

90-009097
MAR 8 1990

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS, EASEMENTS AND APPROVALS APPENDED TO AND MADE A PART OF A PLAT OF STONEFIELD, SECTION I, PHASE I, AN ADDITION TO THE CITY OF FORT WAYNE, COUNTY OF ALLEN, STATE OF INDIANA

Wilmer W. Rodenbeck, LaVerne E. Linnemeier, and Summit Land Investment, Inc., an Indiana corporation, by Ronald Daymude, it's President, and Leroy Lepley, it's Secretary, hereby declare that they are the Owners or Purchasers of the Real Estate shown and described in this plat and do hereby layoff, plat and subdivide said Real Estate in accordance with the information shown on the plat, being the certified plat attached hereto and incorporated herein. The subdivision shall be known and designated as Stonefield, Section I, Phase I, an addition to the City of Fort Wayne, County of Allen, and State of Indiana.

The Lots are numbered from Lots 1 through 32 inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All street right of ways and easements specifically shown or described are hereby expressly dedicated to public use for the usual and intended purposes.

PREFACE

Stonefield, Section I, Phase I, a portion of a tract of Real Estate which will ultimately be subdivided into approximately 162 residential parcels, all to be included and known as Stonefield by various numerical sections. Section I will be subdivided in five (5) Phases, Phase I of which includes Lots 1 through 32, inclusive. Phase II will include Lots 33 through 54, inclusive; Phase III will include Lots 55 through 76, inclusive; Phase IV will include Lots 77 through 98, inclusive; and Phase V will include Lots 99 through 120, inclusive. After the recordation of the plat of Stonefield, Section I, Phase I, these protective restrictions and covenants, there will be recorded Articles of Incorporation of Stonefield Community Association, Inc., it being Plator's intention that each Owner of a Lot in Stonefield, Section I and in any future section of Stonefield shall become a member of said community association and shall be bound by its Articles of Incorporation and Bylaws.

This preface and its statements shall be deemed a covenant of equal force and effect as all others herein set forth.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Stonefield 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 Stonefield and its various sections, including Section I, Phase I, and including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property herein described, and such additions thereto

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ALLEN COUNTY RECORDER
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as may hereafter be brought within the jurisdiction of the Association.

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 Owners, which may consist of one or more Lots or parts of one or more Lots as platted, upon which a dwelling may be erected in accordance with restrictions hereinafter set forth. Provided, however, no tract of land consisting of any 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 at least fifty (50) feet and width at the established building line as shown on this plat, except that cul-de-sac Lot or Lots which abut cul-de-sac Lots. Provided further, however, that no dwelling shall be erected or placed on any "Lot" having an area of less than six thousand (6,000) square feet.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 6. "Bylaws" shall mean the bylaws initially adopted by Stonefield Community Association, Inc." and all amendments and additions thereto.

Section 7. "Plattor" shall mean and refer to Summit Land Investment, Inc. and/or Wilmer W. Rodenbeck and LaVerne E. Linnemeier.

Section 8. "Developer" shall mean the person or entity acquiring multiple Lots from the Plattor, for the purpose of reselling said Lots to individual Lot Owners.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' easements of enjoyment. Every Owner shall have a right of enjoyment in and to the common areas 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 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 thirty (30) days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association;

(c) The right of the Association to dedicate or transfer all or any part of the common areas 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 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 Bylaws, his right of enjoyment to the common areas and facilities to the members of his family, his

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tenants, his guests or invitees or contract purchasers who reside on the property.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment 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 (2) classes of voting membership:

Class A. Class A members shall be all Owners, exclusive of the Plator and the Developer. Owner shall be entitled to one vote for each Lot owned.

Class B. Class B members shall be the Plator, which may assign its membership to the Developer. A Class B member shall be entitled to 324 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:

- (i) When fee simple title to all Lots in all Sections of Stonefield have been conveyed by the Developer; or
- (ii) On December 31, 1993.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

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

Section 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 Stonefield and the improvement and maintenance of the Common Areas and of the facilities therein. Assessments shall be levied to provide for the maintenance of the detention basin and surface water drainage easements as designated in the plat, and which detention basin is located in Section II of Stonefield. The City of Fort Wayne, Indiana, (City) has required the Plator to agree to install concrete sidewalks along Ludwig Road at a future date. Plator agrees that until the earlier of December 31, 1993 or when fee simple title to all Lots in all sections of Stonefield have been conveyed by the Developer, that the Plator will install said sidewalks if required by the City. In the event the City has not required the Plator to install said sidewalks prior to the earlier of the dates specified

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herein, the Association shall be responsible for installing said sidewalks and the assessments provided for herein shall be used for that purpose.

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

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3% 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 3% by the vote or written assent as 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.

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 percentage of each class of members, members who were 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 Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or yearly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas. 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

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Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 8% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas 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. 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 to payments which became due prior to such sale or transfer. 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

Section 1. Establishment. There is hereby established an Architectural Control Committee to be composed of two (2) members. The first Committee members are to be appointed by the Plator. In the event of death or resignation of any member of the Committee, the remaining member shall have full authority to designate a successor. Neither the members of the Committee or its designated representatives shall be entitled to any compensation for service performed pursuant to this article. At such time as the Plator or Developer ceases to be a class B member of the Association, the members of the Architectural Control Committee shall be appointed by the Association, pursuant to its Bylaws.

