

73-71728

POOR ORIGINAL

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR CASTLETON ESTATES DEVELOPMENT AND
CASTLEBROOK DEVELOPMENT

This Declaration of Covenants and Restrictions for
Castleton Estates Development and Castlebrook Development (herein-
after referred to as "Declaration of Covenants and Restrictions"),
made this 5th day of November, 1973, by NORTHEAST
DEVELOPMENT CO., INC., an Indiana corporation, and MARVIN TAYLOR
DEVELOPMENT CO., INC., an Indiana corporation (hereinafter
collectively referred to as "Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the owner of certain real estate located
in Marion County, Indiana, the legal description of which is
set forth in Exhibit "A" attached hereto and made a part hereof
(hereinafter referred to as the "Real Estate"). Such Real Estate
and the development thereof shall be referred to as "Castleton
Estates Development" and "Castlebrook Development" (hereinafter
referred to collectively as the "Development").

B. Declarant desires to develop on the Real Estate a
residential community with a recreational area for the benefit
of the residents (hereinafter referred to as the "Common Area").
Such Development shall be in accordance with the zoning regula-
tions of Marion County, Indiana, and may include certain areas
for multi-family dwellings either for development under the
Horizontal Property Act of the State of Indiana, or for some
other similar type development.

C. The purpose of this Declaration of Covenants and
Restrictions is

- (1) to provide a means for the preservation
of the values and amenities in the Development
and for the maintenance of the Common
Area, and
- (2) to provide that all owners and residents
within the Development (a) have the right
to use the Common Area and (b) have the
obligation to pay their proportionate share
of the costs of maintaining the Common Area
in accordance with the procedure outlined
herein, and
- (3) to provide for the formation of a not-for-profit
corporation to provide for the maintenance and
administration of the Common Area.

RECEIVED FOR RECORD
NOV 13 05 PM '73
FAYE J. HOBBS
RECORDER
OF MARION COUNTY

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ARB
A-9, 24, 10 → 24-17-4
A-59, 3 → 19-17-5
Also ALL LOTS IN (CASTLETON EST. SEC. 2)
FIRST SEC.

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NOW, THEREFORE, Declarant declares that the Real Estate and such additional real property as may be added thereto pursuant to paragraph 4 is and shall be held, conveyed, encumbered, used, occupied and improved in accordance with the covenants and restrictions contained in this Declaration of Covenants and Restrictions.

1. Definitions. The following terms, as used in this Declaration of Covenants and Restrictions, unless the context clearly requires otherwise, shall mean the following:

- (a) "Corporation" means the not-for-profit corporation, Castleton Estates, Inc., which is more fully described in paragraph 2 of this Declaration of Covenants and Restrictions.
- (b) "Board of Directors" means the governing body of the Corporation elected by the members in accordance with the By-Laws of the Corporation.
- (c) "Declarant" means Northeast Development Co., Inc. and Marvin Taylor Development Co., Inc., their successors, assigns or nominees.
- (d) "Development" means Castleton Estates Development and Castlebrook Development.
- (e) "Dwelling Unit" means any single family home, apartment or living unit housing one family and located within the Development, and any real property associated therewith.
- (f) "Real Estate" means the property which comprises the Development as described in Exhibit "A" to this Declaration of Covenants and Restrictions.
- (g) "Owner" means any person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to one or more Dwelling Units within the Development.
- (h) "Common Area" means that part of the Real Estate on which it is contemplated that the recreational facilities as described in paragraph 3 of the Declaration will be constructed and located. The exact location of the Common Area has not been determined.
- (i) "Resident" means any person who resides in a Dwelling Unit, whether or not an Owner.
- (j) "Additional Property" means any real estate which may become subject to this Declaration of Covenants and Restrictions.

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2. Corporation. There has been created under the laws of the State of Indiana a non-for-profit corporation known as Castleton Estates, Inc. (hereinafter referred to as the "Corporation"). Membership to this Corporation shall be comprised of, limited to and an obligation of all Residents and Owners and of Declarant so long as Declarant owns any part of the Real Estate.

