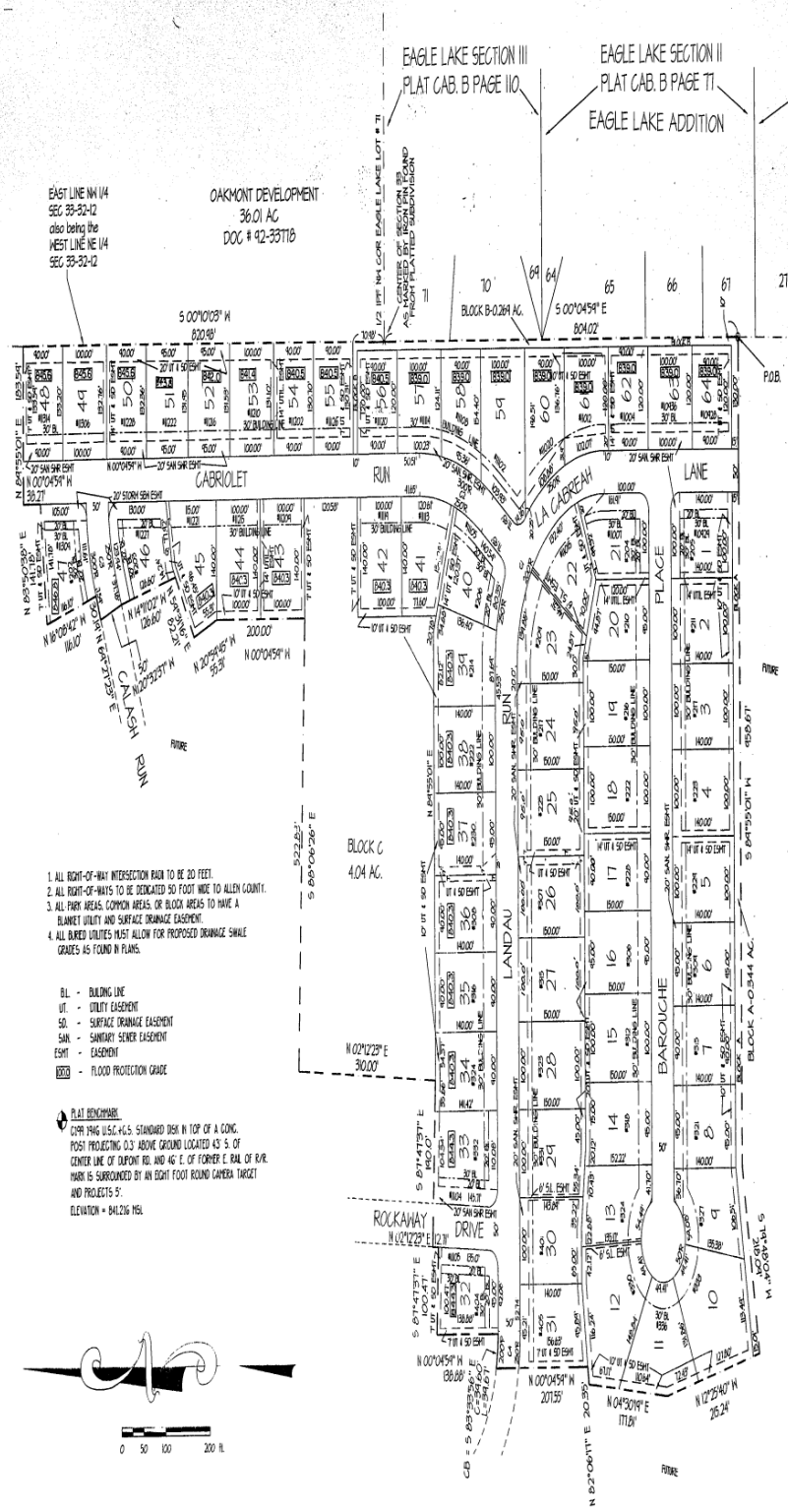
94 26351



1. ALL RIGHT-OF-WAY INTERSECTION RADII TO BE 20 FEET.
2. ALL RIGHT-OF-WAYS TO BE DEDICATED 50 FOOT WIDE TO ALLEN COUNTY.
3. ALL PARK AREAS, COMMON AREAS, OR BLOCK AREAS TO HAVE A BLANKET UTILITY AND SURFACE DRAINAGE EASEMENT.
4. ALL BURIED UTILITIES MUST ALLOW FOR PROPOSED DRAINAGE SWALE GRADES AS FOUND IN PLANS.

