

# **Covenants and Restrictions**

## **Vanderburgh Industrial Park**

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# DECLARATION OF PROTECTIVE COVENANTS VANDERBURGH INDUSTRIAL PARK

This Declaration of Protective Covenants for Vanderburgh Industrial Park (ADeclaration@) is made this 16<sup>th</sup> day of June, 2000 by the Evansville Industrial Foundation, Inc., an Indiana not-for-profit corporation (AFoundation@).

## RECITALS

**WHEREAS**, Foundation is the owner of certain real estate situated in Vanderburgh County, Indiana, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the AReal Estate@); and

**WHEREAS**, Foundation desires to subject the Real Estate to the conditions, covenants, restrictions, and reservations hereinafter set forth to ensure proper use and appropriate development and improvement of the Real Estate, which conditions, covenants, restrictions and reservations shall run with the title to the Real Estate and shall be binding upon all persons or entities having an interest in the Real Estate from and after the date hereof in accordance with the Term set forth in Article VIII. The Real Estate thus developed shall be known as the AVanderburgh Industrial Park@ ("VIP").

## ARTICLE I - DEFINITIONS

### 1.01 Definition of Terms

Unless otherwise specified herein to the contrary, each of the following defined terms or phrases shall have the following meanings when used in this Declaration:

1. "Architectural Review Committee" or "ARC" means the committee initially appointed and acting from time to time in accordance with the provisions of Article V below.
2. "Building" means any structure that is permanently affixed to the Real Estate, has one or more floors and a roof, and is bounded by either an open area or other lot lines of a Building Site.

3. "Building Site(s)" means (i) any contiguous parcel of land within the Real Estate, the dimensions of which are established by the legal description in the deed from Foundation to the Owner; (ii) any parcel of land within the Real Estate designated as a building site by Foundation in any instrument in writing executed, acknowledged and recorded by the Foundation; (iii) two or more contiguous building sites under common ownership if the Owner elects, by written notice to the Foundation, to treat them as a single building site during the time of such Owner's ownership; and (iv) all of the Real Estate, with the exception of the common areas, owned at any point in time by the Foundation.
4. "Common Areas" means those areas of or for the benefit of the Real Estate (including any portions subject to an easement or right of way) together with appurtenant Improvements, devoted to the common use and enjoyment of the Owners, including, but not limited to, originally platted lakes, retention ponds, legal drains, parks, sidewalks, median strips, park signage areas, traffic controls, park entrances, park traffic signals/signage and drainage areas. Upon sale of the last Building Site by Foundation, there shall be no further responsibility of any kind by Foundation for Common Areas nor shall Foundation remain an Owner of any Common Area. Building Site Owners are responsible for payment of all taxes owed on property they own even if that property could be defined as "common area."
5. "Common Expense(s)" means administrative costs incurred by the Owner's Association in administering its duties hereunder, and any cost or expense incurred for the installation, repair, maintenance and replacement of Improvements to the Common Areas; any cost of expense of utilities and related expenses including but not limited to street lights, and signage associated with Improvements in the Common Areas; and all taxes and assessments thereon (not otherwise due from Building Site Owners); and any related costs included in the cost of required insurance coverage. Common Expenses shall further include any expenses assessed against the Foundation by governmental authorities after assessment of all initial VIP development costs as described in paragraph 8.04.
6. "Covenant(s)" means all the conditions, covenants, restrictions and reservations contained herein, or any one or more of them as the context may require.
7. "Declaration", "hereof", "herein", and words of similar import have reference to this Declaration as a whole and not to any particular section, subsection or clause hereof.
8. "Design Guidelines" means, at any relevant point in time, the guidelines setting forth certain architectural standards and specifications regarding the location and design of improvements, and their expansion, remodeling, construction materials, lighting,

landscaping, signage, parking and other matters. The Design Guidelines, as may be amended from time to time, are hereby incorporated into this Declaration by reference.

1. "Development Period" means that period of time during which the Foundation owns any Building Site in Vanderburgh Industrial Park.
10. "Foliage Easement" means foliage easements and berms as depicted on the recorded plat and subdivision of the Real Estate designated as the Vanderburgh Industrial Park (VIP). Foliage easements and berms are not common areas. Foliage easements may be grassy areas, tree or other shrubbery planting areas, or some combination of grass and plants, or other appropriate screening material.
11. "Improvements" means any building, parking areas, sidewalks, loading areas, fences, walls, hedges, landscaping, mass plantings, poles, signs, traffic signals, structures of any type or kind, and the permanent result of any other action taken for the improvement of the Real Estate.
12. "Mortgage" means any bona fide mortgage, deed of trust or conveyance of a Building Site or any interest therein or portion thereof which secures the performance of an obligation which, upon completion of such performance, will be released, discharged or be conveyed. "Mortgagee" means the mortgagee, secured party or other beneficiary of a mortgage.
13. "Owner(s)" means the fee owner or owners, as the context may require, of all or any part of the Real Estate, including a Building Site.
14. "Owner's Association" means the association that may hereafter be established by Foundation for the purpose of exercising the rights and performing the duties and obligations of Foundation under this Declaration.
15. "Railroad Easement" means an easement for railroad purposes upon the areas marked on the recorded plat of Vanderburgh Industrial Park, and, additionally, includes an easement upon adjoining real estate described on Exhibit "B" attached hereto, and as set forth in that certain "Railroad Spur Easement Agreement" dated April 29, 1999 and recorded April 30, 1999 in Deed Drawer 12 Card 6244 in the office of the Recorder of Vanderburgh County, Indiana. Railroad Easement(s) are not Common Areas, and maintenance of the Railroad Easement shall be the responsibility of the Building Site Owner for that portion of the Railroad Easement located upon that Owner=s Building Site unless and until a

railroad track is built and maintained on the Railroad Easement; and in such event, expenses are governed by 4.08 and related paragraphs.

16. "Real Estate" means all of the real property described on Exhibit "A" attached hereto.
17. "Vanderburgh Industrial Park" means the presently recorded plat and subdivision of the Real Estate designated as Vanderburgh Industrial Park and recorded June 28, 2000 in Plat Book Q, Page 79, in the office of the Recorder of Vanderburgh County, Indiana.

## **ARTICLE II - PURPOSE**

### **2.01 Establishment of Covenants**

Foundation does hereby declare that the Real Estate shall be held, sold, transferred, conveyed and occupied subject to the Covenants contained herein, which shall be binding upon the Owners, jointly and severally, and their successors and assigns, and shall run with the title to every Building Site and every portion of the Real Estate for the Term set forth in Article VIII. No portion of the Real Estate may be developed or operated, nor any construction of improvements commenced thereon, by any Owner except in accordance with the provisions of this Declaration; and any violation of the provisions hereof shall subject the Owner of such portion of the Real Estate to the causes of action and remedies provided in this Declaration.

