

*Patrick L. Lippert*

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**DECLARATION OF RESTRICTIONS  
UPON LOTS IN THE**

RECORDER OF DEEDS  
ERIE COUNTY, PA

**WINDSWEPT ACRES SUBDIVISION, PHASE III  
AS PLOTTED IN ERIE COUNTY MAP NUMBER 2007-113 & 113A**

**ALL LOTS IN THE WINDWEPT ACRES SUBDIVISION, PHASE III AS  
PLOTTED IN ERIE COUNTY MAP NUMBER 2007-113 & 113A ARE AND SHALL BE  
SUBJECT TO THE FOLLOWING RESTRICTIONS:**

**RESTRICTION AGAINST  
MODIFICATION OF  
STORM WATER MANAGEMENT  
SURFACE CONTOUR**

1) The Storm Water Management Plan as approved by North East Township, which is incorporated herein by reference, requires the maintenance of certain surface contours for the purpose of control of storm water. Said contours have been established on the ground such as retention ponds or water channels including road ditches, and no modification thereof is permitted without the explicit written approval of North East Township and David L. Thornton.

**RESTRICTION AGAINST  
DEVELOPMENT IN  
PROPOSED DETENTION BASIN AREA**

2) No activities shall be conducted upon those portions of lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 which are designated as "Proposed Detention Basin Areas" which are inconsistent with the utilization of said areas as detention basin areas.

**LIABILITY FOR  
DAMAGES DURING CONSTRUCTION**

3) In the event that construction activities, including but not limited to the transport of construction materials to or from a construction site, damage to any highways, including curbs and storm water control devices, utility installations, sidewalks, structures or landscaped areas, then the contractor whose actions or failure to act caused the damage shall be responsible for the

repair of any such damages. In the event that said contractor does not repair any damage or make provision for the repairs satisfactory to David L Thornton or the property owner of the property to which the damage was done within fifteen days, then in that event, the property owner who secured the services of the contractor shall thereafter be responsible to repair same within fifteen days. In the event the property owner shall fail to repair same or make arrangements satisfactory to David L Thornton or the owner of the property to which the damage was done within fifteen days, then David L Thornton or the property owner of the damaged property may repair same in which event the contractor and property owner who secured the services shall be jointly and severally liable for the repair costs to David L Thornton or the property owner of the damaged property. The within provision is by way of additional relief and shall not limit or exclude any other remedy available to David L Thornton or the property owner whose property was damaged or their subrogates.

#### **HOMEOWNERS' ASSOCIATION**

4) Maintenance and operation of the storm water management facilities as installed in accordance with the storm water management plan for Windswept Acres Phase III as submitted to and approved by the North East Township, shall be the responsibility of the Windswept Acres, Phase III Property Owners Association, which shall be an incorporated association consisting of the owners of the lots in Windswept Acres, Phase III. The Windswept Acres, Phase III Property Owners Association shall be governed by majority vote, with each lot having one (1) vote regardless of the number of owners thereof. The Association shall meet at least annually to determine the amount of annual assessments for maintenance of the storm water management facilities and the maintenance of the Association property and any other related Association expenses and to designate two members of the Association as treasurer and co-treasurer to collect the assessments and disburse the same. The owner or owners of any lot who should fail to pay the assessment within sixty (60) days of the due date there shall be subject to suit for recovery of the assessment by the Association and the assessment shall be a lien on the property until paid, shall bear interest at the rate of twelve (12%) per cent per annum, and the Association may recover costs of collection, including reasonable attorney's fees. The lien of the Association shall be subject and subordinate to any mortgages given by a property owner upon a lot or lots of

the subdivision. Assessments shall be equal for each lot and more than one (1) assessment may be made in any year if necessary. The owners of any five lots may call for an Association meeting by giving not less than ten (10) days written notice to the other lot owners. The members of the Association may, by majority vote: establish by-laws consistent with the within restrictions; enforce any restrictions established hereunder; and extend, modify or amend restrictions set forth in the section entitled "Other Restrictions" after expiration of the initial period thereof, on December 31, 2027.

### **OTHER RESTRICTIONS**

5) No structure shall be erected, altered, placed, or constructed upon any lot except for single family residential dwellings and related outbuildings. All structures shall have an attached garage for not less than two nor more than four cars.

