

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED  
TO AS PART OF THE DEDICATION AND PLAT OF  
WINDMILL RIDGE, SECTION II  
A SUBDIVISION IN WASHINGTON TOWNSHIP, ALLEN COUNTY, INDIANA

PLAT C-88 "A" PAGE "142"

North Eastern Construction Co., Inc. an Indiana corporation, by Joseph L. Zehr, its President, hereby declares that it is the Owner of the real estate shown and described in this plat and does hereby lay off, plat and subdivide said real estate in accordance with the information shown on the final plat, being the certified plat appended hereto and incorporated herein. The Subdivision shall be known and designated as Windmill Ridge, Section II, a Subdivision in Washington Township, Allen County, Indiana.

The lots are numbered from 62 to 111, inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are hereby expressly dedicated to public use for their usual and intended purposes.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to the Windmill Ridge Community Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Lot" shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent Owners, which may consist of one or more lots or parts of one or more lots as platted upon which a residence may be erected in accordance with the restrictions hereinabove set out or such further restrictions as may be imposed by any applicable zoning ordinance, PROVIDED, HOWEVER, no tract of land consisting of part of any one lot or parts of more than one lot shall be considered a "LOT" unless said tract of land has a frontage of 70 feet in width at the established building line as shown on this plat.

Section 6. "By-Laws" shall mean the By-Laws initially adopted by the WINDMILL RIDGE COMMUNITY ASSOCIATION, INC. and all amendments and additions thereto.

**ARTICLE II  
PROPERTY RIGHTS**

**INSTRUMENT X 1873**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to the use of the recreational facilities by an Owner for

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any period during which any assessment against his lot remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

#### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any lot which is subject to assessment.

Section 2. The Association shall have two classes of voting memberships:

Class A. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

Class B. Class B member(s) shall be North Eastern Construction Co., Inc. and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when title to all lots in all sections has been conveyed, or
- (b) on December 31, 1997.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any lot, excepting North Eastern Construction Co., Inc. by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by the Architectural Control Committee, such committee to be composed of three members, the first committee members to be: Joseph L. Zehr, Cathy A. Zehr and Orrin R. Sessions. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. In the event said Board or the Architectural Control Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

#### ARTICLE VI GENERAL PROVISIONS

Section 1. No lot shall be used except for residential building purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height. Each house shall include not less than a two car garage, which shall be built as part of said structure and attached thereto.

Section 2. No building shall be built having a ground floor area upon the foundation, exclusive of one-story open porches, breezeway or garages of less than 1300 square feet for a one-story dwelling, nor less than 900 square feet for a dwelling of more than one-story.

Section 3. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located nearer than a distance of seven (7) feet to an interior lot line. No dwelling shall be located on an interior lot nearer than twenty-five (25) feet to the rear lot line.

Section 4. No dwelling shall be erected or placed on any lot having a width of less than 70 feet at the minimum building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than 8,000 square feet.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be exclusively to promote the recreation, health and welfare of the residents in the properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be Seventy-Five Dollars (\$75.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than 8% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above 8% by the vote or written assent of 51% of each class of members.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments For Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 51% of each class of members.

Section 5. Notice and Quorum For Any Action Authorized Under Sections 3 and 4. Any action authorized under Sections 3 or 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite 51% of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly or yearly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 5. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear seven (7) feet of each lot or as shown on the plat. No Owner of any lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any house or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections.

Section 5 (a). Surface Drainage Easements and Common Areas used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 6. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 7 (a). No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be constructed, erected, or located or used on any lot for any purpose, including use as a residence, either temporarily or permanently; provided, however, that basements may be constructed in connection with the construction and use of any residential building.

Section 7 (b). No boat, boat trailer, recreational vehicle, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked ungaraged on any lot for periods in excess of 48 hours, or for a period of which in the aggregate is in excess of 8 days per calendar year. A "truck" is defined for this purpose as one which is rated one-ton or more.

Section 7 (c). No clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, shall be constructed, erected, or located or used on any lot.

Section 8. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot or one sign of not more than five square feet, advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 9. No radio or television antenna with more than thirty (30) square feet of grid area or which attains a height in excess of six (6) feet above the highest point of the roof shall be attached to any dwelling house. No free standing radio or television antenna, television receiving disk or dish shall be permitted on any lot. No solar panels attached or detached shall be permitted.

Section 10. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 11. No animals, livestock 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 that they are not kept, bred or maintained for any commercial purpose.

Section 12. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. No incinerators or outside incinerators shall be kept or allowed on any lot.

Section 13. All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building on any lots of said Subdivision and no roll roofing of any description or character shall be used on the roof of any dwelling house or attached garage on any of said lots.

Section 14. All driveways from the street to the garage shall be poured concrete and not less than sixteen (16) feet in width.

Section 15. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any lots in this Subdivision.

Section 16. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to all Public Utility Companies, the proprietors of the land herein platted and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 17. No rain and storm water runoff or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewage System, which shall be a separate sewer system from the Storm Water and Surface Water Runoff Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned Storm Water and Surface Water Runoff Sewer System.

Section 18. Before any house or building on any lot in this Subdivision shall be used and occupied as a dwelling or as otherwise provided by the Subdivision restrictions above, the developer or any subsequent Owner of said lot shall install improvements serving said lot provided in said plans and specifications for this Addition filed with the County of Allen. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana or by any aggrieved lot Owner in this Subdivision.

Section 19. Before any lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the Improvement Location Permit and Certificate of Occupancy as required by the Allen County Zoning Ordinance.