### **2.02 Purpose**

The purpose of the Covenants contained herein is to promote the industrial development of the community by providing a location compatible for industrial uses that will: (i) protect Foundation and each Owner through the proper development and use of the Real Estate; (ii) cause the erection on the Real Estate of Improvements which are constructed of suitable materials; (iii) insure compatibility of design of Improvements within the Real Estate; (iv) secure and maintain sufficient setbacks and space between Buildings to create an aesthetically pleasing environment; (v) provide for proper landscaping and for the maintenance thereof; (vi) provide adequate off-street parking and loading facilities; and (vii) in general, encourage construction of attractive, high-quality, permanent Improvements that will promote the general welfare of all Owners and occupants.

### **2.03 Acceptance of Covenants**

The Covenants and Design Guidelines, having been in place at purchase, are recognized by the Owners to be desirable and as such the Owners, by the acceptance of title to any Building Site or part thereof, accept these Covenants and Design Guidelines and agree that the Covenants and Design Guidelines shall be binding upon them and their respective Building Sites. Every person who now holds or hereafter acquires any right, title or interest in or to any portion of the Real Estate shall be conclusively deemed to

have consented and agreed to every Covenant, term and provision contained in this Declaration, whether or not any reference to this Declaration is contained in any instrument conveying to such person any interest in the Real Estate.

#### **2.04 Owner Responsibility**

Each Owner, notwithstanding any third party occupancy or possession of a Building Site, shall be responsible for the enforcement of and compliance with these Covenants and the Design Guidelines.

### **ARTICLE III - PERMITTED USES**

#### **3.01 Permitted Uses**

Building Sites may be used only for the uses set forth in the Vanderburgh County Zoning Code for a light Industrial District [M-1][ ' 153.055] and for a General Industrial District [M-2][ ' 153.056]; provided, however, that no residential uses [R-1 through R-5], Neighborhood Commercial uses [C-1][ ' 153.050], Community Commercial uses [C-2][ ' 153.051], or General Commercial uses [C-4][ ' 153.052] shall be permitted even if such uses are permissible under the M-1 or M-2 zoning classification except for cold storage or frozen food plant, storage warehouse or wholesale broker or establishment. An example of the permitted uses are the following: offices; office-showrooms; office-warehouses; manufacturing; assembling; processing; light manufacturing; wholesaling; research and development; warehousing; servicing and distribution; distribution centers; and other commercial uses compatible with the foregoing uses. Uses which are neither specifically prohibited nor specifically authorized by this Declaration may be permitted [as well as variances pursuant to 3.04] as to certain Building Sites in a specific case if a proposed use plan describing such proposed use in detail is submitted to and approved in writing by the Owner=s Association.

### **3.02 Prohibited Uses**

No noxious or offensive trades, services or activities shall be conducted on any Building Site nor shall anything be done therein which may be or become unsightly or an annoyance or nuisance to any Owner, tenant or occupant of any Building Site including anything which results in an emission of fumes, odors, glare, vibration, gases, hazardous waste, pollutants, radiation, dust, liquid waste, smoke or noise, or in violation of any applicable law. Specifically, but not in limitation of the preceding, the following uses shall not be permitted on any portion of any Building Site: (i) dumping, disposal, incineration or reduction of garbage, trash, sewage, offal, dead animals or refuse, or the construction or operation of water or sewage treatment plants; (ii) junk yards and recycling facilities; (iii) commercial excavation of building or construction materials (but not excluding excavation in connection with the construction of Improvements); (iv) extraction or refining of petroleum or of its products; (v) distillation of bones; (vi) smelting of iron, tin, zinc or other ores; (vii) fat rendering; (viii) stockyard or slaughter of animals; (ix) cemeteries; (x) labor camps and migrant worker camps; and (xi) jails or honor farms. In addition, no Building Site shall be used for a high-traffic distribution center or truck terminal, except as may be specifically permitted by the Owner's Association on a Building Site located in the south end of Vanderburgh Industrial Park.

### **3.03 Zoning and Variance Restrictions**

No Owner shall be permitted to obtain or make use of a zoning change or reclassification, subdivision waiver or variance, or a special, conditional or accessory use or use variance, with respect to a Building Site, without the prior written approval of the Owner's Association.

### **3.04 Variances**

To encourage good design, innovation and flexibility, the Owner's Association may, with or without request therefor, in writing waive or grant a variance from any of the Covenants or Design Guidelines, if, in the sole judgment of the Owner's Association, such waiver or variance would be consistent with the general intent and purposes expressed in this Declaration. Any Owner desiring a waiver or variance must first submit a written request to the Owner's Association providing all information and material requested by the Owner's Association. If the Owner's Association fails to approve or disapprove in writing any request for a waiver or variance within thirty (30) days after receiving all requested information relating to the waiver or variance, the requested waiver or variance shall be deemed denied. The granting of a variance shall not be deemed to be a precedent for the granting of any other variance request by an Owner. By acceptance of any deed to any Building Site, the Owners expressly waive any claims, causes of action or damages arising out of the granting or denial of any requested variance. The grant of a variance to any Owner shall not constitute a waiver of the Owner's Association's right to strictly enforce the Covenants and Design Guidelines contained in this Declaration against any other Owner.

## **ARTICLE IV - REGULATION OF IMPROVEMENTS**

#### **4.01 Improvements, Generally**

No Improvement shall be constructed, erected, placed, altered, maintained or permitted on any Building Site unless it complies with the Covenants, terms and provisions contained in this Declaration, the Design Guidelines, any regulations and guidelines promulgated by utility companies for activities surrounding utility lines, pipes, poles, and wires, and all applicable governmental requirements, and is approved by the Architectural Review Committee. If there shall be a conflict between the terms and provisions contained in this Declaration, the Design Guidelines, applicable utility regulations, and the applicable governmental requirements, the more restrictive shall be deemed controlling.

#### **4.02 Site and Building Development Standards**

Standards governing appropriate building setbacks, greenspace requirements, parking, loading areas, storage, temporary improvements, landscaping, signs, utility connections, fencing, on-site lighting, roof-top construction and on-site drainage are set out in the Design Guidelines.

