and assigns.

8. **Severability.** Invalidation of any one of these Amended Restrictive Covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

9. All parties represent and affirm that each corporate party (a) is duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and (b) has the full power and authority to carry out its business and to enter into these Amended Restrictive Covenants and to perform the obligations as set forth herein. All parties represent and affirm that the representative signatory to these Amended Restrictive Covenants has the authority to bind the entity, as well as its individual constituents, to the terms of these Amended Restrictive Covenants.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Declarations of Covenants, Conditions, and Restrictions on the date first written above.

MILLSTONE VILLAGE COMMUNITY ASSOCIATION, INC.

By: Greg Tucker Pres
Greg Tucker, its President

WEIGAND PROPERTIES, LLC

By: Larry Weigand MEMBER
Larry Weigand, its duly authorized member

Property Owners:
ZEKE, LLC

By: Martin Marinkus
Name: MARTIN MARINKUS
Title: Its duly authorized member

FEFFER ACQUISITIONS, LLC

By: Peter C. Wilson
Name: Peter C. Wilson, Manager
Title: Its duly authorized member

Orlie Brand
ORLIE BRAND

Kathaleen Brand
KATHALEEN BRAND

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Greg Tucker, the President of Millstone Village Community Association, Inc., and acknowledged the execution of the foregoing to be his voluntary act and deed this 15th day of September, 2000.

My Commission Expires:
APRIL 23, 2008

Carrie A. Melcher
CARRIE A. MELCHER, Notary Public
Resident of HUNTINGTON County

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Larry Weigand, a duly authorized member of Weigand Properties, LLC, and acknowledged the execution of the foregoing to be his voluntary act and deed this 27th day of September 2000.

My Commission Expires:
Oct. 13, 2000

Diana L. Miller
DIANA L. MILLER Notary Public
Resident of Wells County

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared MARTIN MARINGER, a duly authorized member of Zeke, LLC, and acknowledged the execution of the foregoing to be his/her voluntary act and deed this 6th day of OCTOBER 2000.

My Commission Expires:
5-26-08

Andrew Brinkley
ANDREW BRINKLEY Notary Public
Resident of WELLS County

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Peter C. Wilson, a duly authorized member of Feffer Acquisitions, LLC, and acknowledged the execution of the foregoing to be his/her voluntary act and deed this 20 day of SEPTEMBER, 2000.

My Commission Expires:
10/9/07

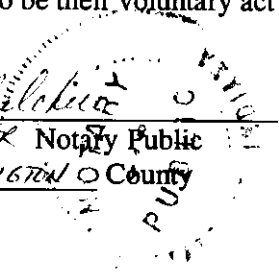
Carole D. Langston
CAROLE D. LANGSTON, Notary Public
Resident of Allen County

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Orlie Brand and Kathaleen Brand and acknowledged the execution of the foregoing to be their voluntary act and deed this 14th day of September, 2000.

My Commission Expires:
APRIL 23, 2008

Carrie A. Melcher
CARRIE A. MELCHER Notary Public
Resident of HUNTINGTON County



This instrument was prepared by Robert W. Eherenman, Attorney at Law.

CERTIFICATE OF SURVEY
DESCRIPTION

A part of the Southwest Quarter Section 11, Township 31 North, Range 12 East, Allen County, Indiana, more accurately described as follows;

Commencing from the Southeast corner of the West Half of the Southwest Quarter, Section 11, Township 31 North, Range 12 East; thence along the East line of said West half of the Southwest Quarter North 00 degrees 32 minutes 14 seconds West (assumed bearing and basis for this description) for a distance of 305.75 feet to an iron pin, said point being the true point of beginning for this description; thence continuing along said east line North 00 degrees 32 minutes 14 seconds West for a distance of 2345.00 feet to an iron pin, said point being the Northeast corner of the west half of the Southwest Quarter; thence North 89 degrees 51 minutes 55 seconds West for a distance of 1306.76 feet to an iron pin, said point being the Northwest corner of the west half of the Southwest Quarter; thence along the west line of the Southwest Quarter South 00 degrees 24 minutes 14 seconds East for a distance of 1049.70 feet to an iron pin; thence South 78 degrees 30 minutes 53 seconds East for a distance of 486.77 feet to an iron pin, said point being on the West right-of-way of Honey Well Drive; thence along said west right-of-way line North 25 degrees 25 minutes 50 seconds East for a distance of 7.83 feet to an iron pin; thence South 63 degrees 51 minutes 03 seconds East for a distance of 60.00 feet to an iron pin, said point being on the East right-of-way line of Honey Well Drive; thence along said East right-of-way line South 25 degrees 26 minutes 50 seconds West for a distance of 301.17 feet to an iron pin; thence along a curve to the left having a radius of 177.92 feet, a curve length of 218.92 feet, a tangent length of 125.74 feet and a chord length of 205.37 feet and bearing of South 09 degrees 45 minutes 02 seconds East; thence South 45 degrees 00 minutes 00 seconds East for a distance of 309.22 feet to an iron pin; thence along a curve to the right having a radius of 212.92 feet, a curve length of 167.22 feet, a tangent length of 88.19 feet and a chord length of 162.96 feet and bearing of South 23 degrees 59 minutes 57 seconds East to an iron pin; thence South 00 degrees 00 minutes 12 seconds West for a distance of 128.85 feet to an iron pin; thence South 89 degrees 59 minutes 48 seconds East for a distance of 344.83 feet to an iron pin; thence parallel with said East line South 00 degrees 32 minutes 14 seconds East for a distance of 210.00 feet to an iron pin; thence South 89 degrees 59 minutes 48 seconds East for a distance of 250.01 feet to said East line and the point of beginning, containing 52.64 acres more or less.

