MISC. DRAWER 2 CARD 6651

87-19750

PROTECTIVE COVENANTS

OF

WINDSONG

UNIT 1

RECEIVED FOR RECORD
at 1:27 P. M.
August 11 1987
BOB STEELE, RECORDER
VANDERBURGH COUNTY

The undersigned, Jagoe Home & Construction Company, Inc. ("The Developer") of 2350 Tamarack Road, Owensboro, Kentucky, owner of record in the Vanderburgh County Recorder's Office as subdivided and is developing said property into residential lots, the subdivision to be known as Windsong, as shown on Plat of record in Plat Book N, Page 106, in said Recorder's office. For the purpose of promoting the development of said property, the undersigned does hereby dedicate for public use the streets and easements shown upon the recorded plat of Windsong, Unit 1, Plat Book and Page aforesaid.

In addition to the restrictions imposed under and by all existing zoning ordinances of the City of Evansville, Indiana, the undersigned does hereby establish and place upon the lots in said subdivision the following restrictions:

1. EXTERIOR MATERIALS. In order to further enhance the future property values of Windsong, the Developer has color coordinated certain exterior materials on the new homes. As these products need replacing, repairing or repainting, the original colors and type materials must be used or colors and materials as near the original as possible may be substituted providing the original is not readily available. Exterior trim shall be white or as originally installed. Siding and roofing

colors and design shall remain as similar as possible to the original. Fences in front of the homes, fences along adjoining streets and painted fences connecting the homes shall remain the same type and color as the original.

2. BUILDING LOCATION. All buildings erected shall conform to the building set back lines for front, rear and side yards and the public utility easements where established on the recorded plat. (See Section 17)

3. BUILDING COMPLIANCE. All buildings erected shall conform to the rules and regulations as established by the zoning ordinances.

4. DWELLING QUALITY AND SIZE. The groundfloor area for a one or one and one-half story residence shall be 500 square fee or more. For a two-story residence the groundfloor area shall be 400 square feet or more. Such minimums shall be exclusive of open porches, breezeways and attached garage. No building shall be constructed to more than two stories in height.

5. FENCES AND WALLS. Fences or walls erected at the rear yards shall not be higher than eight (8) feet. No fences or walls shall be permitted in the front years except such fences or walls used for decorating or ornamental purposes installed by the Developer. Any fence connecting homes which were originally erected by the Developer for side yards privacy from the street shall not be removed, destroyed or materially altered and shall be maintained in good condition and repair by the owner. Fences must be constructed to permit reasonable access to utilities, or

they must have gates to allow access. Fencing added after initial construction of a home must conform to the same style as that of the connecting fences at the time of construction or shall be a six-foot high stockade-type fence. Fences along side streets must remain at the same distance from the street as originally erected.

6. DRIVEWAYS. All driveways shall have a permanent constructed surface of concrete or bituminous asphalt.

7. TRELLISES. Side yard trellises shall not have solid roofs over them unless permitted by zoning ordinances.

8. PRIVACY WALL. In the event a home is destroyed or moved or for any other reason, does not provide a privacy wall along its zero lot line, the owner of that lot shall construct a six (6) foot high solid fence of the same style as the side fence connecting the homes along the zero lot line where the house wall was formerly located, within seven (7) days.

9. DRAINAGE FLOW AND CARE OF PROPERTY. Fencing, structures erected, and/or grading by owners must allow the original direction or flow of the community drainage. Each lot owner shall be responsible for exercising good erosion control practices during construction of any improvement and that said contractor and/or the owner of said lot shall finish grade and seed straw the lot as soon as possible. Straw bale dams for run-off control during construction shall be used if necessary. Thereafter, a good turf shall be established and maintained and each lot owner shall be responsible for maintenance and grade

elevation of the drainage swales along their respective lot line. The Developer has established certain grades for the subdivision as required by the Planning Commission. Accordingly, it shall be the sole responsibility of each lot owner to maintain their drainage easements providing proper surface water drainage for the community.

10. DRAINAGE OF WATER. The water from down spouts or other surface water drainage systems shall not be drained into or guided into the sanitary sewer system provided for the use of the residents of this subdivision.