B.L. - BUILDING LINE
UT. - UTILITY EASEMENT
SD. - SURFACE DRAINAGE EASEMENT
SAN. - SANITARY SEWER EASEMENT
ESMT - EASEMENT
970 - FLOOD PROTECTION GRADE

PLAT BENCHMARK
CHIP 1946 U.S.C.+G.S. STANDARD DISK IN TOP OF A CONC. POST PROJECTING 0.3' ABOVE GROUND LOCATED 43' S. OF CENTER LINE OF DUPONT RD. AND 46' E. OF FORMER E. RAIL OF R/R. MARK IS SURROUNDED BY AN EIGHT FOOT ROUND CAMERA TARGET AND PROJECTS 5'.
ELEVATION = 841.216 MSL

0 50 100 200 ft.

DESCRIPTION

A parcel of land located in the West One-half of Section 33, Township 32 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

COMMENCING at the Southeast corner of the Southwest One-quarter of Section 33, Township 32 North, Range 12 East; thence along the East line of the Southwest One-quarter North 0 degrees 04 minutes 59 seconds West, a distance of 1752.95 feet to the point of beginning.

BEGINNING at the above described point; thence South 89 degrees 55 minutes 01 seconds West, a distance of 658.67 feet; thence South 79 degrees 48 minutes 04 seconds West, a distance of 218.09 feet; thence North 12 degrees 25 minutes 40 seconds West, a distance of 215.24 feet; thence North 04 degrees 30 minutes 19 seconds East, a distance of 177.81 feet; thence North 82 degrees 06 minutes 17 seconds East, a distance of 20.35 feet; thence North 00 degrees 04 minutes 59 seconds West, a distance of 207.55 feet; thence on a non-tangent curve to the left having a radius of 200.0 feet, an arc length of 39.67 feet and being subtended by a chord of 39.60 feet bearing South 83 degrees 33 minutes 56 seconds East; thence North 0 degrees 04 minutes 59 seconds West, a distance of 138.88 feet; thence South 87 degrees 47 minutes 37 seconds East, a distance of 100.47 feet; thence North 02 degrees 12 minutes 23 seconds East, a distance of 12.71 feet; thence South 87 degrees 47 minutes 37 seconds East, a distance of 190.0 feet; thence North 02 degrees 12 minutes 23 seconds East, a distance of 310.0 feet; thence South 88 degrees 06 minutes 26 seconds East, a distance of 522.83 feet; thence North 0 degrees 04 minutes 59 seconds West, a distance of 200.00 feet; thence North 20 degrees 59 minutes 45 seconds West, a distance of 55.31 feet; thence North 59 degrees 31 minutes 16 seconds East, a distance of 92.21 feet; thence North 14 degrees 11 minutes 02 seconds West, a distance of 126.60 feet; thence North 20 degrees 32 minutes 37 seconds West, a distance of 50.0 feet; thence North 69 degrees 27 minutes 23 seconds East, a distance of 30.19 feet; thence North 16 degrees 08 minutes 42 seconds West, a distance of 116.10 feet; thence North 83 degrees 50 minutes 38 seconds East, a distance of 141.76 feet; thence North 00 degrees 04 minutes 59 seconds West, a distance of 38.27 feet; thence North 89 degrees 55 minutes 01 seconds East, a distance of 183.59 feet; thence South 00 degrees 10 minutes 03 seconds West, a distance of 820.98 feet; to a 1/2" iron pin found at the Northwest corner of Lot # 71 in Eagle Lake, Section III, as recorded in Plat Cabinet B, page 110, said point also the center of Section 33, Township 32 North, Range 12 East; thence South 0 degrees 04 minutes 59 seconds East, a distance of 804.02 feet to the point of beginning containing 29.274 acres of land, more less and subject to all pertinent easements of record.