#### **4.03 Maintenance During Construction**

During the period of any construction upon a Building Site, the Building Site (and all streets used by construction equipment or trucks) shall be kept in a clean and neat condition by Owner and all trash, rubbish, debris, mud and dirt shall be removed daily. The Owner shall also take all measures necessary or appropriate to control fugitive dust, blowing sand and erosion, whether by wind or water. Damage to roadways, utilities or any of the Common Areas caused by construction activity shall be repaired to the satisfaction of the Owner's Association at the sole pro-rata cost to the Owner(s) conducting construction activity. All construction and construction traffic shall be conducted so as not to interfere with free and ready access to existing Buildings and neighboring Building Sites and in accordance with the direction of the Owner's Association from time to time.

#### **4.04 Fire Protection**

Each Owner shall be responsible for all fire protection for the Buildings and Improvements located on their respective Building Sites.

#### **4.05 Subdivision of Building Sites**

No Building Site of record within the Vanderburgh Industrial Park may be further subdivided for sale or used by more than one occupant without both 1) written permission of the Owner's Association, and 2) appropriate governmental review and approval pursuant to applicable statutes, ordinances and regulations.

#### **4.06 Owner Maintenance**

Each Owner, at its sole expense, shall keep, maintain, service and replace its Building, Improvements, and appurtenances, including landscaping, on its Building Site, in a safe, clean, maintained, neat, wholesome condition and with the same exterior finish originally approved by the Owner=s Association, and shall comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements.

#### **4.07 Owner=s Association Maintenance**

The Owner=s Association shall be responsible for maintaining (as a Common Expense) all Common Areas in a clean, safe, and attractive condition and shall maintain, repair and replace all components thereof. Foundation hereby reserves perpetual easements for reasonable access over and across all areas of the surface of each Building Site for the use of the Owner=s Association for the purposes of installation, maintenance and repair of the Common Areas. The Owner=s Association shall indemnify and hold harmless the Owners and occupants of Building Sites from any damage to property or person resulting from the exercise of such reserved rights. Such access shall be during normal business hours with 24-hours= advance notice to the affected Owner of such access. Access during times of an emergency, as determined by the Owner=s Association, may be at any time and shall not require advance notice.

#### **4.08 Railroad Track**

In the event any (of the) Owner(s) require(s) the construction of a railroad spur upon the area designated for such purpose on the recorded plat of Vanderburgh Industrial Park and/or upon the adjoining real estate described in Exhibit "B" attached hereto, such Owner(s) utilizing the Railroad Easement shall bear all costs and expenses associated with the Railroad Easement and/or such railroad spur, and such costs and expenses shall be assessed against such Owner(s) in the same manner as provided in Article X herein. All Owner(s) utilizing the Railroad Easement and/or the railroad spur shall comprise a subcommittee of the Owner=s Association which shall make recommendations to the Owner=s Association regarding all aspects of the Railroad Easement and/or the railroad spur. The recommendations of such subcommittee shall be adopted by the Owner=s Association unless overridden by a two-thirds vote of the Owner=s Association.

#### **4.09 On-Site Lighting**

Standards governing appropriate on-site lighting are set out in the Design Guidelines. The site lighting will be maintained in a safe and attractive manner so as to preserve the aesthetic qualities established for VIP. In the event site lighting is not maintained and becomes in need of repair, a notice of said disrepair will be delivered to the responsible Owner. If repair is not initiated within thirty (30) days, the Owner=s Association may undertake repairs at owner=s expense.

## ARTICLE V - APPROVAL OF PLANS

### 5.01 Architectural Review Committee

There is hereby established an Architectural Review Committee (AARC@) whose members shall initially be appointed by the Foundation. The Architectural Review Committee shall consist of five (5) members which shall include an Indiana licensed architect, with the remaining members being recommended to include a landscape architect, a person with building construction experience, and two representatives from the Foundation and/or Owner=s Association. The concurrence of three (3) members shall constitute the action of the Architectural Review Committee without the necessity of a formal meeting. Members shall serve and be appointed at the pleasure of the Foundation until such time as the Foundation, in writing, notifies the Owner=s Association [Article X] that the Foundation irrevocably assigns this power of appointment for this Architectural Review Committee to the Owner=s Association, however, upon Foundation conveying the last available Building Site in VIP to a third party, all rights and obligations of Foundation to appoint members of the ARC shall automatically vest in the Owner=s Association and the Owner=s Association shall have the same rights and powers and be subjected to the same obligations and duties as are incumbent upon Foundation and Foundation shall be relieved of further responsibility hereunder.

### 5.02 ARC Approval

No Improvements may be constructed, erected, placed, altered, maintained or permitted on any Building Site until plans and specifications in content and form meeting the Design Guideline requirements and satisfactory to the Architectural Review Committee showing the proposed construction, plot layout and all exterior elevations, sample materials and colors, signs and landscaping, traffic engineering, number and size and layout of parking spaces, drainage, landscaping, grading, easements and utilities, proposed building use and number of employees and such other information as may be requested by ARC have been submitted over the signature of the Owner or its authorized representative to and approved in writing by ARC. In addition, no trees may be removed from any Building Site without the prior written approval of the Architectural Review Committee. The ARC has sole interpretation authority of the Design Guidelines.

### 5.03 Approval Procedures

Approval by ARC shall be based on, among other things, adequacy of Building Site size, conformity and harmony of external design with the Design Guidelines and neighboring structures, effect of location and use of Improvements on neighboring Building Sites, operations and uses; relation to and enhancement of the topography, grade and finished ground elevation of the Building Site to that of neighboring Building Sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these Covenants. Approval by ARC of such plans and specifications shall not constitute a recommendation, certification or other verification by it of the worthiness, suitability or integrity of the plans and specifications.

#### **5.04 Presumed Approval**

If the Architectural Review Committee ("ARC") fails to make any kind of response either approving or disapproving such plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within thirty (30) days after the same have been last submitted to it, it shall be conclusively presumed that said plans and specifications have been approved. The ARC shall make every reasonable effort to respond in a shorter period of time when so requested.

#### **5.05 ARC's Nonliability**

Neither the Architectural Review Committee nor Foundation nor their respective successors or assigns shall be liable in damages to anyone submitting plans or other data to them for approval, nor to any affected Owner by reason of mistake in judgment, negligence or nonfeasance by ARC or any of its members, arising out of or in connection with the approval or disapproval or failure to approve any plans, specifications, application or request; and each Owner, by its acceptance of title to a Building Site, releases the Architectural Review Committee from any liability to it, its successors and assigns, growing out of any loss or damage sustained as the result of the performance or nonperformance of ARC's duties hereunder, and agrees to indemnify ARC and its members, both jointly and severally, without limit as to time or amount, against any such liability, regardless of by whom asserted, including all costs of defense and attorney's fees.