EXHIBIT A

TOP OF MOUND TO INCLUDE
4'-0" WIDE LEVEL AREA

PROPOSED - 4' TO 5'
TALL WHITE PINE'S AT
PLANTING

PROPOSED - 18" TO 24"
PYRACANTAJ HAWTHORN
BUSHES ON 9' CENTERS

PROPOSED -
10' HIGH MOUND

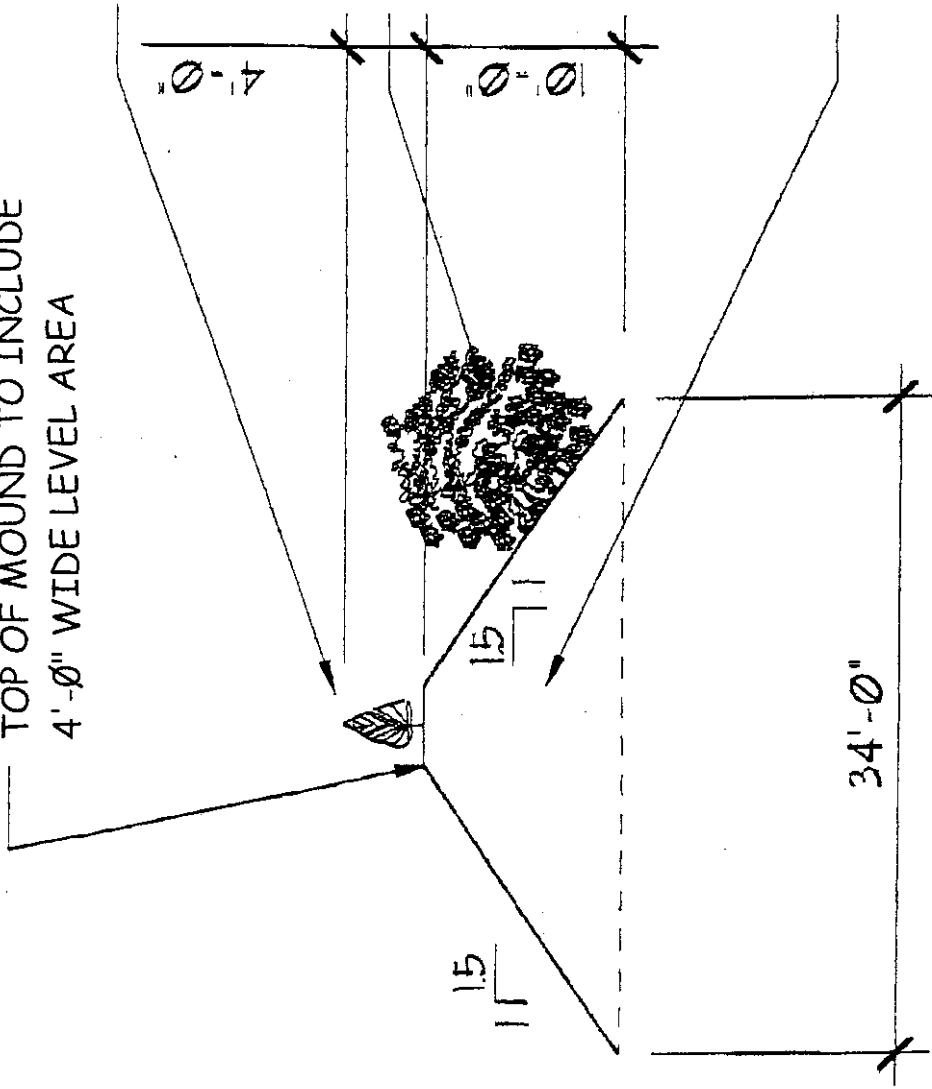


EXHIBIT B