LOT CURVE DATA

LOT	RADIUS	DELTA	CHORD	LENGTH
9	50.00	68°- 53'- 25"	56.56	60.12
10	50.00	55°- 28'- 4"	46.51	48.38
11	50.00	55°- 25'- 36"	46.50	48.37
12	50.00	55°- 25'- 16"	46.50	48.36
13	50.00	64°- 49'- 39"	53.80	56.57
21	200.00	17°- 44'- 7"	61.66	61.91
22	200.00	37°- 55'- 52"	130.00	132.40
23	200.00	34°- 20'- 1"	118.06	119.85
31	250.00	9°- 43'- 58"	42.42	42.47
32	250.00	0°- 59'- 7"	2.92	2.92
39	250.00	9°- 39'- 47"	42.11	42.16
40	250.00	19°- 24'- 50"	80.00	80.35
40	250.00	15°- 43'- 14"	68.38	68.59
41	250.00	18°- 5'- 44"	78.63	78.95
46	250.00	19°- 44'- 50"	85.74	86.16
47	300.00	19°- 51'- 58"	103.50	104.02
57	300.00	9°- 29'- 43"	49.66	49.72
58	300.00	18°- 12'- 46"	94.96	95.36
59	250.00	4°- 23'- 25"	19.15	19.16
59	300.00	6°- 6'- 29"	31.97	31.98
60	250.00	24°- 57'- 15"	108.02	108.88
61	250.00	21°- 6'- 1"	91.55	92.07

RIGHT OF WAY

	RADIUS	DELTA	CHORD	LENGTH
LA CABREAH LANE				
CURVE #C1				
WEST	200.00	55°- 39'- 59"	186.76	194.31
EAST	250.00	50°- 26'- 41"	213.07	220.11
CABRIOLET RUN				
CURVE #C2				
EAST	300.00	33°- 48'- 58"	174.50	177.08
WEST	250.00	33°- 46'- 58"	145.42	147.55
CALASH RUN				
CURVE #C3				
SOUTH	250.00	19°- 44'- 50"	85.74	86.16
NORTH	200.00	12°- 11'- 58"	42.50	42.58
LANDAU RUN				
CURVE #C4				
SOUTH	250.00	9°- 43'- 58"	42.42	42.47
NORTH	200.00	12°- 11'- 58"	42.50	42.58
LANDAU RUN				
CURVE #C1				
SOUTH	200.00	34°- 20'- 1"	118.06	119.85
NORTH	250.00	28°- 4'- 37"	121.29	122.51

SECONDARY PLAT
of
La Cabreah SECTION I

a Subdivision located in Fractional Section 33.
Township 32 North. Range 12 East.
Allen County. Indiana

DULY ENTERED FOR TAXATION
MAY 2 1994
Auditor of Allen County

INSTRUMENT 94 2440

DEVELOPERS
NORTH EASTERN CONSTRUCTION CO. INC.
6700 East State Blvd.
Fort Wayne. Indiana 46815
219/749-0425

ENGINEERS-SURVEYORS-PLANNERS
COIL + DICMEYER. INC.
6044 East State Boulevard
Fort Wayne. Indiana 46815
219-749-0125

94-026351

PLAT CABC PAGE 13

DULY ENTERED FOR TAXATION

MAY 2 1994

AUDITOR OF ALLEN COUNTY

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED OF THE PLAT OF LA CABREAH, SECTION I
A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

North Eastern Construction Co., Inc., an Indiana corporation, by Joseph L. Zehr, its President, declares that it is the owner of the real estate shown and legally described in this plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference in this document. The platted Subdivision shall be known and designated as La Cabreah, Section I, a Subdivision in Perry Township, Allen County, Indiana.

The lots are numbered from 1 through 64 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 expressly dedicated to public use for their usual and intended purposes.