6) No mobile homes, whether erected on a permanent foundation or otherwise, trailers or temporary dwelling places may be erected or placed on any lot described above.

7) Any dwelling erected upon the above described premises shall have a pitched roof with a minimum pitch of six (6) feet vertical rise for each twelve (12) feet horizontal coverage of main roof.

8) Any residence erected upon the property shall have not less than 2,000 square feet of enclosed above ground finished living area excluding any breezeway, porches, garage, or basements. For split-level residences, ground floor living areas may be considered as "above ground finished living area" at the discretion of David L Thornton notwithstanding that the lower portion thereof is below ground.

9) No dwelling, outbuildings or attached structure shall be constructed with an exterior of concrete blocks or cinder blocks.



10) All buildings erected hereon shall be of sound and safe construction with finished exterior coverings

11) Any outbuildings erected shall conform to the main dwelling as to style and architecture. Outbuildings shall not exceed 120 square feet in area and 12 feet in height. Garages shall be attached to the main dwelling.

12) Concrete driveways must be installed before occupancy of a residence; or if inclement weather delays installation, sufficient funds shall be escrowed for that purpose with an escrow agent acceptable to David L Thornton until such time as weather permits completion. Concrete driveways may have wearing surfaces of brick, stone, or other paving material, excluding asphalt, provided same is approved by David L Thornton. A lending institution or an attorney at law licensed in the Commonwealth of Pennsylvania are acceptable escrow agents without any additional approval.

13) No residence placed or erected on any part of said property shall be occupied for residential purposes in any manner prior to completion of the exterior.

14) Construction of any dwelling shall be completed within one year of the date of commencement of construction.

15) No temporary buildings may be placed on any lot.

16) All lawn, shrubbery, gardens or any other type of vegetation growing on the lots or surrounding any buildings shall be kept up in a neat and orderly fashion so it would not appear unclean or obnoxious to the eye. No vegetable gardens shall be maintained upon the property prior to completion of a residence.

17) No lot shall be used in whole or in part for any commercial purpose nor shall any lot be used whole or in part for storage of any property or object that will cause such lot to appear in an unclean or untidy condition, or that will be obnoxious to the eye, nor shall any



activity be carried on or substance kept upon any lot that will emit foul or obnoxious odors or that will cause an unreasonable noise or which may become a nuisance to the neighborhood. No horses, cattle, sheep, goats, hogs, poultry, or other livestock shall be kept or maintained upon any part of the property provided, however, that the keeping of domestic pets for personal but not commercial purposes shall be permitted. For purposes of enforcement and interpretation of this restriction, the conduct of professions commonly conducted at and in the residence of the practitioner shall not be considered commercial purposes.

18) All utility service lines including telephone, gas, electric and water shall be installed below ground.

19) Sanitary sewer system for the subject subdivision is not designed to provide sanitary sewer connections to facilities located below grade as established in the plans for said sanitary sewer system on some lots. No sanitary sewer connections shall be made except in conformance with the sanitary sewer system plan filed with the municipality and no below grade facilities shall be installed unless the sewage collection lines as installed will accept the discharge from said below grade facilities. See Developer.

20) Prior to commencement of construction of any structure including fences and decks upon the subject premises, the plans therefore including exterior elevations thereof shall be submitted to David L Thornton or the homeowner's association as hereafter provided for approval of compliance with the restrictions set forth herein and the aesthetic acceptability of the proposed structure. Failure to notify the owner to the contrary within thirty (30) days of delivery of proposed plans to the office of Thornton of disapproval shall constitute approval. No action shall be brought by reason of violation of the within restrictions more than one year after completion of the construction of any improvements. In the event of the death or incapacity of David L Thornton, approvals hereunder shall be secured from his successor in interest. David L Thornton or his successor in interest may designate the homeowners' association to exercise the approval right established in this paragraph.

21) No residence or other structure shall be erected upon any lot formed by re-subdivision of plotted lots which lot has an area of less than 20,000 square feet.

22) No commercial or private oil or gas wells shall be drilled and no sand, gravel, or earth, other than the amount necessary to improve the premises, shall be removed from any lot in the subdivision. Any sand, gravel or earth removed shall first be offered to David L Thornton without compensation.