### **ARTICLE VI - ENFORCEMENT**

#### **6.01 Abatement and Suit**

The Covenants and/or the Design Guidelines herein contained shall run with title to the Real Estate and be binding upon and inure to the benefit of the Foundation, the Owners and their respective successors and assigns. These Covenants and/or Design Guidelines may be enforced by Foundation; however the Foundation's opportunity to enforce these Covenants and/or Design Guidelines shall cease, and shall no longer be available upon the Foundation selling the last Building Site for which the Foundation has ownership. Each Owner, by acquiring an interest in the Real Estate, appoints irrevocably, as a power coupled with an interest, the Owner's Association as its attorney-in-fact for such purpose; provided, however, that if an Owner notifies the Owner's Association of a claimed violation of these Covenants and/or Design Guidelines, and the Owner's Association fails to act within thirty (30) days after receipt of such notification, then and in that event only, an Owner may separately, at its sole cost and expense, bring suit to enforce the violated Covenant and/or Design Guidelines in like manner as permitted by the Owner's Association. In enforcing these Covenants and/or Design Guidelines, the Owner's Association shall have all remedies available to it or the Owners at law or in equity, and, as may be appropriate under the circumstance, the Owner's Association shall have the right to demand injunctive relief and specific

performance. In all instances, the Owner's Association shall be entitled to recover all of its costs incurred in maintaining any such action regardless of the outcome thereof, including its attorney's fees.

### **6.02 Deemed to Constitute a Nuisance**

Every violation of these Covenants and/or Design Guidelines or any part thereof is hereby declared to be and to constitute a nuisance and every public or private remedy allowed therefor by law or in equity against an Owner, tenant or occupant, including injunctive relief and specific performance, shall be available to the Owner's Association.

### **6.03 Owner's Association Right to Perform**

In addition to the Owner's Association's other rights to remedy defaults of an Owner, if the Owner's Association reasonably determines that an Owner has failed to comply with any of the obligations and responsibilities imposed upon it hereunder, the Owner's Association may give such Owner written notice specifying the default and the action required of the Owner to correct the default. If the default is not corrected to the reasonable satisfaction of the Owner's Association within a period of thirty (30) days from the date of such notice or, where the condition relating to the default is not susceptible of being corrected within such period of time, and the Owner has not, within such thirty (30) day period, commenced correcting the default with due diligence and dispatch, the Owner's Association shall have the right, but not the obligation, to correct or cause to be corrected the default, and in connection therewith it and its agents and subcontractors shall have the right to enter upon the affected Building Site and any of its Improvements for the performance of all acts deemed necessary by the Owner's Association for the purpose of correcting or remedying the default.

### **6.04 Owner's Association's Performance**

If the Owner's Association elects to correct or remedy any default as permitted it by the provisions of Section 6.03 above, it will thereafter submit to the affected Owner a written statement of all costs incurred by the Owner's Association in connection therewith. The Owner's Association shall have a lien upon the Building Site for the purpose of securing such costs and all of Owner's Association's other related costs incurred by it in connection with the collection thereof, including costs of litigation and attorney's fees. If the Owner's Association's statement for its actual costs incurred in connection with the remedying of such default is not paid within a period of thirty (30) days from date of the statement, the Owner's Association may collect the same and have all the rights in respect thereof as provided in Article X below.

## **6.05 Enforcement**

The failure of the Owner's Association to enforce any of these Covenants and/or Design Guidelines shall in no event be deemed to be a waiver of the right to do so for the current or subsequent violations or of the right to enforce any of the other Covenants and/or Design Guidelines, nor shall the Owner's Association incur any liability to anyone whomsoever for any failure from time to time to enforce the Covenants and/or Design Guidelines.

## **ARTICLE VII - PERFORMANCE TIME**

### **7.01 Repurchase Procedures**

If, after the expiration of thirty-six (36) months from the date of execution of any deed to any Building Site in the Vanderburgh Industrial Park, the Owner thereof shall not have begun in good faith, and with reasonably complete arrangements to carry through to prompt completion the construction of improvements thereon, approved by the Architectural Review Committee under these Covenants, then the Foundation shall have an option to repurchase such Building Site as follows:

1. The price shall be the same amount as was paid to the Foundation at its sale to said Owner and shall be paid in cash at the closing. The Foundation may set off against the purchase price all amounts necessary to release each lien or other encumbrance against the Building Site and any other costs to insure that title is conveyed in accordance with the intent hereof.
2. The option shall be deemed exercised by a notice in writing to said Owner delivered within sixty (60) days of the end of the thirty-six (36) month period.
- c. At the closing, which shall be within a reasonable time following the expiration of the sixty (60) days, such Owner shall deliver its deed to the Foundation, reconveying title to the site free and clear of all encumbrances except those as originally conveyed with the property, warranting title therein against all acts done or conditions arising since the conveyance from the Foundation and shall forthwith deliver possession thereof.
- d. Foundation may, at its election, file suit for specific performance or any other rights at law and equity, demanding the Court enforce the right to purchase the Building Site, and in all events, Foundation shall be entitled to its attorneys' fees and related costs whenever it is required to enforce the rights available to it under this Article VII. The Foundation retains the exclusive right, however, to extend the foregoing thirty-six (36) month period for commencement of construction site by agreeing thereto in writing whenever it shall determine that valid reasons

exist therefor. However, the sixty (60) day Option Period described in sub-paragraph "b" above shall attach at the end of any extended time granted for the commencement of construction site hereunder.

### **7.02 Third Party Purchase**

For as long as there are no Buildings or other improvements on the Building Site, the Owner shall not hereafter sell the Building Site or any portion thereof to a third party without having first given the Foundation a forty-five (45) days option to repurchase said property. The repurchase price shall be the price as was paid to the Foundation at its sale to said Owner, with right of set off and costs for title insurance as set forth above.

## **ARTICLE VIII - TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS**

### **8.01 Term**

This Declaration, and every provision hereof and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of twenty (20) years from the date hereof, and shall thereafter be renewed automatically for successive ten (10) year periods unless and until terminated as provided in section 8.02 below.

### **8.02 Termination, Modification or Amendment by Owners**

This Declaration or any provision hereof may be terminated, extended, modified or amended, as to the whole of the Real Estate or any portion thereof, with written consent of the Owners of seventy-five percent (75%) in area of the Real Estate (other than Common Areas); provided, however, that no such termination, extension, modification or amendment shall be effective without also the written approval of Foundation so long as the Foundation owns any portion of the Real Estate. Such termination, extension, modification or amendment shall be immediately effective upon recording an appropriate written instrument in recordable form, executed by the requisite Owners (and by Foundation if required) in the office of the Recorder of Vanderburgh County, Indiana.