PREFACE

La Cabreah, Section I is part of a tract of real estate which is currently planned to be subdivided into a maximum of 345 residential lots. In addition to the recordation of the Plat of and this document, there will be recorded articles of incorporation of La Cabreah Community Association, Inc., it being Developer's intention that said association, and be bound by its articles of incorporation and bylaws.

Section 1. *DEFINITIONS*. The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 "Articles". The articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

1.2 "Association". La Cabreah Community Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

1.3 "Board of Directors". The duly elected board of directors of the Association.

1.4 "Bylaws". The bylaws adopted by La Cabreah Community Association, Inc., and all amendments to those bylaws.

1.5 "Committee". The Architectural Control Committee established under section 5 of the Covenants.

1.6 "Common Area". All real property owned by the Association for the common use and enjoyment of Owners.

1.7 "Covenants". This document and the restrictions, limitations and covenants imposed under it.

1.8 "Developer". North Eastern Construction Co., Inc., an Indiana corporation, and its assigns and successors in interest in the Real Estate.

1.9 "Lot", and in plural form, "Lots". Any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance; provided, however, that no tract of land consisting of part of Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 85 feet in width at the established front building line as shown on the Plat.

94 MAY -2 PM 1:27

INSTRUMENT 94 2440

33

94 26351

1.10 "Owner, and in the plural form, "Owners". The record owner(s) (whether one or more persons or entities) of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.11 "Plan Commission". The Allen County Plan Commission, or its successor agency.

1.12 "Plat" The recorded secondary plat of La Cabreah.

1.13 "Subdivision". The platted Subdivision of La Cabreah.

Section 2. PROPERTY RIGHTS.

2.1 Owners' Easements of Enjoyment. Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and passes with the title to every Lot, subject to the following rights which are granted to the Association.

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

2.1.2 To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against an Owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any published rule of the Association.

2.1.3. 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 Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family, and tenants or contract purchasers who reside on the Owner's Lot.

Section 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

3.2 The Association shall have the following two classes of voting memberships:

3.2.1 Class A. Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be case with respect to a Lot.

3.2.2 Class B. Class B membership consists of Developer. The Class B member shall be entitled to 1,035 votes less that 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, whichever occurs first:

3.2.2.1 When fee simple title to all Lots have been conveyed by Developer; or

3.2.2.2 on December 31, 2003.

94 26351

Section 4. COVENANT FOR MAINTENANCE ASSESSMENTS

4.2 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer, by acceptance of a deed for a Lot, 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 provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision, and for the improvement of facilities in the Subdivision. In addition, assessments shall be levied to provide for the proportionate burden of the maintenance of the common impoundment basin into which the Subdivision's surface waters drain.

4.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be Four Hundred-Fifty ($450.00) per Lot. Subsequent assessments may be made as follows:

4.3.1 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than 8% above the annual assessment for the previous year, without a vote of the membership.

4.3.2 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

4.4 Special Assessments For Capital Improvements. In addition to the annual assessments authorized in Section 4.3, 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 of an existing capital improvement in the Common Area, including fixtures and related personal property; provided that any such assessment shall require the vote or written assent of 75% of each class of members of the Association; and provided, further, that nosuch special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain the Common Area, or pay its prop rata share of the cost of maintaining the common impoundment basin.

4.5 Notice and Quorum for Any Action Authorized Under Subsections 4.3 and 4.4. Any action authorized under Sections 4.3.2 and 4.4 shall be taken at a meeting of the Association 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 case at such meeting, but such vote is less than the requisite percentage 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 an officer of the Association within 30 days of the date of such meeting.

4.6 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.

94 26351

4.7 Date of Commencement of Annual Assessment/s Due Dates. The annual assessments allowed under Section 4.3 shall commence as to all Lots then subject to an assessment, on the first day of the month following the first conveyance of a Lot by Developer. The first annual assessment shall be pro rated 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 30 days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. 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 stating whether an assessment on a Lot has been paid.

4.8 Effect of Nonpayment of Assessments/Remedies of the Association.

4.8.1 Any assessment not paid within 30 days after its due date shall bear interest from the due date at the rate of 12% per annum, or at the legal rate of interest in Indiana, whichever is higher.