11. UTILITY ACCESS. Any utility which has an easement over any lot shall, in addition to the easement shown on the plat, have the right to enter the property at any necessary location for the purpose of repairing, maintaining or moving utility wires, pipelines or any other equipment. If at anytime access to an easement by any utility or agency of the City of Evansville is necessary, the lot owner shall be responsible for removal of any obstruction at the lot owners expense.

12. APPEARANCE OF LOTS. The front yard areas shall be kept neat and clean. All trash containers, junk, immobilized autos, bicycles, and any other items when not in use must be stored in the side or back yard and out of view from the street. No basketball goals or other parmanent sporting equipment structures shall be constructed in the front yard.

13. PARKING OF VEHICLES. The owners will not park or permit others to park large vehicles or vehicles and trailers

which total over eight (8) feet in height or longer than twenty (20) feet on a permanent or regularly reoccurring basis in the drives, front yards, the street or alley. The vehicles referred to be this section include but are not limited to semi trucks, large vacation vehicles, two-ton or larger trucks, boat trailers and so forth.

14. RESIDENTIAL PURPOSES. Except for model homes, sales or construction buildings and trailers of the Developer or its designated builders, no lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling.

15. TEMPORARY STRUCTURE. No trailer, garage, carport, garage apartment, barn, tent, shack or other buildings in the subdivision shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence. This restriction shall not be construed to prohibit the building of a detached garage or carport to be used as a garage or carport when allowed by governing ordinances or these protective covenants.

16. TRADE OR ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any lot; nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

17. RESIDENCE LOCATION AND SIDE YARD EASEMENTS. The home on each lot may be built by the Developer on or at any distance from the side boundary lines, which boundary line shall

be known as the zero setback line. A Sideyard Easement shall serve each home. The Sideyard Easement shall be on the adjoining lot and immediately adjoining the lot along the zero setback line. The Sideyard Easement shall be five feet wide and shall begin at the front street and extend to the rear line. Further, there will be a minimum of ten (10) feet separation between residence buildings.

The five (5) foot Sideyard Easements serving a home shall be known as the Dominant Estate. The lot across which the five (5) foot Sideyard Easement lies shall be known as the Servient Estate.

The Sideyard Easement shall be used for maintenance and repair purposes by the owner of the Dominant Estate, and neither the whole or any part thereof nor any right to use and enjoy the whole or any part thereof shall be sold, mortgaged, leased, rented or otherwise granted and conveyed separate and apart from the Dominant Estate.

The owner of the Dominant Estate shall not:

(a) permit eaves, gutters or overhangs of the house to extend more than twelve inches over the Sideyard Easement;

(b) suffer or permit any waste upon the Sideyard Easement;

(c) undertake any use of or affix any object to any wall, fence or other structure on the Servient Estate which abuts, adjoins or crosses the Sideyard Easement;

(d) undertake any grading that would tend to prevent proper drainage of the Sideyard Easement, or to promote soil

erosion or to undermine support for the foundation of any wall, fence or other structure on the Servient Easement which abuts or adjoins the Sideyard Easement;

(e) place or permit the accumulation of any soil or fill material against any wall, fence or other structure on the Servient Easement which abuts, adjoins or crosses the Sideyard Easement to a height which exceeds original grade;

(f) cause, suffer or permit any damage to any utility lines located within the Sideyard Easement or interrupt or interfere with the maintenance and repair thereof;

(g) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation or which would result in a violation of any applicable governmental statute, ordinance, rule or regulation.

There shall be reserved to the owner of the Dominant Estate with the respect to the Sideyard Easement the right to:

(a) cause or permit the foundations of the dwelling constructed upon the Dominant Estate to extend under the Sideyard Easement (below finish grade) and to cause or permit the eaves and gutters, if any, of the dwelling constructed on the Dominant Estate to extend over the Sideyard Easement at heights no less than as such as eaves and gutters are originally constructed; and extensions no greater than 12"; provided that no such gutters shall be permitted which cause or lead to excess water run-off and drainage upon the Sideyard Easement that results in erosion of the surface thereof;

(b) enter upon the Sideyard Easement at reasonable times and under reasonable circumstances for the purpose of constructing, reconstructing, maintaining and repairing any connecting fence, wall or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(c) permit reasonable drainage of water from the Dominant Estate over, upon and across the Sideyard Easement;

(d) in exercising the right of entry upon the Sideyard Easement as provided for above, the owner of the Dominant Estate agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area; provided, however, the owner of the Dominant Estate shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the easement area for authorized purposes and shall not be liable for damage to structures if they are built upon the easement so as to unreasonably interfere with repairs, maintenance or reconstruction of the wall, fence or the home on the lot having the Dominant Estate.