### **8.03 Modification or Amendment by Foundation**

For and so long as Foundation owns any portion of the Real Estate, Foundation reserves the right to amend, modify and supplement any of the Conditions or other terms and provisions contained in this Declaration and/or the Design Guidelines which shall be binding upon all Real Estate owned by Foundation at the time of such amendment and/or modification.

### **8.04 Assignments of Foundation's Right and Duties**

Any and all, or any portion and part, of the rights, powers and reservations of Foundation herein contained may be assigned by Foundation to any one or more persons, corporations or associations, including, but not limited to the Owner=s Association, on condition that the assignee(s) undertake in writing to assume all of the relevant duties of Foundation hereunder. To the extent of such assignment, the assignee shall have the same rights and power and be subject to the same obligations and duties as are incumbent on Foundation, and to the extent of those duties assumed by the assignee, Foundation shall be relieved from all further responsibility. The Foundation is responsible for all initial VIP development costs, not otherwise paid for by governmental financing, including but not limited to the initial traffic signal requirements of the Indiana Department of Transportation ("InDOT"), which costs have been incorporated into the lot pricing within the VIP. However, all obligations of Foundation, if any, for any costs and expenses imposed after these initial development costs by any governmental entity for improvements to roadways, highways and additional traffic signals, signage, street lighting, and other facilities for the benefit of or necessitated as a result of the VIP=s growth (including but not limited to a traffic signal at Baseline Road due to employment growth within the VIP) shall automatically vest in the Owner=s Association and the Owner=s Association shall be responsible for any such obligation(s) imposed upon (or attempted to be imposed upon) Foundation, and the Owner=s Association shall be permitted to impose such costs as assessments for Common Expenses against the Owners. Notwithstanding the foregoing, however, upon Foundation conveying the last available Building Site in Vanderburgh Industrial Park to a third party, all rights and obligations of Foundation contained in this Declaration shall automatically vest in the Owner=s Association and the Owner=s Association shall have the same rights and powers and be subjected to the same obligations and duties as are incumbent upon Foundation and Foundation shall be relieved of further responsibility hereunder. If at any time Foundation is liquidated or dissolved or for any reason fails to perform its duties hereunder, a successor Foundation may be appointed by the Owners of seventy-five percent (75%) in area of the Building Sites by a written instrument in recordable form filed of record in the office of the Recorder of Vanderburgh County, Indiana.

## **ARTICLE IX - OWNER'S ASSOCIATION**

### **9.01 Membership**

Every Owner, including the Foundation, of all or any portion of the Real Estate, shall be a member of the Owner's Association. The membership of a person or entity in the Owner's Association shall commence upon becoming an Owner and shall terminate upon ceasing to be an Owner. Membership shall be appurtenant to the Building Site giving rise to such membership and shall not be assigned or transferred except as a part of and in connection with the conveyance of the Building Site to a new Owner.

### **9.02 Member=s Rights and Duties**

Each member of the Owner's Association shall have the rights, duties and obligations set forth in this Declaration, the Articles of Incorporation and By-Laws of the Owner's Association, and all amendments duly made hereto and thereto.

### **9.03 Votes of Members**

With respect to each matter on which a member of the Owner's Association is entitled to vote, each member shall have the right to cast that number of votes equal to the number of acres of the Building Site(s) of which the member is then the Owner, rounded down to the nearest acre. Co-Owners shall have the right to cast in the aggregate only that number of votes to which a single Owner of the Co-Owner=s Building Site would be entitled. The aggregate vote of Co-Owners of any Building Site may be cast by any one of them unless an objection or protest is made by one of the Co-Owners, in which case the aggregate vote of all Co-Owners of the Building Site in question shall not be counted.

### **9.04 Board of Directors**

The number of directors of the Owner's Association shall be five (5). Until the sale of the last Building Site by Foundation, the Foundation shall be entitled to appoint three (3) of the directors, and the remaining two (2) directors shall be elected by the members (other than the Foundation) of the Owner's Association. At the first annual meeting of the members of the Owner's Association held after the sale of the last Building Site by Foundation, all directors appointed by the Foundation shall resign, and all directors of the Owner's Association shall thereafter be elected by the members of the Owner's Association.

### **9.05 Powers and Duties of Directors**

The Board of Directors of the Owner's Association shall have powers for the conduct of the affairs of the Owner's Association which are granted to the Owner's Association by law, this Declaration, or the Articles of Incorporation or By-Laws of the Owner's Association, with the sole exception of those powers specifically reserved by such documents to members of the Owner's Association, the Architectural Review Committee or the Foundation. Without limiting the generality of the foregoing, the Board of Directors shall have the power:

To construct, or cause to be constructed, the Improvements to the Common Areas, including infrastructure, and to enter into such contracts as may be required from time to time in the exercise of such powers, duties and responsibilities;

1. To own the Common Areas and all its Improvement;
2. have the right to grant easements and rights of way appurtenant to or for the benefit of the Real Estate and Improvements;
3. To manage and maintain the Common Areas;

4. To incur such debt as may be incident to its ownership of the Common Areas, and the preservation, maintenance, repair and restoration of any and all Improvements thereto, and make such regular and special assessments permitted by this Declaration;
5. To have the right to mortgage or otherwise encumber the Common Areas to secure any debt incurred in the performance of its obligations hereunder;
6. To acquire, own, hold, improve, maintain, manage, convey, transfer or dedicate real or personal property for the benefit of members of the Owner's Association;
7. To employ, enter into contracts with and delegate authority to persons or entities for the purpose of managing, conducting and performing the duties and obligations of the Owner's Association;
- h. To take such other action as reasonably necessary or appropriate to implement or enforce any of the provision of this Declaration or the Articles of Incorporation or By-Laws of the Owner's Association, including, but not limited to, the institution of legal action for collection of delinquent assessments by seeking a personal money judgment against the defaulting party or by foreclosing upon as assessment lien.

#### **9.06 Enforcement**

The Owner's Association shall be entitled to enforce the covenants, conditions, Design Guidelines, and restrictions imposed under or in accordance with this Declaration, and may pursue the rights and remedies provided in this Article and any other rights and remedies available to the Owner's Association under this Declaration or at law or in equity. The right and remedies of the Owner's Association shall be cumulative; no one right or remedy shall be construed as exclusive of any other; and the exercise of any one right or remedy by the Owner's Association shall not preclude it from exercising any other right or remedy at the same or any subsequent time.