4.8.2 The Association may bring an action at law against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association shall also be entitled to recover the attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 4.

4.9 Subordination of Assessment Lien to First Mortgages Liens. The lien of the assessments made under the Covenants shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer.

Section 5. ARCHITECTURAL CONTROL

5.1 No building, fence, wall, in-ground swimming pool, or other structure shall be commended, erected or maintained upon a Lot, nor shall any exterior addition, change, or alteration be made to a structure on a Lot until the plans and specifications showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the Committee in writing as to the structure's harmony of external design and location in relation to surrounding structures and topography in the Subdivision. The Committee shall 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 appoint 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 appoint a successor.

5.2 The Committee shall have the exclusive authority and responsibility to review plans for construction of all primary residences in the Subdivision. The Committee may delegate to the Board of Directors (or to such other entity designated in the Articles or Bylaws) the authority and responsibility to review plans for construction of fences and other structures (excluding primary dwellings) in the Subdivision. Such delegation shall be made in writing, signed by a majority of the Committee members, and delivered or mailed to the Association's registered office.

94 26351

5.3 After primary residences are constructed on all Lots in the Subdivision, the Board of Directors (or other entity designated under its Articles or Bylaws) shall succeed to the Committee's responsibilities under this Section 5 to review subsequent construction, modifications and additions of structures in the Subdivision.

5.4 In the event the Committee (or Board of Directors or other entity acting under Sections 5.2 or 5.3), fails to approve or disapprove the design and location of a proposed structure within 30 days after said plans and specifications have been submitted to it, approval will not be required, and approval under this Section 5 will be deemed to have been given.

5.5 Notwithstanding any other provisions to the contrary in this section 5, the Committee may not approve construction or modification of any fence on Lots 34 through 45 inclusive which, in the Committee's sole opinion, would create a sight obstruction of any lake in the Subdivision.

Section 6 GENERAL PROVISIONS

6.1 Use. Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Such garage shall be built as part of the residence, shall have a floor area of not less than 660 square feet, and shall have one or more doors with an aggregate width of not less 24 feet.

6.2 Dwelling Size. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeways or garages, of less than 1,800 square feet for a one-story residence, or less than 2,100 square feet of total living area, (excluding one-story open porches, breezeways and garages), for a residence that has more than one story.

6.3 Building Lines. No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than a distance of 7 feet to an interior Lot line. No dwelling shall be located on an interior Lot nearer than 25 feet to the rear Lot line for Lots 11 through 33, 40, 46 through 55 and 15 feet to the rear lot line for lots 1 through 10, 34 through 39, 41 through 45 and 56 through 64.

6.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than 85 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 10,500 square feet.

6.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear 10 feet of each Lot. No Owner shall erect on a Lot, 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 in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.

94 26351

6.6 Surface Drainage Easements. Surface drainage easements and Common Area 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 surface of the Real Estate 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 proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

6.7 Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision.

6.8 Temporary Structures. 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, 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 a single-family residence building.

6.9 Outside Storage. No boat, boat trailer, recreational vehicle, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked ungaraged on a Lot for periods in excess of 48 hours, or for a period of which is in the aggregate is in excess of 8 days per calendar year. The term "truck" as used in this Section 6.9 means every motor vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

6.10 Free-Standing Poles. 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 a Lot.

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

6.12 Antennas. No radio or television antenna with more than 30 square feet of grid area, or that attains a height in excess of 6 feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna, or satellite receiving disk or dish shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot.

6.13 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

6.14 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on a 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.

6.15 Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

6.16 Workmanship. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

94 26351

6.17 Driveways. All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width.

6.18 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and granted to all public utility companies, the owners of the Real Estate and their respective successors and assigns, to install, lay , erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

6.19 Storm Water Runoff. 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 or permitted to flow into the sanitary sewage system serving the Subdivision, 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 Subdivision's storm and surface water runoff sewer system.

6.20 Completion of Infrastructure. Before any residence on a Lot shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Plan Commission or by any aggrieved Owner.