23) Radio and television antennas shall not exceed the height of the principal structure upon the premises by more than six feet nor shall any such structures be located in the front or side yards of any property.

24) Front yard fences shall not exceed four (4) feet in height. No chain link fences are permitted. All fences must be approved by David L Thornton or the Homeowners' Association and may require a permit from North East Township.

25) All fences and decks shall be constructed of maintenance free material.

26) Above ground and in-ground swimming pools are permitted providing they are enclosed with maintenance free security fencing with a minimum height of four (4) feet.

27) No unlicensed or uninspected motor vehicles nor any trailers, boats, motor homes, or campers shall be stored outdoors upon the subject premises. A vehicle shall be considered to be "stored" at the subject premises when owned by the owner or any one of the said owners of the premises or it is located at the premises during any part of the day for a period in excess of 21 continuous days in any one calendar year.

28) No commercial or farm motor vehicles having a gross vehicle weight in excess of 10,000 pounds may be parked upon the streets or lots of the subdivision (including within garages) unless the motor vehicle is making a delivery or pick-up to a lot in the subdivision and then only for such time as is reasonably necessary to complete said delivery or pick-up. The

within prohibition shall not apply to construction vehicles and equipment utilized for the construction of improvements upon a lot or the streets in the subdivision for the period of time during which the subject vehicles are in active use for that purpose.

29) All storm and subsurface water drains including sumps and down spouts shall be piped to the designated area for storm water control. All houses shall have in-ground storage chambers to infiltrate water into ground. See developer for instructions.

30) All lots shall be graded and seeded not later than the first planting season after occupancy of the dwelling.

#### **OTHER PROVISIONS**

31) In the event that any one or more of the provisions, conditions, covenants and restrictions set forth herein shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, covenants and restrictions herein set forth shall continue unimpaired and in full force and effect.

32) Enforcement of the covenants contained herein shall be by proceedings at law or equity against any person or persons violating or attempting to violate any covenants, either to restrain violation or recover damages.

33) David L Thornton reserves the right to modify or amend any of the restrictions set forth hereunder for so long as he owns any lot in the subject subdivision.

34) The above restrictions shall apply to the above described lots only and not to other sections of said subdivision.

35) Lots numbered 9 & 10 are subject to a right of way in favor of Northern Consolidated Power, Inc. The boundary of said right of way as plotted upon the subdivision map is and shall constitute the east building lines for the lots identified in this paragraph.



37) The within restrictions shall run with the land and inure for the benefit of all or any present and future owners of the subject premises and of other lots in the section of the subdivision of which it is a part and shall be binding upon successive owners, their heirs, executors and assigns until December 31, 2027, at which time all the within restrictions shall lapse absolutely, except those set forth in Paragraphs 1, 2, 3, 4, 30, 31, 32, 33, 34, 35, and 36 shall not so lapse but remain in full force and effect. (Paragraphs 1 and 2 in accordance with the terms thereof and Paragraphs 3, 4, 30, 31, 32, 33, 34, 35, and 36 in perpetuity).

  
DAVID L THORNTON

On this, the 21<sup>st</sup> day of May, 2007, before me, a notary public the undersigned officer, personally appeared David L Thornton known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Nancy Jane Wick, Notary Public  
North East Twp., Erie County  
My Commission Expires Jan. 13, 2008  
Member, Pennsylvania Association Of Notaries

Nancy Janelek  
Notary Public

*Patrick L. Thornton*

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2007 MAY 24 A 8:34 <sup>PM</sup>

RECORDER OF DEEDS  
ERIE COUNTY, PA.

**DECLARATION  
OF  
RETAINED RIGHTS OF WAY  
RE: WINDSWEPT ACRES, PHASE III**

**KNOW ALL MEN BY THESE PRESENTS** that the undersigned, **DAVID L THORNTON**, Owner of premises designated **WINDSWEPT ACRES, PHASE III** and plotted as **Erie County Map Number 2007 – 113 & 113A**, does hereby declare that:

1.1) Attached hereto is a plot of the above described lots upon which has been designated a right-of-way for the installation of electric, telephone, sewer, gas and television cable utility services to the subject lots.

1.2) Upon the subdivision plot at Erie County Map Number 2007 – 113 & 113A, areas are designated as "Proposed Detention Basin Areas" which area has been designated for the construction, repair, and maintenance of storm water detention areas.