The owner of the Servient Estate may use the Sideyard Easement for the purposes of planting, landscaping, installation and use of general landscape type structures, including such structures as benches, ponds, walks, patios, decks, fences or trellises, general recreation, access, drainage and other visual, aesthetic and recreational purposes and it shall be maintained by the owner of the Servient Estate. The owner of the Servient Estate further shall maintain the landscaping on any land lying

between the Dominant Estate's building foundation and their mutual property line.

The owner of the Servient Estate shall not:

(a) place any structures on the Sideyard Easement in such a manner or such a location that the structure would unreasonably interfere with repair, maintenance or reconstruction of any wall, fence or the house on the lot having the Dominant Estate. If the structure does interfere, the owner of the Dominant Estate will not be liable for any damage to a structure which is done in the course of repair, maintenance or reconstruction work done by the Dominant Estate.

(b) permit trees, shrubbery or other vegetation to grow on the Sideyard Easement which would cause damage to or interfere with the maintenance and repair of any wall, fence or the house on the Dominant Estate;

(c) cause or permit any offensive contact (including without limitation thereto, any pounding or bouncing of objects) with any wall of the residence on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(d) suffer or permit upon the Sideyard Easement any activity by household pets or other animals which would tend to cause damage to or undermine support for any wall, fence or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(e) cause or permit to exist any open, uncontained fire on the Sideyard Easement;

(f) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake

any grading or fill or any other activity upon the Sideyard Easement which is in violation or which would result in a violation of any applicable governmental statute, ordinance, rule or regulation;

The owner of the Dominant Estate shall not construct, install or otherwise cause to be made any door, window, duct, vent or aperture of any kind in the residence on the Dominant Estate which abuts or adjoins the Sideyard Easement.

In the event of any dispute arising concerning the rights and obligations created by this Section, the owner of the Servient Estate and the owner of the Dominant Estate shall each choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision of a majority of all the arbitrators shall be binding upon such owners.

18. SUBDIVISION OF LOTS. No lot or lots shall be subdivided (a) except as such may become necessary in order to correct minor changes resulting from errors of survey in the platting of the subdivision or (b) unless the lot or lots resulting from such subdivision shall have a minimum of not less than that allowed by any governmental bodies. In either of the events described in this section, the Developer may subdivide or resubdivide lots without the consent of any other lot owners.

19. DEVELOPMENT SIGNS. Windsong entrance signs will remain until the Developer or its successor removes them.

20. HOMEOWNERS ASSOCIATION. All record owners of lots in this subdivision shall automatically be members of and subject to the obligations, rules, regulations, assessments and by-laws of Windsong Homeowners Association, an Indiana not-for-profit

corporation, hereinafter referred to as the "Association", upon its formation. Transfer of lot ownership, either voluntary or by operation of law, shall terminate membership in said Association and said membership thereupon becomes vested in the transferee. All charges and assessments of said Association against any lot or lots in this subdivision shall be a lien against said lot, enforceable as other liens against real estate in the state of Indiana are in force, together with interest thereon at the rate of eighteen percent (18%) per annum and a reasonable attorneys fee on foreclosure; provided, however, that such lien or liens shall be secondary and inferior to the lien of any bona fide mortgage at any time of record against such lot or lots. Each lot owner shall pay not more than Twenty Dollars ($20.00) this year and said amount shall not increase more than ten percent (10%) per year unless approved by a majority of the owners of record. The Association is formed for the purpose of beautifying and maintaining the subdivision entrance, islands, signs and special designated areas with flowers, shrubs, trees and landscaping improvements and maintenance of the storm drainage if necessary.

21. AMENDMENT OF COVENANTS. From time to time the owners of Windsong Unit 1 lots may want or need to change any colors, style or large vehicle parking sections and/or provisions of this Protective Covenants not in conflict with or required by the laws of the Area Planning Commission of Evansville and Vanderburgh County. Such restrictions may be amended by a recorded vote of the owners representing a majority of the lots.