(a) Membership. The Corporation shall have two members, Class A and Class B, as follows:

(i) Class A members shall be Declarant and anyone who owns one or more Dwelling Units, including but not limited to Owners. Class A members shall be entitled to one vote for each Dwelling Unit owned on all matters which the members of the Corporation are entitled to vote; provided, however, each Dwelling Unit represented shall have only one vote as the Owners of such Dwelling Unit may determine in accordance with the Code of By-Laws of the Corporation.

(ii) Class B members shall be any Resident who is not an Owner or any officer, director, partner or appointee of a Class A member. Class B members shall not be entitled to any vote, but may act as a director and may vote in such capacity on matters which are determined by the Board of Directors.

(b) Purpose. The purposes of the Corporation are more fully set forth in the Articles of Incorporation and are generally to provide for the maintenance, repair, replacement, administration, operation, preservation and ownership of the Common Area and such other areas that may come within its jurisdiction and authority. The Corporation shall have all powers set forth in its Articles of Incorporation, together with all other powers granted under the laws of the State of Indiana, including but not limited to the power to levy a uniform assessment against Class A members and such additional special assessment against Class A members in the manner set forth in this Declaration of Covenants and Restrictions.

(c) Operation of Corporation. The operation of the Corporation is more fully described in its Articles of Incorporation which are filed in the office of the Secretary of State of the State of Indiana, and its By-Laws, both of which are incorporated herein by reference.

(d) Insurance. The Corporation, acting through its Board of Directors, shall obtain fire and extended insurance insuring the Common Area and improvements thereon equal to the full replacement cost thereof,

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and such other insurance as is deemed necessary or appropriate by the Board of Directors.

3. Common Area. The Common Area shall consist of a club house, a swimming pool and tennis courts. Declarant hereby covenants and declares that the Common Area and any improvements thereon shall be conveyed to the Corporation.

4. Additional Property. Additional real estate may become subject to this Declaration of Covenants and Restrictions providing such addition is approved by the members of the Corporation in accordance with the Articles of Incorporation, and upon such approval, the owner of the Additional Property to be added to the jurisdiction of the Corporation may file in the Recorder's Office of Marion County, Indiana, a supplemental declaration to this Declaration of Covenants and Restrictions which shall extend this Declaration of Covenants and Restrictions to such Additional Property. Declarant, however, prior to January, 1980 may place Additional Property under the jurisdiction of the Corporation without approval of the members, provided such addition is reasonable in light of the recreational facilities available.

Such supplemental declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration of Covenants and Restrictions as may be necessary to reflect the different character, if any, of the Additional Property and as are not inconsistent with the scheme of this Declaration of Covenants and Restrictions. In no event, however, shall such supplemental declaration revoke, modify or add to the Restrictions within the Real Estate.

5. Merger of Corporation. The Articles of Incorporation provide that the Corporation may merge or consolidate with another corporation with similar purposes, provided such merger or consolidation is approved by the members in accordance with the Articles of Incorporation. Upon such a merger or consolidation of the Corporation with another corporation, the Corporation's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated corporation, or alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to the merger. A surviving or consolidated corporation may administer the covenants and restrictions established in this Declaration of Covenants and Restrictions with respect to the Real Estate.

6. Assessments. The assessments and payment of assessments to cover the costs and expenses of operating, maintaining and replacing the Common Area shall be in accordance with the following procedures:

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- (a) Proposed Annual Budget. The Board of Directors, acting in accordance with the Articles and By Laws of the Corporation, shall cause to be prepared and adopted at the annual meeting of the Corporation a proposed annual budget for the ensuing calendar year estimating the total amount of expenses for the ensuing year, which budget shall be the basis for the regular assessments (hereinafter defined) for the ensuing year.
- (b) Regular Assessments. The annual budget as adopted shall contain the proposed assessment against each Dwelling Unit which shall be the same for each Dwelling Unit. Immediately following the adoption of the annual budget each Owner shall be given written notice of such assessment against his Dwelling Unit or Units (hereinafter called the "Regular Assessment"). The Regular Assessment against each Dwelling Unit shall be paid in accordance with the method of payment determined by the Board of Directors as necessary to satisfy the financial requirements and obligations of the Corporation. Payment of such Regular Assessment shall be made to the Board of Directors or as otherwise directed by the Board of Directors. The first annual budget and the Regular Assessment to be charged against each Dwelling Unit pursuant thereto shall be determined at the first annual meeting of the Corporation to be held in January, 1980 or at such earlier date if Declarant so determines.
- (c) Special Assessments. From time to time expenses of an unusual or extraordinary nature or not otherwise anticipated may be deemed necessary by the Board of Directors. In such event the Board of Directors shall be authorized to adopt a resolution to make such expenditures and shall have the full right, power and authority to make a special assessment of equal amount upon each Dwelling Unit upon approval of such resolution by two-thirds of the votes of Class A members at a special meeting of the members duly called in accordance with the By Laws for purposes of approving or rejecting such resolution (hereinafter called "Special Assessment").
- (d) Commencement of Assessments and Interim Assessment. Notwithstanding any provision in this Declaration and prior to the first annual meeting of the Corporation which shall be held in January, 1980, or at such earlier date if Declarant so determines, each Owner (other than Declarant), on the first