2) Said rights-of-way are retained by the undersigned, his heirs, successors, and assigns for the purpose of providing said utilities, storm water detention, and such other similar services as may hereafter be developed or become available to the parcels platted in the above described plats as well as to such other properties of David L Thornton as may be reasonably provided said utilities and similar services by and through said rights-of-way. Said rights-of-way shall therefore, be appurtenant to not only the platted parcels identified hereinabove, but also to all other lands of David L Thornton located in North East Township, County of Erie, and Commonwealth of Pennsylvania and located generally South of Ackerman Lane, West of Route 89, North of Sidehill Road, and East of Cemetery Road.

3) Said excepted and reserved rights-of-way shall not be exclusive and each grantee of a parcel from David L Thornton to which specific reference is made to the within declaration in the deed of conveyance shall have an interest in said rights-of-way for the purpose of providing utility and similar services to the parcel or parcels acquired directly or successively by said grantee from David L Thornton but not to parcels acquired from others. The interest of any

such grantee shall not extend to any lands of Thornton except those designated as numbered lots upon the maps above referenced and shall be limited to a right-of-way as set forth in this paragraph.

4) David L Thornton reserves the right to make partial assignments of interest in the subject rights-of-way to providers of utility and similar services who shall thereafter be authorized to utilize the said rights-of-way in connection with the operation of their systems notwithstanding that their systems may provide services to lands in addition to those owned or formerly owned by David L Thornton and their services to such lands may be facilitated or otherwise provided for through the subject rights-of-way.

5) The within rights-of-way shall be in addition to and not by way of or in derogation of any previously recorded rights-of-way or any right of way depicted upon the subdivision map or recorded hereafter.

6) The within rights-of-way shall include the right to install, maintain, repair, replace and remove equipment reasonably necessary or desirable for the provision of utility and similar services without obligation to the land owner for damage to the surface or improvements or planting within the right-of-way occasioned by any such acts except that said surface shall be restored to grade and reseeded with a perennial grass seed.

7) The rights of way depicted upon the attached plot for the installation and maintenance of utility service shall, unless otherwise noted upon the plot or the subdivision map, have a uniform width of fifteen feet centered upon the property line between two lots in the subdivision when the right of way is located upon such a boundary and otherwise from the boundary of the lot when the right of way is located upon the boundary of the subdivision or a street in the subdivision. The width of said right of way shall be measured perpendicularly from the boundary. The right of way for storm water detention areas shall include the entire area of each of said detention areas, together with a right of access thereto. The right of way for storm water detention areas is eighty feet wide measured perpendicularly from the north boundary of the subdivision on Lot 1, 2, 3, 4, 5, 6, 7, and 8. The right of way for storm water detention areas



IN WITNESS WHEREOF and with the intent to be legally bound thereby, this 21<sup>st</sup> day of May, 2007.

STATE OF PENNSYLVANIA )  
 ) ss:  
COUNTY OF ERIE )

Nancy Jane Uch  
Notary Public

LANDS NOW OR FORMERLY OF  
NEPA ENERGY L.P.  
RECORD BOOK 885, PAGE 0203

LANDS NOW OR FORMERLY OF  
WILLIAM RICH  
RECORD BOOK 86, PAGE 1404

STORMWATER  
80' EASEMENT (TYPICAL)

STORMWATER  
MANAGEMENT  
80' EASEMENT  
(TYPICAL)

(8)

N08°11'28"W

LANDS NOW OR FORMERLY OF  
DAVID L. THORNTON  
UNNAMED TRIBUTARY  
SIXTEEN MILE CREEK

N08°25'28"W

STORMWATER  
MANAGEMENT  
100' EASEMENT  
(TYPICAL)