22. AMENDMENT BY DEVELOPER. At any time before a lot

or lots are sold, the Developer may amend these Protective Covenants so as to add restrictions for any unsold lot or lots. The consent of any other lot owners shall not be required for the Developer to add restrictions as provided in this section.

23. BINDING EFFECT. The restrictions herein contained shall run with the land and shall be binding upon all persons claiming interest therein.

24. INVALIDATION OF RESTRICTIONS. In the event any one of these restrictions shall be declared void by the judgment of a court of competent jurisdiction, such judgment shall in no wise affect any other restriction herein contained.

25. INJUNCTIVE RELIEF. Each and all of the covenants, restrictions and conditions contained herein shall inure to the benefit of all owners of lots in this subdivision, jointly and severally, and may be enforced by them or by any of them, in any court of competent jurisdiction by injunction or other appropriate legal remedy. The party adjudged to have violated any of said restrictions shall be liable to the aggrieved party for reasonable attorneys fees and court costs, which shall be fixed by the court hearing said matter. The owner of any lot in this subdivision shall have the right to enforce said covenants, conditions and restrictions without proof of pecuniary damage to their own property in this subdivision or otherwise.

26. REMONSTRATE OR PETITION. By acceptance of title to any lot in this subdivision, the lot owner agrees that he, she or it shall not object, remonstrate or petition against the Developer in any undertaking which the Developer deems beneficial to the subdivision.

27. TERMINATION OF RESTRICTIONS. Unless on or before (2) years from January 1, 2017 A.D., seventy-five percent (75%) of the owners of lots in this unit shall have agreed in writing and shall have recorded such agreement in the Vanderburgh County Recorder's Office, to terminate the restrictions herein set forth, such restrictions shall continue in force and effect until such later date as seventy-five percent (75%) of the owners shall have recorded such agreement in the Vanderburgh County Recorder's Office.

IN WITNESS WHEREOF, said Jagoe Home & Construction Company, Inc. has caused these presents to be duly executed by its authorized officers, duly attested, this 10 day of August, 1987.

JAGOE HOME & CONSTRUCTION COMPANY, INC.

By: _____
W. R. Jagoe III, President

ATTEST:

_____
Elizabeth C. Jagoe, Secretary

STATE OF KENTUCKY)
)
COUNTY OF DAVIESS)

The foregoing instrument was acknowledged before me this the 10th day of August, 1987, by W. R. Jagoe III and Elizabeth C. Jagoe, the President and Secretary, respectively, of Jagoe Development Corporation, a Kentucky corporation.

_____
Notary Public
My commission expires: 4-2-89

This instrument was prepared by:

_____
W. C. Wilson III, SHEFFER, HOFFMAN, NEEL, WILSON & THOMASON
300 First Street, Henderson, Kentucky 42420

COPY 88-03731 MISC. DRAWER 2 CARD 8111

AMENDMENT TO WINDSONG SECTION I OF INDIAN WOODS PUD FENCE RESTRICTIONS:

Lots 1, 2, 3, 4, 5, and 6 (rear yards):
The six foot high fence may be constructed 15 feet from the property line on Shoshoni Lane.

Lots 98 and 7 (side yards):
The six foot high fence may be constructed 15 feet from the property line on Shoshoni Lane.

Approved by:

Walter Schifter Lillian Schifter (Lot #6)

x Walter Schifter x Lillian Schifter

RECEIVED FOR RECORD
at 12:12 P M.
March 4 1988
BOB STEELE, RECORDER
VANDERBURGH COUNTY

Approved by:

Rhonda Broglin Chris Broglin (Lot #3)

Rhonda Broglin Chris Broglin

Susan Thompson Brian Thompson (Lot #4)

Susan Thompson Brian Thompson

Juanita Smallwood (Lot #5)

Juanita Smallwood

Nanao Schaefer (Lot #2)

Nanao Schaefer

Approved by:

Bill Jagoe, Sr.

x

James Q. Morley 2-11-88
ENGINEER

Alan W. Braun
ALAN BRAUN

Joe Wallace
JOE WALLACE

Barbara L. Cunningham
EXECUTIVE DIRECTOR
Approved by Area Plan Commission 3-2-1988