6.21 Certificate of Compliance. Before a 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 compliance required by the Allen County Zoning Ordinance.

6.22 Enforcement. The Association, Developer and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association, Developer or an Owner to enforce any provisions in the Covenants shall in no event be deemed a waiver of the right to do so later.

6.23 Invalidation. Invalidation of any one of these Covenants by judgment or court order shall not affect the remaining provisions, and such provisions shall remain in full force and effect.

6.24 Duration of Covenants. These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of 10 years.

6.25 Amendments. Any provision of these Covenants may be amended, but such amendment is subject to the following requirements and limitations:

6.25.1 After primary residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of the Lots in the Subdivision and by the owners of at least 75% of the lots in future sections, if any, of La Cabreah. For purposes of this Section 6.26.1, the term "owner" shall have the same meaning with respect to Lots in such future sections, as the term "Owner" is defined in Section 1.10.

6.25.2 Until primary residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, in order to amend the Covenants, Developer, in addition to those persons whose signatures are required under Section 6.25.1, also must sign the amendatory document.

94 26351

6.25.3 Notwithstanding the provisions of Section 6.25.1, Developer and its successors and assigns shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded, to amend any of the Covenant provisions (except Section 6.2) without approval of the Owners.

6.25.4 In order for any amendment of these Covenants to be effective, the approval of the Plan Commission shall be required.

6.26 Subdivision. No lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under Section 1.9.

Section 7. Attorney Fees and Related Expenses. In the event the Association, Developer, an Owner, or the Plan Commission is 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 subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

Section 8. Sidewalks. Plans and specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of Lots #1, 13 through 22, 32 through 47 and 59 through 64, as shown on the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of compliance for such Lot. A violation of this Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Should a certificate of compliance be issued to Developer for a Lot on which a sidewalk must be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant with respect to that Lot.

Section 9. Flood Protection Grades. In order to minimize potential damage to residences from surface water, minimum flood protection grades are established of 844.30 feet for Lots 32 and 33, 840.30 feet for Lots 34 through 39, and Lots 41 through 45, 846.80 feet for Lot 47, 845.60 feet for Lots 48 through 50, 843.80 feet for Lot 51, 842.00 for Lot 52, 841.40 feet for Lot 53, 840.50 feet for Lots 54, 55 and 56, and 839.00 feet for Lots 57 through 64 Mean Sea Level. All residences on such Lots shall be constructed so that the minimum elevation of the first floor, or the minimum sill elevation of any opening below the first floor, equals or exceeds the applicable minimum flood protection grade established in this Section 9.

Section 10. Mandatory Solid Waste Disposal. The Association shall be obligated to contract for disposal of garbage and other solid waste to and may pay for the cost of such disposal through assessments established under Section 4. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be excused from payment of any part of an assessment attributable to the cost of waste disposal for which the Association contracts under this section 10.

Section 11. Geothermal Systems.

11.1 Owners of Lots in the Subdivision shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service residences located on the Owner's Lots, and the right to use the Association property described below:

11.1.1 A System with a closed loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lots.

94 26351

11.1.2 A System which uses an discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lots.

11.2 Any Systems so installed must:

11.2.1 Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations.

11.2.2 Satisfy reasonable requirements of the Allen County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and obtain approval from La Cabreah Community Association, Inc.

11.2.3 Be installed according to approved guidelines of, and by technicians certified by, the International Ground Source Heat Pump Association.

11.3 Any Owner using property owned by the Association for the purpose described in Section 11.1 agrees to idemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with the Systems.

IN WITNESS WHEREOF, North Eastern Construction Co., Inc., an Indiana corporation, by its duly authorized President, Joseph L. Zehr, Owner of the Real Estate, has signed this document on this 31st day of March 1994.

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, this 31st day of March , 1994, 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 aforegoing as his voluntary act and deed and on behalf of said corporation for the purposes and uses set forth in this document.

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

My Commission Expires:
May 30, 1996

Witness my hand and notarial seal.

This instrument was prepared by James A. Federoff, Attorney at Law.

94 26351