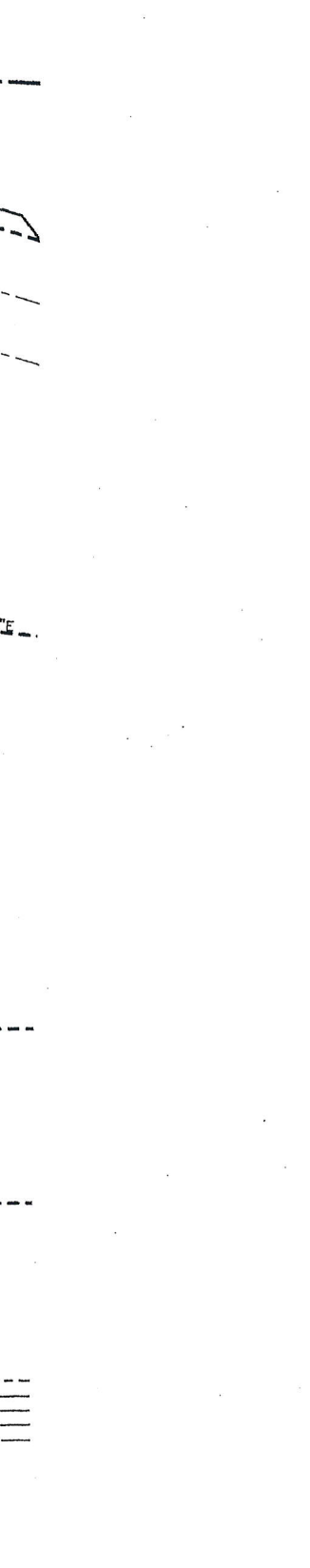
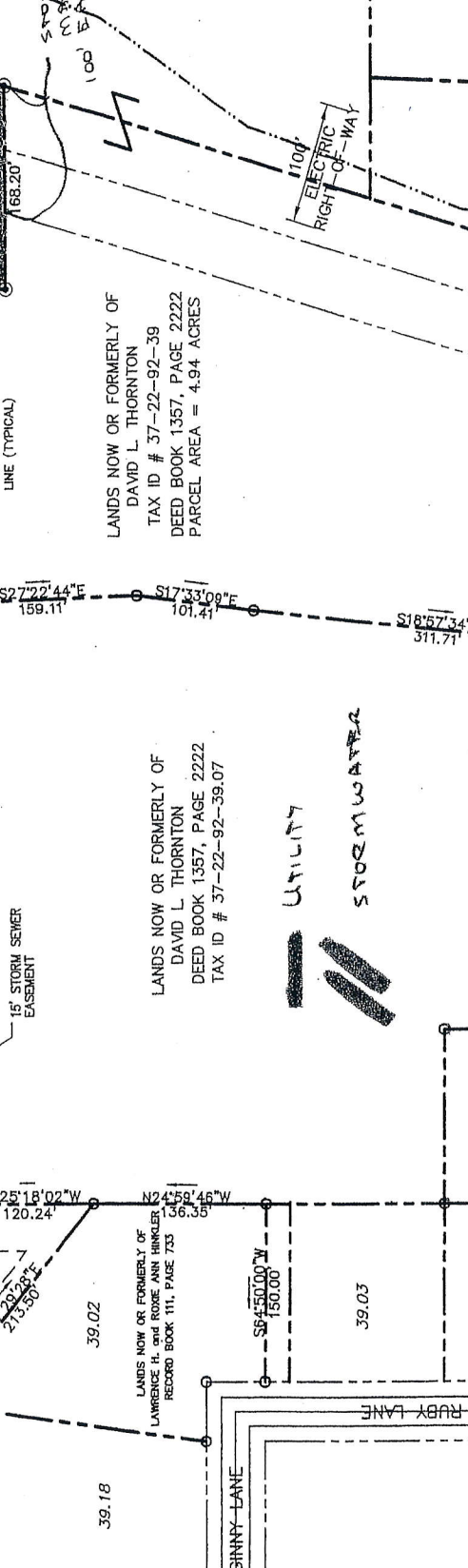
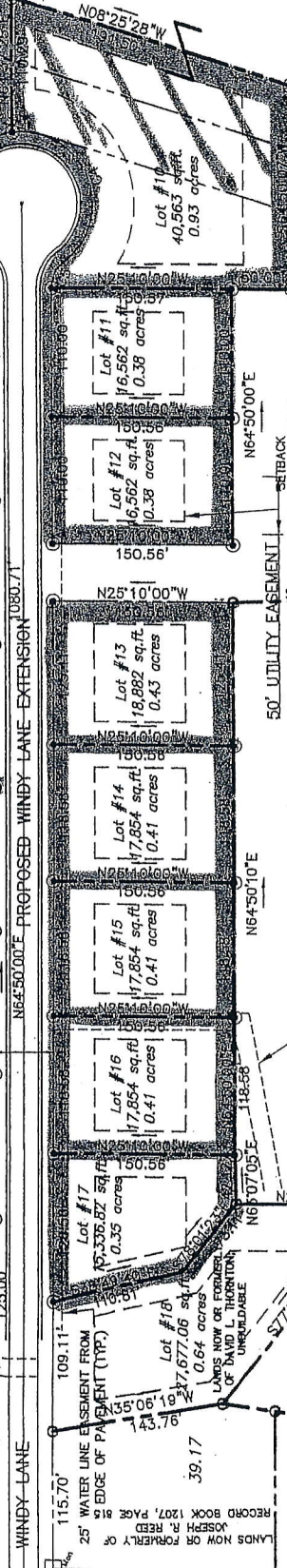
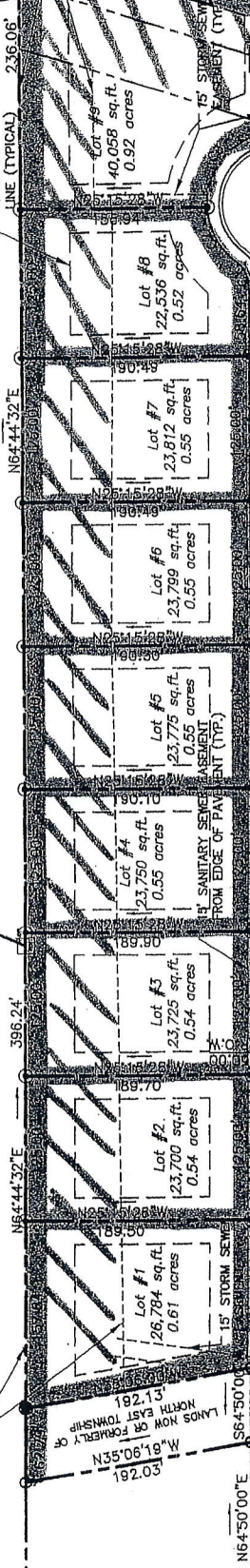
ELECTRIC  
RIGHT-OF-WAY