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day of the month following the first occupation and use of such Owner's Dwelling Unit for residential purposes, shall be required to pay to the Board of Directors that portion of the annual interim assessment that would be due from the date of such occupation based upon the total yearly assessment. Thereafter on or before the 1st day of February of each year each owner (other than Declarant) shall be required to pay to the Board of Directors the annual interim assessment. Such annual interim assessment prior to the first annual meeting of the corporation shall be determined by the Board of Directors of the Corporation and shall be that amount necessary for the Corporation to maintain and operate the Common Area based on the assumption that there are 200 Dwelling Units using the Common Area even though additional Dwelling Units may be able to use the Common Area subsequently. Such Interim Assessment shall in no event exceed \$250.00 per Dwelling Unit per year prior to the first annual meeting of the Corporation. Such amount shall be referred to as an "Interim Assessment" and shall become a lien on each Dwelling Unit, the Owner of which is obligated to pay such assessment on the first day of the month following the first occupation and use of the Dwelling Unit for residential purposes, and shall be enforced and collected in the same manner as a Regular or Special Assessment. Notwithstanding any other provision contained herein or elsewhere, in no event shall such Interim Assessment or any other assessment restriction or obligation under this Declaration commence until at least a portion of the recreational facilities in the Common Area have been constructed and the Common Area conveyed to the Corporation, and the assessment restrictions, obligations and rights under this Declaration shall only be applicable to a Dwelling Unit that has at sometime been occupied for residential purposes.

- (e) Failure of Owner to Pay Assessment. Any Regular, Special or Interim Assessment levied or assessed against any Owner, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Owner's Dwelling Unit or Units until paid in full. Each Owner shall be personally liable for the payment of all Regular, Special or Interim Assessments. Where the Owner constitutes more than one person the liability of such persons shall be joint and several. The Board may, on behalf of the Corporation, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The Owner of the Dwelling Unit or Units subject to the charge shall, in addition to the amount of the charges at the time legal action is instituted, be obligated to pay any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting the same. In addition, such charge or assessment shall bear interest at the rate of nine per cent (9%) per annum from the date due until paid in full. No such charge or lien shall exist at the time of the first conveyance of a Dwelling Unit by Declarant or the first conveyance of a Dwelling Unit by any other person unless such Dwelling Unit has previously been occupied for residential

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purposes. Every Owner of a Dwelling Unit in the Development and any person who may acquire an interest in such Dwelling Unit, whether as an Owner or otherwise, is hereby notified and by the acquisition of such interest agrees that any such lien which may exist upon the Dwelling Unit at the time of the acquisition of such interest are valid liens and shall be paid unless otherwise provided by law. Every person who shall become an Owner of a Dwelling Unit in the Development is hereby notified that by the act of acquiring or making such purchase or acquiring title, such person, unless relieved of such obligation by law, shall be conclusively held to have covenanted to pay the Corporation all charges that the Corporation shall make, which charges shall be made pursuant to this paragraph 6 of this Declaration of Covenants and Restrictions, the Articles of Incorporation and By-Laws of the Corporation. Notwithstanding anything contained in this paragraph 6 or elsewhere, any sale or transfer of a Dwelling Unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve the Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof. No charges shall ever be levied by the Corporation against the Declarant unless the Dwelling Unit or Units owned by the Declarant are occupied or have at one time been occupied for residential purposes.