Section 2. Architectural Control. No building, fence, wall, or other structure shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been submitted to and approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevations. The Committee's approval or disapproval shall be in writing. In the event that the Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

ARTICLE VI GENERAL PROVISIONS

Section 1. No Lot shall be used except for residential purposes, No building shall be erected, altered, placed or

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permitted to remain, on any Lot other than one (1) detached single-family dwelling unit, which shall not exceed two (2) stories in height. No detached structure shall be permitted on any Lot without prior written approval from the Architectural Control Committee.

Section 2. No building shall be built on any Lot having a ground floor area upon the foundation, exclusive of one-story open porches, terraces, breezeways or garage, of less than 672 square feet for a one-story single-family dwelling; nor less than 480 square feet for a single-family dwelling of more than one story.

Section 3. No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building set-back lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than twenty-five (25) feet to the front line or nearer than fifteen (15) feet to any side street line, nor nearer than a distance of ten percent (10%) of the Lot width to an interior Lot line and the combined width of both side yards shall not be less than a distance of five (5) feet to an interior Lot line. No dwelling shall be located on any interior Lot nearer than twenty-five (25) feet to the rear Lot line.

Section 4. Easements for the installation and maintenance of utility and drainage facilities are reserved as shown on the recorded plat for the construction of poles, wires and conduits, and the necessary or proper attachments in connection therewith for the transmission of utilities, telephone service, construction and maintenance of drains, sewers, pipe lines, gas, water and heat; and for any other public or quasi-public utility or function. Any municipal, public or quasi-public corporation engaged in supplying any one or more of the above utilities will have the right to enter upon said easements for any purpose for which said easements are reserved. All of said easements shall be kept free of permanent structures (except those installed by any such municipal, public, quasi-public corporation) and removal of any obstructions by any such utility company shall in no way obligate the utility company to pay damages or to restore any such removed obstruction to its original form. All such obstructions, whether temporary or permanent, shall be subject to the paramount rights of any such utility company to construct, install, repair, maintain, or replace its utilities and/or sewer installations.

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

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

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Section 7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. No camper, trailer, or boat shall be stored on any lot or on any street in the subdivision at any time.

Section 8. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one foot square, 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 sale period.

Section 9. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 10. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

Section 11. 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. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 12. No fence, wall, hedge or shrub planting which obstructs sight line at elevations between three (3) and eight (8) feet above roadways, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines; or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. In no event shall any fence or wall be erected, placed or altered on any lot nearer to any street than the minimum building set-back line.

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

Section 14. All driveways from the street to the garage shall be poured concrete and not less than 10 feet in width. The driveway shall be constructed so as to accommodate a 5-foot wide sidewalk. This walk will require a minimum of 1/4 inch per foot gradient toward the street. A 1/2 inch bituminous expansion joint shall be installed where the driveway meets the

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back of the walk. No driveway shall have direct access to Ludwig Road or Rodenbeck Drive.

Section 15. All oil or fuel storage tanks shall be installed underground or concealed within the main structure of the dwelling house, its basement or attached garage. All utility services into dwelling houses shall be installed underground.

Section 16. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any lots in this subdivision.

Section 17. In addition to the utility easements herein designated, easements in the streets as shown on this plat, are hereby reserved and granted to all public utility companies, the proprietors of the land herein platted, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 18. No rain and stormwater runoff or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow in the sanitary sewage system, which shall be a separate sewer system from the stormwater and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned stormwater and surface water runoff sewer system.

Section 19. The further subdivision of any lot or combination of lots within this subdivision, once it has been approved by the Plan Commission, is prohibited, unless and until the Plan Commission has reviewed and approved the change.

Section 20. The restrictions and covenants herein contained shall run with the land and be effective for a period of fifty (50) years, unless prior to the expiration of fifty years, said restrictions and covenants are altered or amended by the owners of fifty-five percent (55%) of the lots in said Addition at the time the alteration or amendment of restrictions and covenants are made; provided, however, Summit Land Investment, Inc., its successors or assigns, shall have the exclusive right, subject to Fort Wayne City Plan Commission approval up to three (3) years from the date of recording to amend these covenants and restrictions except "2" above. The term "owners" shall be a person, firm or corporation in whose name the fee simple title appears of record in the Office of the Recorder of Allen County, Indiana.

Section 21. Enforcement shall be by the Community Association or by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages.

Section 22. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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Section 23. Before any house or building on any Lot or tract in this subdivision shall be used and occupied as a dwelling or as otherwise provided by the subdivision restrictions above, the developer or any subsequent owner of said Lot or tract shall install all improvements serving said Lot or tract as provided in said plans and specifications for this Addition filed with the City of Fort Wayne, State of Indiana. This covenant shall run with the land and be enforceable by the City of Fort Wayne, State of Indiana, or aggrieved Lot owner in this subdivision.

