

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED  
TO AS PART OF THE DEDICATION AND PLAT OF  
WEDGEWOOD PLACE, SECTION II  
A SUBDIVISION IN ST. JOSEPH TOWNSHIP, ALLEN COUNTY, INDIANA

North Eastern Construction Co., Inc., and Indiana corporation by Joseph L. Zehr, its President, hereby declares that it is the Owner of the real estate shown and described in the 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 know and designated as Wedgewood Place, Section II, a Subdivision in St. Joseph Township, Allen County, Indiana.

The lots are number from 84 to 161, 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.

PREFACE

Wedgewood Place, Section II is a portion of a tract of real estate which will be subdivided into approximately 78 residential lots, to be known as Wedgewood Place, Section II. Simultaneously with the recordation of the Plat of and the Protective Restrictions and Covenants, there has been recorded Articles of Incorporation of Wedgwood Community Association, Inc., it being plattor's intention that each owner of a lot in Wedgwood Place, Section II shall become a member of said Community Association and shall be bound by its Articles of Incorporation and By-Laws.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Wedgewood Place 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 Wedgwood Place, Section II and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent Owner, 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 5. "By-Laws" shall mean the By-Laws initially adopted by the WEDGEWOOD COMMUNITY ASSOCIATION, INC., and all amendments and additions thereto.

## ARTICLE II PROPERTY RIGHTS

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 any period during which any assessment against his lot remains unpaid; and for a period not to exceed 30 days for an 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 600 votes less than number of votes which Class A members are entitled to exercise. Class B Membership shall cease upon the happening of either of the following events:

- (a) When fee simple title to all lots in Wedgewood Place, Section II have been conveyed by North Eastern Construction Co., Inc. or
- (b) On December 31, 1996.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any lot, excepting the North Eastern Construction Co., Inc., by acceptance of a deed therefore, whether of 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 lean 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 assumed by them.

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 Wedgewood Place, Section II and for the improvement thereon. In addition, assessments shall be levied to provide for Wedgewood Place, Section II proportionate burden of the maintenance of the common impoundment basin into which its surface waters drain.

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 One Hundred Dollars (\$100.00) 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 for the purpose of defraying, in whole or in part, the cost of any new construction or repair or replacement thereof of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 75% of each class of members, and provided, further, that no such special assessments for any such purpose shall be made if the taking of such assessment shall in any way jeopardize or affect the Association's ability to improve and maintain its Common areas or to pay its pro rata share of the cost of maintaining the Common Impoundment Basis.

Section 5. Notice and Quorum For Any Action Authorized Under Section 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 Commencements 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 assessment on a specified lot has been paid.

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 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 any lot, 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 or 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 on 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 1200 square feet for a one-store dwelling, nor less than 850 square feet for a dwelling or 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 a area of less than 8,000 square feet.

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 charge 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 an lot, nor shall anything be done thereon which may be or may become an annoyance to 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 un-garaged 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 rate 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 or 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 an 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 or 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 designed, 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 times be discharge 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 discharge 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 restriction above, the developer or any subsequent Owner of said lot shall install improvements servicing 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 or 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, reservation, 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 judgement 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 of 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 Wedgewood Place 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 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.

Section 24. 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 84 through 97, 98 through 104, 115 through 123, and 139 through 148 as shown on approved plans. 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. Flood Protection Grade. In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. The flood protection grades for lot 124 through 127 and lots 151 through 160 inclusive are 809.0 feet Mean Sea Level.

Section 26. 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 Wedgwood Place, 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 Construction 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 1<sup>st</sup> day of February, 1989.

NORTH EASTERN CONSTRUCTION CO., INC  
Original signed by Joseph L. Zehr, President

Original notarized by Tamara S. Brown, Notary Public, as Resident of Allen County, Indiana dated March 1, 1993

Original prepared by: Thomas J. Blee, Attorney at Law  
13<sup>th</sup> Floor – Lincoln Bank Tower  
Fort Wayne, Indiana 46802