7. Right of Declarant to Use Real Estate During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument, covenants or agreements affecting the Real Estate or any part thereof, the Declarant, its successors, assigns and nominees during the period in which the Real Estate is being developed or, if applicable, being conveyed, may maintain upon such portion of the Real Estate as Declarant deems necessary, including but not limited to a part of the Common Area, such facilities as in the sole opinion of Declarant may be reasonably required convenient or incidental to the development and sale of any part or parts of the Real Estate, including but not limited to a business office, storage area, construction yard, signs, model units and sales office.

8. Covenants and Restrictions. The covenants and restrictions contained in this Declaration of Covenants and Restrictions are for the mutual benefit and protection of the present and future

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Owners, the Corporation and Declarant, and shall run with the land and inure to the benefit of and be enforceable by any Owner, the Corporation or Declarant. These covenants and restrictions shall run with the land and be binding upon all parties and all persons claiming under them until January 1, 2020, at which time such covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the Dwelling Units in the Development. Present or future Owners, the Corporation or Declarant shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation. Neither the Declarant or the Corporation shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these covenants and restrictions, nor for a failure of the Common Area to be developed for any reason. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these covenants and restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him on the occurrence, recurrence or continuation of such violation of these covenants and restrictions.

9. Acceptance and Ratification. All present and future Owners, mortgagees, tenants and occupants of any Dwelling Unit within the Development shall be subject to and shall comply with the provisions of this Declaration of Covenants and Restrictions. The acceptance of a deed of conveyance and the execution of a contract for the purchase of or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration of Covenants and Restrictions and the agreements contained herein, including but not limited to the obligation to pay any Regular, Special or Interim Assessment, are accepted and ratified by each Owner, tenant or occupant, and such Owner, tenant or occupant acknowledges the rights and powers of the Declarant and of the Corporation with respect to this Declaration of Covenants and Restrictions and agrees to keep, observe, comply with and perform all of the covenants, restrictions and agreements contained herein.

10. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement to any of the Common Area rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

11. Right of Board of Directors to Adopt Rules and Regulations. The Board of Directors, in accordance with the provisions of the Articles and By-Laws of the Corporation, may promulgate such additional rules and regulations regarding the operation and

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use of the Common Area as it may deem necessary from time to time, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners. Such rules as are adopted may be amended by a vote of a majority of the Board and the Board shall cause such amendment to be delivered or mailed to all Owners.

12. Costs and Attorneys' Fees. In any proceeding arising because of a failure of any Owner to make any payments required or to comply with any provision of this Declaration of Covenants and Restrictions, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

13. Waiver. No Owner may exempt himself from liability for his contribution toward the expenses of the Corporation and payment of his pro rata share of such by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Dwelling Unit.

14. Reservation of Name. Declarant hereby reserves the right to use the name "Castleton Estates," "Castlebrook" or any form thereof in any other development in which Declarant might be involved now or in the future.

15. Notice of Unpaid Assessments. The Corporation shall, upon request of a mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Regular, Interim or Special Assessment against the Dwelling Unit, which statement shall be binding upon the Corporation, and any mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement.

16. Severability Clause. The invalidity of any covenant, restriction, limitation or other provision of this Declaration of Covenants and Restrictions shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration of Covenants and Restrictions.

17. Amendment of Declaration. Except as otherwise provided in this Declaration amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors of the Corporation or by the Owners of at least a majority of the Dwelling Units.

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- (b) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy five percent (75%) of the Owners of the Dwelling units entitled to vote. No amendment to this Declaration shall be adopted which would change the uniform voting rights or uniform assessment of all Owners.
- (c) Recording. Each amendment to this Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Covenants and Restrictions to be executed the day and year first above written.

NORTHEAST DEVELOPMENT CO., INC.

ATTEST:

BY Marvin L. Taylor PRESIDENT

John W. Wynne, 3307 Secy

MARVIN TAYLOR DEVELOPMENT CO., INC.

ATTEST:

BY Marvin L. Taylor PRESIDENT

John W. Wynne, 3307 Secy

"Declarant"

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Marvin L. Taylor and John W. Wynne, by me known, and by me known to be the President and Assistant Secretary, respectively, of Northeast Development Co., Inc., who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for Castleton Estates Development and Castlebrook Development for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 5th day of November, 1973.

