

RECORDED
06/16/1997 14:23:06
RECORDER
VIRGINIA L. YOUNG
ALLEN COUNTY, IN

Doc. No. 970031442
Receipt No. 11702

DCFD 3.00
MISL 20.00
MISL 1.00
Total 24.00

DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Agreement, dated this 9th day of June, 1997, by and between **NORTHROP PARK LAND DEVELOPMENT, INC.** (referred to as "Declarant") and **MILLSTONE VILLAGE COMMUNITY ASSOCIATION, INC.** (referred to as "Association").

LAST DEED Record 89-18804

WHEREAS, Declarant is the owner of real property, which is described on attached Exhibit "A" ("the Real Estate");

WHEREAS the Real Estate is proposed for approval as a subdivision for non-residential purposes under the City of Fort Wayne's Subdivision Control Ordinance, said subdivision to be known as the "Northrop Industrial Park";

WHEREAS, Declarant intends to sell the above described Real Estate for industrial uses as permitted in an M-2 District under the City of Fort Wayne's Zoning Ordinance;

WHEREAS, the Association has members who own property directly adjacent to the proposed Northrop Industrial Park, and who have concerns about the potential noise, physical security, visual security, lighting, and odors associated with the proposed subdivision and who have agreed to support the proposed subdivision if these covenants are executed by the Declarant;

WHEREAS, the Declarant and the Association desire to enter into this declaration, as allowed by Section 155.020(D) of the City of Fort Wayne's Subdivision Control Ordinance, so that the proposed Northrop Industrial Park and the future industrial uses do not adversely impact the Associations' members, particularly the property owners whose land is directly adjacent to the Real Estate;

NOW, THEREFORE, IN CONSIDERATION FOR THE MUTUAL UNDERTAKINGS OF THE PARTIES, Declarant declares that the Real Estate shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of said property and of each and every person or entity who now or in the future owns any portion or portions of the Real Estate.

DULY ENTERED FOR TAXATION

JUN 16 1997

[Signature]
RECORDER OF ALLEN COUNTY

97 4277
AUDITORS NUMBER

Haller box

*24
1300*

1. **Land Use and Building Location.** The Real Estate shall be used only for those uses permitted in an M-2 District (General Industrial) under the City of Fort Wayne's Zoning Ordinance, except as modified below:

- a. Any building, structure or parking area for Lots 4 through 9 shall have the following set backs:
 - (1) Buildings shall have a rear set back of 100 feet from the property line of the adjacent Association property owners;
 - (2) Employee parking shall have a rear set back of 50 feet from the property line of the adjacent Association property owners;
 - (3) Non-passenger vehicle parking, loading and unloading and storage shall have a rear set back of 150 feet from the property line of the adjacent Association property owners if the area is located in front of or is separated by the main building or structure;
 - (4) Non-passenger vehicle parking, loading and unloading and storage shall have a rear set back of 200 feet from the property line of the adjacent Association property owners if the area is located in rear of or is not separated by the main building or structure;

These building line setbacks shall be incorporated onto the subdivision plat for the Northrop Industrial Park that is approved by the Plan Commission or Plat Committee and recorded with the Allen County Recorder.

- b. The height of any structure or other land use shall not exceed fifty (50) feet.
- c. The Real Estate shall not be used as a fuel yard, including bulk storage of petroleum products for local distribution and a petroleum products terminal for extensive storage and regional distributing purposes.

2. **Nuisances.** No noxious or offensive activity shall be carried on upon any lot of the Real Estate nor shall anything be done thereon which may be or become an annoyance or nuisance to the members of the Association. All smoke, dust, dirt, toxic gases, and fumes or noxious odor shall be confined to the Real Estate and shall not affect any member of the Association.

3. **Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot. No animals, livestock or poultry shall be kept, bred or maintained for any commercial purpose.

4. **Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept on the Real Estate, except in sanitary containers. No incineration, burial or other form of on-site method of disposal will be permitted on the Real Estate. All other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be used so that it does not adversely affect the Association's members.

5. **Protective Screening.** The Declarant agrees to establish protective screening plan as shown on attached Exhibit "B" ("Protective Screening Plan"), which is incorporated herein by reference. The intent and purpose of this Protective Screening Plan is to shield and minimize the impact of the proposed Northrop Industrial Park from the adjacent Association property owners. The Protective Screening Plan shall be maintained by the Declarant or his successors or assigns. The Protective Screening Plan shall be constructed and maintained so as:

- a. to act as sound buffer for any loud traffic or machine operations;
- b. to serve as a visual barrier and to maintain and preserve the adjacent Association property owners' privacy;
- c. to prevent any glare or lights from shining onto the adjacent Association property owners' yards and residences;
- d. to prevent access from the Northrop Industrial Park to the adjacent Association property owners' land; and
- e. to preserve the residential nature and character of the adjacent Association property owners' land.