Section 20. The Association, North Eastern Construction Co., Inc. and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 21. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 22. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date these covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these covenants and restrictions may be amended by an instrument signed by not less than 75% of the lot Owners of Windmill Ridge and all Sections thereof, and provided further, North Eastern Construction Co., Inc., its successors or assigns shall have the exclusive right for two (2) years from the date of recording of the plat to amend any of the Covenants and Restrictions, except Article VI, Section 2 above, with the approval of the Allen County Plan Commission.

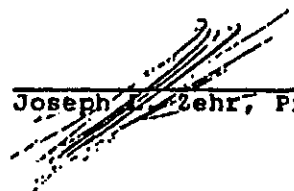
Section 23. No lot or combination of lots may be further subdivided until approval therefore has been obtained from the Allen County Plan Commission.

Section 24. Sidewalks. Plans and specifications for this subdivision, on file with the Allen County Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of lots 62 through 70, 81 through 88 and 104 through 111 all inclusive. Installation of said sidewalks shall be the obligation of the Owner of any such lot, exclusive of the developer, shall be completed in accordance with said plans and specifications and prior to the issuance of a Certificate of Occupancy for any such lot and the cost of said installation shall be a lien against any such lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Occupancy be issued to the developer, said individual or corporation shall be considered an Owner for the purposes of the enforcement of this covenant.

Section 25. Attorney's Fees and Related Expenses. In the event the Association or North Eastern Construction Co., Inc., shall be successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of the Dedication Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to and made a part of the Dedication and Plat of Windmill Ridge, it shall be entitled to recover from the party against whom the proceeding was brought all of the attorney's fees and related costs and expenses it incurred in such proceeding.

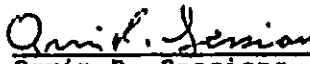
IN WITNESS WHEREOF, North Eastern Const. Action Co., Inc. an Indiana corporation, by its duly authorized President, Joseph L. Zehr, Owner of the real estate described in said plat, has set his hand and seal this 1st day of February, 1989.

NORTH EASTERN CONSTRUCTION CO., INC.

By:   
Joseph L. Zehr, President

STATE OF INDIANA )  
                          ) SS  
COUNTY OF ALLEN )

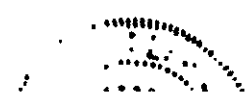
Before me, a Notary Public in and for said County and State, personally appeared Joseph L. Zehr, known to me to be the duly authorized President of North Eastern Construction Co., Inc., and acknowledged the execution of the above and foregoing as his voluntary act and deed for and on behalf of said corporation for the purposes and uses therein set forth.

  
Orrin R. Sessions - Notary Public  
Resident of Allen County, Indiana

My Commission Expires:

May 13, 1992

Prepared by: Thomas J. Blee, Attorney at Law  
13th Floor - Lincoln Bank Tower  
Fort Wayne, Indiana 46802





89-021360

AMENDMENT TO DEDICATIONS, PROTECTIVE RESTRICTIONS,  
COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO  
AND MADE A PART OF THE DEDICATION  
AND PLAT OF WINDHILL RIDGE SECTION II,  
A SUBDIVISION IN WASHINGTON TOWNSHIP, ALLEN COUNTY, INDIANA

The undersigned, North Eastern Construction Co., Inc., pursuant to the provisions of Article VII of the Dedications, Protective Restrictions, Covenants, Limitations, Easements, and Approvals appended to and made a part of the Dedication of Plat of Windmill Ridge, Section II, a subdivision in Washington Township, Allen County, Indiana, hereinafter referred to as "Covenants", hereby amends said Covenants as filed in the offices of the Recorder of Allen County, Indiana, in Cabinet A, page 147, as follows:

Article VII, Section 23 is amended to read as follows:

"Section 23. No lot or combination of lots may be further subdivided until approval therefor has been obtained from the Allen County Plan Commission; excepting, however, the Developer, and its successors in title, shall have the absolute right to increase the size of any lot by joining to such lot a section of an adjoining lot (thereby decreasing the size of such adjoining lot) so long as the effect of such joining does not result in the creation of a "lot" which violates Article I Section 5 hereof, or a lot which does not satisfy the applicable area and yard requirements imposed under these restrictive covenants or the Allen County Zoning Ordinance."

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All other terms and provisions of said Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to and made a part of the Dedication and Plat of Windmill Ridge, Section II, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Developer does hereby execute this Amendment to said Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to and made a part of the Dedication and Plat of Windmill Ridge, Section II, as its free and voluntary act and deed.

Dated this 8th day of June, 1989.

DULY ENTERED FOR TAXATION

JUN 08 1989

NORTH EASTERN CONSTRUCTION CO, INC.


John K Bloom

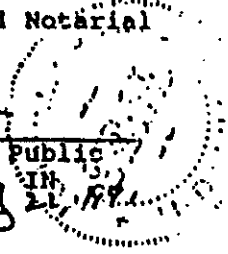
BY: [Signature]

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public in and for said County and State, this 8 day of June, 1989, personally appeared Joseph L. Zehr, known to me to be the President of North Eastern Construction Co., Inc., and acknowledged the execution of the above and foregoing to be his voluntary act and deed.

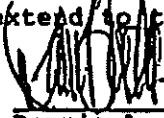
IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal the date above written.

  
\_\_\_\_\_  
Thomas J. Blee Notary Public  
A resident of Allen County, IN  
My Commission Expires July 21, 1991



This is to certify that the foregoing document has been reviewed by the Allen County Plan Commission. As presented, the content of the restrictions contained in said document conforms to the requirements of the Allen County Zoning and Subdivision Control Ordinances and the document is now eligible for recording. This certification does not extend to the form or validity of the document.

DATE: 8 June 89

  
\_\_\_\_\_  
Dennis A. Gordon, A.I.C.P.  
Executive Director.

This instrument prepared by Thomas J. Blee, Attorney at Law.