#### **9.07 Indemnity**

Each Owner is required hereby to indemnify and hold the Owner=s Association, its agents, directors, shareholders, employees and affiliates harmless, without limit as to time or amount, from all losses, claims, damages or liabilities in any way arising out of any activity conducted on or from its Building Site, including all costs of defense and attorney=s fees.

#### **9.08 Attorney-in-Fact**

The President and any Vice President of the Owner=s Association (and of each successor in interest at any point in time) are each hereby, as a power coupled with an interest, irrevocably appointed by each of the Owners to manage, control and deal with their common interests in the Real Estate, whether joint or several, and where applicable with the Common Areas, in such manner and to such extent as may permit the Owner=s Association to more fully perform and discharge its powers, duties and

responsibilities hereunder. Each Owner=s acceptance of title to a Building Site, or any portion thereof, shall be deemed to be its full designation and appointment as herein provided.

## **ARTICLE X - ASSESSMENTS**

### **10.01 Assessment for Common Expenses**

All Owners shall be obligated to pay the assessments imposed hereunder by the Owner's Association to pay the Common Expenses. The Owners shall not be assessed for the costs of initial construction of the Improvements to the Common Areas incurred on or before December 31, 2000, which costs shall be borne by Foundation. Subject to the provisions of this Declaration, the Owner=s Association Board of Directors shall have the power and authority to determine all matters in connection with assessments, including power and authority to determine where, when and how assessments are paid to the Owner's Association.

### **10.02 Assessments Pro-Rata.**

All assessments against the Owners and Foundation made by the Owner's Association for payment of the Common Expenses shall be prorated among the Owners as follows:

1. The total number of acres of all Building Sites of Owners and Foundation at the date of the assessment shall be calculated (Assessment Acreage); and
2. The Assessment Ratio shall be in the ratio in which each Owner's total acreage in its Building Site bears to the Assessment Acreage, expressed as a percentage; and
3. The Assessment shall be an amount equal to the product obtained by multiplying the total of the Common Expenses by the Assessment Ratio.

All acreage computations shall be made to the nearest hundredth of an acre. No assessment will be made against the Foundation after sale of the last Building Site.

### **10.03 Proposed Annual Budget**

On or before the first day of November of each calendar year, the Board of Directors for the Owner=s Association ("Board") shall cause to be prepared a proposed annual budget for the ensuing calendar year, estimating the total amount of the Common Expenses required during such year, together with a reasonable amount considered by the Board to be necessary for a replacement reserve fund for capital expenditures and replacement and repair of the Improvements to the Common Areas, and within a reasonable time thereafter furnish a copy of the proposed annual budget to each Owner. The proposed annual budget shall be submitted to the Owner's Association's voting shareholders at its annual meeting, and to the extent adopted by such shareholders, the proposed annual budget shall be the basis for

assessment ("Regular Assessment"). The Regular Assessment shall be paid in such installments as may be determined from time to time by the Owner's Association, but not more frequently than monthly. All other matters pertaining to the Regular Assessment shall be determined by the Board.

#### **10.04 Supplementary Assessments**

If the amount received by the Owner's Association on account of the Regular Assessment is less than the amount required by the Owner's Association to pay the Common Expenses, whether as a result of defaults by some Owners in making payments or as a result of mistaken estimates in budgeting or otherwise, the Board may, at any time, levy supplementary assessments ("Supplementary Assessments") to cover the deficiency, including interest and costs of collection and attorneys' fees.

#### **10.05 Special Assessments**

In addition to the Regular Assessments and Supplementary Assessments, the Owner's Association may levy special assessments ("Special Assessments"), payable over such periods as the Board may determine, for the purpose of defraying, in whole or in part (to the extent the amounts in any capital reserve fund are insufficient therefor) the cost of any construction or reconstruction undertaken for repair or replacement of the Improvements to the Common Areas, or any part thereof, or for the other expenses incurred or to be incurred as provided in this Declaration for the benefit of the Owner's Association and the Owners. No Special Assessment shall be levied, however, until first approved by the Owner's Association's shareholders owning seventy-five percent (75%) of its issued voting stock.

#### **10.06 Owner's Obligation for Payment**

Each Owner's share of Common Expenses shall from date of assessment be the personal and individual debt of such Owner. If there are multiple Owners of a Building Site, each is jointly and severally liable. Suit to recover a money judgment for unpaid assessments and all costs of suit (including attorney's fees) shall be maintainable by the Owner's Association without foreclosing or waiving any lien securing the same. No Owner may exempt itself from liability for assessments by waiver of the use or enjoyment of any of the Common Areas or by abandonment of its Building Site. Except for Mortgagees and Foundation, each Owner of a Building Site shall be jointly and severally liable with each former Owner of the Building Site for all amounts which had accrued and were payable at the time of the transfer of fee simple title to the Building Site, but without prejudice to the new Owner's right of recovery against the former Owner. Foundation shall pay its share of all assessments, and if Foundation defaults in such payments, no other Owner shall be assessed to pay any shortfall caused by Foundation's default.

#### **10.07 Lien for Assessments**

The Owner's Association shall diligently attempt to collect all assessments and shall have a lien against each Building Site to secure payment by its Owner of any assessment, charge, fine, penalty or other amount due and owing hereunder, plus interest at the rate of eighteen percent (18%) per annum from the

due date of payment and all costs incident to collection, including attorney's fees and other costs of litigation. Whenever any amount due the Owner's Association remains unpaid for a period of thirty (30) days from due date, the Foundation may at any time thereafter file a statement of its lien claim in the office of the Recorder of Vanderburgh County, Indiana, substantially in the form called for and with all rights and remedies provided by the mechanic's lien laws of the State of Indiana. Nevertheless, any such lien shall be deemed to be junior to all recorded liens against or encumbrances of the Building Site of record as of the date of the filing of the lien claim. The lien may thereafter be foreclosed, and the Owner's Association shall have the same rights and remedies as provided for by the mechanic's lien laws of the State of Indiana.

## **ARTICLE XI - MISCELLANEOUS**

### **11.01 Owner's Liability Subsequent to Sale**

Upon sale of a Building Site, its Owner shall have no further liability for assessments or other obligations hereunder becoming due subsequent to recordation of the transfer in the office of the Recorder of Vanderburgh County, Indiana; provided, however, that nothing herein shall be construed to relieve an Owner from any preexisting liquidated liabilities or obligations. Furthermore, no such sale shall operate to enlarge or extend or modify any of the construction time constraints imposed in Section 7.01 above.