The Declarant hereby acknowledges the above goals and agrees that the Protective Screening Plan will be built and maintained in accordance with this paragraph. As part of this restrictive covenant, Declarant agrees to execute a twenty-five (25) foot screening easement on the subdivision plat specifically dedicated for the development of the Protective Screening Plan. This easement shall be recorded as part of the plat for the Northrop Industrial Park.

6. **Enforcement.** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. These covenants shall run with the land and shall be enforceable by the Association or any of its members as hereinafter set forth. In the event Declarant, or any successor in interest or assign, violates or attempts to violate these covenants, the Association shall have the right to enforce the same through injunctive relief, recognizing that monetary damages would be insufficient to adequately compensate the Association or its members. The Association or any of its members or any other owner of any lot or parcel of the Real Estate shall be entitled to enforce these covenants against the title holder of the lot or parcel which is in violation of the covenants, and the prevailing party of any action commenced to enforce the covenants shall be entitled to reasonable costs and attorneys' fees.

The Declarant agrees that these covenants shall be deemed to be part of every future conveyance, contract, and transaction for the sale of the Real Estate, or any portion thereof. These covenants shall be binding on the Declarant and any and all of its successors and assigns. These covenants shall inure to the benefit of and be enforceable by the Association, its members, the property owners adjacent to the Real Estate, and their legal and personal representatives, grantees, successors, and assigns.

8. **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant and the Association have executed this Declaration of Restrictions on the 12th day of June, 1997.

**MILLSTONE VILLAGE
COMMUNITY ASSOCIATION, INC.**

BY: *Kenton R. Wierks*
Kenton R. Wierks, its President

**NORTHROP PARK LAND DEVELOPMENT,
INC., fee simple owner of the Real Estate**

BY: *John V. Loudermilk Pres*
**John V. Loudermilk, its duly
authorized agent**

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, personally appeared **Kenton R. Wierks**, the President and duly authorized representative of Millstone Village Community Association, Inc. and acknowledged execution of the above and foregoing this 12 day of June, 1997.

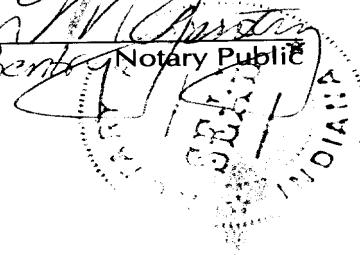
My Commission Expires: _____
Resident of: _____

Carrie A. Melcher
CARRIE A MELCHER
NOTARY PUBLIC STATE OF INDIANA
HUNTINGTON COUNTY
MY COMMISSION EXP. APR. 10, 1998
Notary Public
STATE OF INDIANA

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, personally appeared **John V. Loudermilk**, the duly authorized agent of Northrop Park Land Development, Inc., the fee simple owner of the aforementioned Real Estate, and acknowledged execution of the above and foregoing this 9th day of June, 1997.