Section 24. Before any Lot or tract may be used or occupied, such user or occupier shall first obtain from the City Plan Commission, the Improvement Location Permit and Certificate of Occupancy as required by the City Plan Commission.

Section 25. Easements for surface water runoff shall be maintained in a manner conducive to the purposes of such easement and shall be maintained by the Association or any proper public authority to whom this duty is delegated. No obstruction shall be placed in any surface drainage easements.

Section 26. Plans and specifications for this subdivision, on file with the City of Fort Wayne Plan Commission, require the installation of concrete sidewalks within the street rights-of-way in front of all Lots. Installation of said sidewalks shall be the obligation of the Owner of any such Lot, exclusive of Summit Land Investment, Inc., and shall be completed in accordance with said plans and specifications prior to the issuance of a certificate of occupancy for any such Lot. The cost of said installation shall be a lien against any such Lot enforceable by the City of Fort Wayne Plan Commission. Should such certificate of occupancy be issued to Summit Land Investment, Inc., said corporation shall be considered an Owner for purposes of the enforcement of this covenant.

Section 27. Covenant for lands in sensitive noise areas. It is understood by the Owners of the Real Estate, their successors and assigns that the Property lies in close proximity to an operating airport and that the operation of the airport and the landing and take-off of aircraft may generate high noise levels. Therefore, in consideration of the issuance by the Indiana Department of Transportation of a permit pursuant to Indiana Code 8-21-10-3-b to construct a residential building or other building designed for noise sensitive uses on said Property in accordance with the terms of Owners application, Owners hereby covenant that they shall not initiate or support action in any court or before any governmental agency if the purpose of the action is to interfere with, restrict, or reduce the operation of the airport or the use of the airport by any aircraft. Owners further covenant that they shall not protest or object to the operation of the airport or the landing or take-off of aircraft before any court or agency of government. The covenants contained herein shall run with the land and shall be binding upon their Owners and their successors and assigns.

PLAT DEDICATION

The undersigned, being the Owner of the Real Estate hereinabove described and shown on the plat of Stonefield, Section I, appended hereto, does hereby layoff, plat, subdivide, and dedicate said Real Estate in accordance with the

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information shown on said plat. The subdivision shall be known and designated as Stonefield. Said subdivision is subject to the building lines and easements on the plat and also subject to the protective restrictions, covenants and limitations which are attached hereto and made a part hereof. The undersigned does hereby dedicate all streets to public use.

IN WITNESS WHEREOF, Wilmer W. Rodenbeck, LaVerne E. Linnemeier, and Summit Land Investment, Inc., an Indiana Corporation, by Ronald Daymude, it's President, and Leroy Lepley, it's Secretary, Owner of the Real Estate described in said plat, has hereunto set it's hand and seal by it's duly authorized officers, this 25th day of January, 1990.

SUMMIT LAND INVESTMENT, INC.

Wilmer W. Rodenbeck
Wilmer W. Rodenbeck

Ronald Daymude
Ronald Daymude,
It's President

ATTEST:

LaVerne E. Linnemeier
LaVerne E. Linnemeier

Leroy E. Lepley
Leroy Lepley,
It's Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 30th day of JANUARY, 1990, personally appeared Wilmer W. Rodenbeck and acknowledged the execution of the foregoing to be his voluntary act and deed, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal.

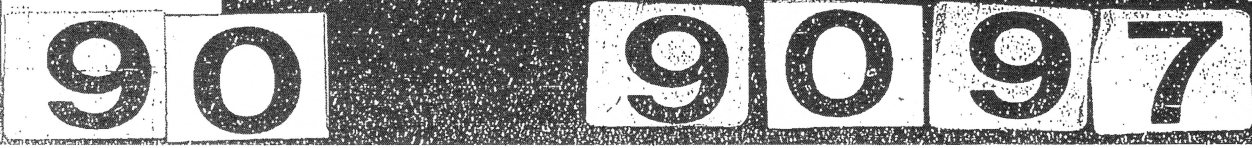
William A. Berning
Notary Public
My Commission Expires: Nov. 10, 1990
WILLIAM A. BERNING, Notary Public
Resident of Allen County, Indiana
My Commission expires Nov. 10, 1990

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 30th day of January, 1990, personally appeared LaVerne E. Linnemeier and acknowledged the execution of the foregoing to be her voluntary act and deed, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal.

William A. Berning
Notary Public
My Commission Expires: Nov. 10, 1990
WILLIAM A. BERNING, Notary Public
Resident of Allen County, Indiana
My Commission expires Nov. 10, 1990



STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

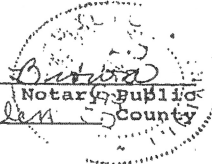
Before me, the undersigned, a Notary Public in and for said County and State, this 25 day of January, 1990, personally appeared Ronald Daymude and Leroy Lepley, known to be the President and Secretary respectively of Summit Land Investment, Inc. and acknowledged the execution of the foregoing to be the voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal.

My Commission Expires:

9/25/91

Teresa M. Brown
Teresa M. Brown, Notary Public
A resident of Allen County



This instrument prepared by John J. Wernet, Attorney at Law

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