Dorothy Ruddell

Dorothy Ruddell
(Printed Signature)
Notary Public

My commission expires

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Nov 22, 1977

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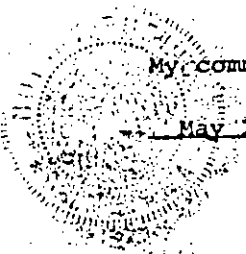
STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Marvin L. Taylor and John W. Wynne, by me known, and by me known to be the President and Assistant Secretary, respectively, of Marvin Taylor Development Co., Inc., who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for Castleton Estates Development and Castlebrook Development for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 5th day of
November, 1973.



Dorothy Ruddell
(Printed Signature)
Notary Public



My commission expires
May 22, 1977

This instrument prepared by Philip A. Nicely, Attorney at Law.

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Legal Description for Total Development

Part of the Northwest Quarter of the Northwest Quarter of Section 19, Township 17 North, Range 5 East and Part ~~of the Northwest Quarter~~ of the Northeast Quarter of Section 24, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of Section 19, Township 17 North, Range 5 East; thence South 89 degrees 17 minutes 25 seconds East on and along the North line of said Quarter Quarter Section, 14.80 feet (20.34 feet measured) to the centerline of 86th Street; thence South 45 degrees 57 minutes 05 seconds East on and along said centerline 46.25 feet (39.73 feet measured); thence South 84 degrees 56 minutes 05 seconds East on and along said centerline 614.35 feet thence South 87 degrees 59 minutes 05 seconds East on and along said centerline 98.75 feet; thence North 77 degrees 54 minutes 55 seconds East on and along said centerline 60.40 feet; thence North 65 degrees 32 minutes 55 seconds East on and along said centerline 25.80 feet (10.46 feet measured to a point which is 829.50 feet South 89 degrees 11 minutes 30 seconds East from the West line of said Quarter Quarter Section); thence South 00 degrees 48 minutes 55 seconds West parallel with the West line of said Quarter Quarter Section 1269.62 feet (1263.00 feet measured) to the South line of said Quarter Quarter Section; thence North 89 degrees 11 minutes 30 seconds West on and along said South line 829.50 feet to the East line of the Northeast Quarter of Section 24, Township 17 North, Range 4 East; thence South 00 degrees 49 minutes 55 seconds West on and along the East line of said Northeast Quarter 1260.23 feet to the South line thereof; thence North 90 degrees 00 minutes 00 seconds West on and along the South line of said Northeast Quarter 1256.36 feet to a point which is 100.00 feet North 90 degrees 00 minutes 00 seconds East of the Southwest corner of the East Half of said Northeast Quarter; thence North 32 degrees 51 minutes 57 seconds East 1791.59 feet to a point which is 1050.00 feet North 90 degrees 00 minutes 00 seconds East of the West line of said East Half and 1505.00 feet North 00 degrees 50 minutes 49 seconds East (measured parallel with the West line) of the South line of said East Half; thence North 90 degrees 00 minutes 00 seconds West parallel with the South line of said East Half 1050.00 feet to the East line of the West Half of said Northeast Quarter; thence South 00 degrees 50 minutes 49 seconds West on and along said East line 1505.00 feet to the South line of said West Half; thence South 90 degrees 00 minutes 00 seconds West on and along said South line 1358.36 feet to the West line of said Northeast Quarter; thence North 00 degrees 51 minutes 43 seconds East on and along said West line 2652.82 feet to the North line of said Northeast Quarter; thence North 89 degrees 56 minutes 47 seconds East on and along said North line 2711.36 feet to the East line of said Northeast Quarter; thence South 00 degrees 49 minutes 55 seconds West on and along said East line 71.42 feet (75.70 feet measured) to the place of beginning, containing 169.51 acres, more or less. Subject to all legal easements and rights-of-way.

Dated October 24, 1973

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	 WEIHE ENGINEERS INC. 10505 N. COLLEGE AVENUE INDIANAPOLIS, INDIANA 46281 CIVIL ENGINEERS LAND SURVEYORS LAND PLANNERS	ALLAN H. WEIHE, P.E., L.S. PRESIDENT GARY L. LEBEL, L.S. VICE PRESIDENT
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