LANDS NOW OR FORMERLY OF  
DAVID L. THORNTON  
TAX ID # 37-22-92-39  
DEED BOOK 1357, PAGE 2222  
PARCEL AREA = 4.94 ACRES

LANDS NOW OR FORMERLY OF  
DAVID L. THORNTON  
DEED BOOK 1357, PAGE 2222  
TAX ID # 37-22-92-39.07

UTILITY  
STORMWATER

LANDS NOW OR FORMERLY OF  
LAWRENCE R. AND JOYCE M. HARKER  
RECORD BOOK 111, PAGE 733



## **OUTLINE OF WATER FEES, SEWER FEES, UTILITY SERVICE, AND STREET LIGHTS**

### **WATER & SEWER FEES:**

For water there is a hook-up fee to the Township, a meter fee, a backflow preventor with coupling, an expansion valve, a water advance, and a NORO tapping privilege fee; for sewer it is considered a property owner fee to the Township which covers a customer facility and inspection fee, a treatment plant and capacity fee, and a North East Borough sewer tapping fee. Total water and sewer connection fee at this time is approximately \$3,800.00. These fees are controlled by the Township Water and Sewer Authority only, and may fluctuate at any time. Windswept Acres or its owner has no control of this.

### **GAS, ELECTRIC, AND CABLE SERVICES:**

For GAS service there will be a hookup fee of between \$300 -\$400, and is provided by North East Heat & Light Company; ELECTRIC service will be provided by Penelec or a supplier of the homeowner's choice; CABLE service will be provided by Time Warner. If the homeowner has never had service with these suppliers, there may be a security deposit required.

### **STREET LIGHTING:**

There will a charge for the energy cost on the street lights. This amount will be billed on resident's quarterly water bill. This amount could fluctuate with Penelec's rate changes. Windswept Acres or its owner has no control of this cost.

## **IMPORTANT**

**Do not let contractors park or drive their equipment on adjacent lots.**

**All contractors must use construction road provided off of West Law Road.**