### **11.02 Benefits and Burdens**

The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Foundation, the Owners and their respective heirs, successors, personal representatives and assigns.

### **11.03 Notice**

Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for an Owner, (i) to the address of the Building Site if improved; or (ii) if the Building Site is not improved, to the Owner's last address known to the Foundation. If notice is to be given Foundation, it shall be given to the Evansville Industrial Foundation, Inc., Suite 100, Old Post Office Place, 100 N. W. Second Street, Evansville, IN 47708-1242.

### **11.04 Singular and Plural**

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

### **11.05 Severability**

All the terms, conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said terms, conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no

other terms, conditions, covenant, restrictions and reservations or any part thereof shall be thereby affected or impaired, but shall continue in full force and effect.

**11.06 No Waiver**

No waiver of, or failure to enforce, any of the conditions, covenants, restrictions or reservations contained within this Declaration shall be deemed to constitute a waiver of any right to enforce the same or other conditions, covenants, restrictions or reservations thereafter.

**IN WITNESS WHEREOF**, the Foundation has executed this Declaration of Protective Covenants the day and year first above written.

**EVANSVILLE INDUSTRIAL FOUNDATION, INC.**

By:

Printed Name:

Title:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )

**ON THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2000, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **Evansville Industrial Foundation, Inc.**, the Corporation which executed the foregoing instrument, who having been duly sworn, acknowledged and affirmed that he did sign said instrument as such officer for and on behalf of said Corporation, and its board of directors, and by authority granted in its Articles of Incorporation and by its governing body, that the same is his free act and deed as said officer and the free and corporate act and deed of said Corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal as of the day and year aforesaid.

My Commission Expires:

Signature of Notary Public

My County of Residence is:  
County, Indiana

Printed Name of Notary

**This instrument was prepared by** Kahn, Dees, Donovan & Kahn, LLP, Brian P. Williams, Attorney at Law, 501 Main Street, FifthA Main Financial Plaza, Suite 305, Post Office Box 3646, Evansville, Indiana 47735-3646, at the request of the parties based solely on information provided by one or more of the parties and without examination of survey, title, or abstract. The drafter assumes no liability for any errors, inaccuracies or omissions in this instrument resulting from the information provided by one or more of the parties. The parties hereto signify their assent to this disclaimer by the execution and acceptance of this instrument.

Return to: Attn: Brian P. Williams, Kahn, Dees, Donovan & Kahn, LLP, Post Office Box 3646, Evansville, Indiana 47735-3646

### **EXHIBIT "A"**

#### **TO DECLARATION OF PROTECTIVE COVENANTS FOR VANDERBURGH INDUSTRIAL PARK**

Part of the West half of Section 1, Township 5 South, Range 10 West of the Second Principal Meridian, in Vanderburgh County, Indiana and being more particularly described as follows:

Commencing at the southwest corner of said Section 1; thence North 89 degrees 35 minutes 27 seconds East (assumed bearing) along the south line thereof 435.60 feet to the Point of Beginning; thence North 00 degrees 49 minutes 16 seconds East and parallel with the west line of said Section, 960.00 feet; thence South 89 degrees 35 minutes 27 seconds West and parallel with the south line of said Section, 435.60 feet to the west line of said Section and also being the centerline of Green River Road; thence North 00 degrees 49 minutes 16 seconds East along the west and center lines thereof 277.09 feet; thence North 11 degrees 39 minutes 17 seconds East along the center line thereof 299.02 feet; thence along an established fence and tree row South 80 degrees 05 minutes 34 seconds East 247.03 feet to a wood fence corner post; thence along an established fence and tree row North 13 degrees 06 minutes 50 seconds East 108.43 feet; thence along an established fence and tree row North 13 degrees 29 minutes 17 seconds East 93.31 feet; thence along an established fence and tree row North 13 degrees 38 minutes 05 seconds East 121.44 feet; thence North 14 degrees 30 minutes 47 seconds East 52.45 feet to a 24" sassafras tree; thence North 28 degrees 31 minutes 25 seconds East 22.54 feet to the corner of a wire fence dog run; thence North 02 degrees 23 minutes 06 seconds East 11.60 feet to the opposite corner of said dog run; thence North 02 degrees 46 minutes 16 seconds East 25.87 feet to the corner of a portable metal building; thence North 04 degrees 39 minutes 14 seconds East 14.69 feet to the opposite corner of said building; thence North 15 degrees 15 minutes 39 seconds East 53.61 feet to a point on the east line of a tract of land conveyed to John P. Arhelger by deed recorded in Deed Record 165, page 498 in the office of the Recorder of Vanderburgh County, Indiana; thence along the east line thereof North 00 degrees 49 minutes 16 seconds East 7.23 feet to the south line of the north Half of the Northwest Quarter of the Southwest Quarter of said Section 1, also being the southeast corner of a tract of land conveyed to Henry Hartig by deed recorded in Deed Record 68, Page 310 in said Recorder's office; thence along the east line thereof North 16 degrees 02 minutes 57 seconds East 24.04 feet to the south line of a 0.229 acre tract of land conveyed to Jeffrey A. Carter and Amy A. Negley by deed recorded in Deed Drawer 10, Card 2418 in said Recorder's office; thence along the south line thereof South 88 degrees 00 minutes 51 seconds East 33.86 feet; thence along the east line thereof North 12 degrees 59 minutes 23 seconds East 347.81 feet; thence North 12 degrees 01 minutes 07 seconds East 304.39 feet to the north line of the Southwest Quarter of said Section 1; thence North 89 degrees 28 minutes 53 seconds West along said north line 247.50 feet to the centerline of Old Petersburg Road; thence North 15 degrees 25 minutes 51 seconds

East along the centerline of said road 137.56 feet; thence Northeasterly 761.63 feet along an arc to the right and having a radius of 3804.12 feet and subtended by a long chord having a bearing of North 21 degrees 09 minutes 54 seconds East and a length of 760.36 feet; thence South 63 degrees 03 minutes 34 seconds East 250.00 feet; thence North 27 degrees 40 minutes 54 seconds East 93.47 feet; thence North 29 degrees 20 minutes 10 seconds East 118.47 feet; thence North 60 degrees 03 minutes 54 seconds West 250.00 feet to the centerline of Old Petersburg Road; thence Northeasterly 606.88 feet along an arc to the right and having a radius of 3804.12 feet and subtended by a long chord having a bearing of North 34 degrees 51 minutes 41 seconds East and a length of 606.23 feet; thence along said centerline, North 39 degrees 25 minutes 54 seconds East 998.46 feet; thence along said centerline, North 40 degrees 49 minutes 12 seconds East 24.80 feet; thence North 89 degrees 59 minutes 24 seconds East 912.68 feet to the east line of the West Half of said Section 1; thence South 00 degrees 48 minutes 58 seconds West along said east line 4939.18 feet to the southeast corner thereof; thence South 89 degrees 00 minutes 28 seconds West 1124.49 feet; thence North 00 degrees 51 minutes 41 seconds East 310.00 feet; thence South 89 degrees 00 minutes 28 seconds West 190.00 feet; thence South 00 degrees 51 minutes 41 seconds West 310.00 feet to the south line of said Section; thence South 89 degrees 35 minutes 27 seconds West 880.26 feet along the south line thereof to the Point of Beginning, containing 227.536 acres, more or less.