My Commission Expires:
March 9, 2001
Resident of: Macon

Stephen M. Gentry
Stephen M. Gentry Notary Public


PREPARED BY: ROBERT EHERENMAN

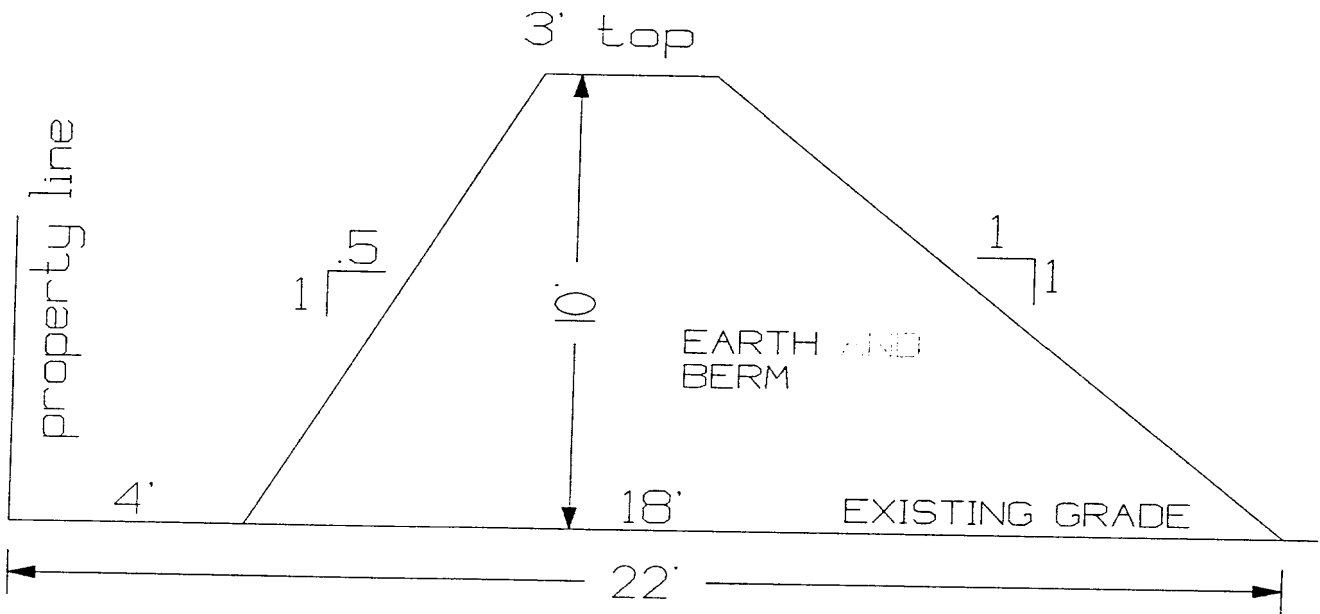
CERTIFICATE OF SURVEY
DESCRIPTION

A part of the Southwest Quarter Section 11, Township 31 North, Range 12 East, Allen County, Indiana, more accurately described as follows:

Commencing from the Southeast corner of the West Half of the Southwest Quarter, Section 11, Township 31 North, Range 12 East; thence along the East line of said West half of the Southwest Quarter North 00 degrees 32 minutes 14 seconds West (assumed bearing and basis for this description) for a distance of 305.75 feet to an iron pin, said point being the true point of beginning for this description; thence continuing along said east line North 00 degrees 32 minutes 14 seconds West for a distance of 2345.00 feet to an iron pin, said point being the Northeast corner of the west half of the Southwest Quarter; thence North 89 degrees 51 minutes 55 seconds West for a distance of 1306.76 feet to an iron pin, said point being the Northwest corner of the west half of the Southwest Quarter; thence along the west line of the Southwest Quarter South 00 degrees 24 minutes 14 seconds East for a distance of 1049.70 feet to an iron pin; thence South 78 degrees 30 minutes 53 seconds East for a distance of 517.68 feet to an iron pin; thence along the center line of Honeywell Drive (easement Doc. # 95012657) South 25 degrees 26 minutes 50 seconds West for a distance of 301.51 feet (301.65 record) to an iron pin; thence along a curve to the left, having a radius of 207.92 feet, a curve length of 255.84 feet, a tangent length of 146.94 feet and a chord length of 240.00 feet and bearing of South 09 degrees 45 minutes 02 seconds East; thence South 45 degrees 00 minutes 00 seconds East for a distance of 310.00 feet to an iron pin; thence along a curve to the right having a radius of 182.92 feet, a curve length of 143.66 feet, a tangent length of 75.77 feet and a chord length of 140.00 feet and bearing of South 23 degrees 59 minutes 57 seconds East to an iron pin; thence South 00 degrees 00 minutes 12 seconds West for a distance of 129.27 feet to an iron pin; thence South 89 degrees 59 minutes 48 seconds East for a distance of 374.83 feet to an iron pin; thence parallel with said East line South 00 degrees 32 minutes 14 seconds East for a distance of 210.00 feet to an iron pin; thence South 89 degrees 59 minutes 48 seconds East for a distance of 250.01 feet to said East line and the point of beginning, containing 53.42 acres more or less.

EXHIBIT A

EXHIBIT "B"



NOTE:

TOP TO BE PLANTED WITH
1-2 FOOT HIGH WHITE PINE
TREES STAGERED AND
10 FOOT ON CENTER.

SLOPES TO BE PLANTED
WITH RYE AND CROWN
VECH.

PROTECTIVE SCREENING PLAN
N.T.S.