Excepting therefrom the right-of-way for Old Petersburg Road along the westerly side thereof; also the right-of-way for State Road 57 along the east side thereof; and also the right-of-way for Ruston Lane along the south side thereof.

**EXHIBIT "B"**  
**TO DECLARATION OF PROTECTIVE COVENANTS FOR**  
**VANDERBURGH INDUSTRIAL PARK**

A part of the Northeast Quarter and part of the Southeast Quarter all in Section 1, Township 5 South, Range 10 West of the Second Principal Meridian, Vanderburgh County, Indiana, described as follows:

Commencing at the northwest corner of the Northeast Quarter of said Section 1; thence along the west line of said quarter section South 00 degrees 49 minutes 12 seconds West 830.21 feet to a 3/4 inch rebar with cap stamped "BLA FIRM 00030" (hereinafter referred to as "3/4 inch rebar") and being the POINT OF BEGINNING of this description; thence North 89 degrees 49 minutes 09 seconds East 790.11 feet to a 3/4 inch rebar; thence Easterly, Southeasterly, and Southerly 1045.87 feet along an arc to the right and having a radius of 662.27 feet and subtended by a long chord having a bearing of South 44 degrees 56 minutes 24 seconds East and a length of 940.53 feet to a 3/4 inch rebar; thence South 00 degrees 18 minutes 03 seconds West 1492.44 feet to a 3/4 inch rebar in the northwestern line of the right of way of the former Evansville and Indianapolis Railroad Company; thence along said northwestern line South 27 degrees 30 minutes 54 seconds West 319.52 feet to its intersection with the southern extension of the east line of the easement for right of way in favor of Southern Indiana Gas and Electric Company as described in a deed recorded in Deed Record 343, page 47 in the office of the Recorder of Vanderburgh County; thence along said east line and its southern extension North 00 degrees 58 minutes 06 seconds East 2032.31 feet to a 3/4 inch rebar at a point of intersection with a non-tangent curve concave Southwesterly; thence Northwesterly, and Westerly 679.12 feet along an arc to the left and having a radius of 597.27 feet and subtended by a long chord having a bearing of North 57 degrees 36 minutes 27 seconds West and a length of 643.12 feet to a 3/4 inch rebar intersection with a non-tangent line; thence North 00 degrees 10 minutes 51 seconds West 15.00 feet to a 3/4 inch rebar; thence South 89 degrees 49 minutes 09 seconds West 790.98 feet to a 3/4 inch rebar; thence North 00 degrees 49 minutes 12 seconds East 50.01 feet to the point of beginning and containing 7.688 acres, more or less.

TOGETHER WITH a temporary construction easement over and upon a strip twenty-five (25) feet wide, said strip being north, northeast and east and coincident with the 790.11 foot, the 1045.87 foot and the 1492.44 foot courses described in the above description and being more particularly described as follows: Commencing at the northwest corner of the Northeast Quarter of Section 1, Township 5 South Range 10 West; thence along the west line of said quarter section South 00 degrees 49 minutes 12 seconds West 805.21 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 49 minutes 09 seconds East 789.67 feet; thence Easterly, Southeasterly, and Southerly 1085.35 feet along an arc to the right and having a radius of 687.27 feet and subtended by a long chord having a bearing of South 44 degrees 56 minutes 24 seconds East and a length of 976.03 feet; thence along said northwestern line South 00 degrees 18 minutes 03 seconds West 1443.83 feet to the northeastern line of the right of way of the former Evansville and Indianapolis Railroad Company; thence along said northwestern line South 27 degrees 30 minutes 54 seconds West 54.67 feet; thence North 00 degrees 18 minutes 03 seconds East 1492.44 feet; thence Northerly, Northwesterly, and Westerly 1045.87 feet along an arc to the left and having a radius of 662.27 feet and subtended by a long chord having a bearing of North 44 degrees 56 minutes 24 seconds West and a length of 940.53 feet; thence South 89 degrees 49 minutes 09 seconds West 790.11 feet; thence North 00 degrees 49 minutes 12 seconds East 25.00 feet to the point of beginning.

ALSO TOGETHER WITH a temporary construction easement over and upon a strip of variable width, said strip being south and southwest and coincident with the south and southwestern lines of the above described 7.688 acre parcel and being more particularly described as follows: Commencing at the northwest corner of the Northwest corner of Section 1, Township 5 South, Range 10 West; thence along the west line of said quarter section South 00 degrees 49 minutes 12 seconds West 880.22 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 49 minutes 09 seconds East 790.98 feet; thence South 00 degrees 10 minutes 51 seconds East 15.00 feet to a point of intersection with a non-tangent curve concave Southwesterly; thence Easterly, and Southeasterly 679.12 feet along an arc to the right and having a radius of 597.27 feet and subtended by a long chord having a bearing of South 57 degrees 36 minutes 27 seconds East and a length of 643.12 feet to the point of intersection with a non-tangent line; thence South 00 degrees 58 minutes 06 seconds West 155.37 feet to a point of intersection with a non-tangent curve concave Southwesterly; thence Northerly, Northwesterly, and Westerly 717.84 feet along an arc to the left and having a radius of 547.27 feet and subtended by a long chord having a bearing of North 47 degrees 49 minutes 38 seconds West and a length of 667.48 feet to the point of intersection with a non-tangent line; thence North 07 degrees 29 minutes 39 seconds East 47.10 feet; thence South 88 degrees 02 minutes 24 seconds West 304.02 feet; thence South 70 degrees 37 minutes 56 seconds West 192.19 feet; thence North 02 degrees 06 minutes 02 seconds West 42.85 feet; thence South 89 degrees 49 minutes 09 seconds West 356.90 feet; thence North 00 degrees 49 minutes 12 seconds East 50.01 feet to the point of beginning.