

1036526

DECLARATION OF PROTECTIVE
COVENANTS, RESTRICTIONS, AND
CONDITIONS FOR THE
PLAT OF PARK CREST, IN THE
CITY OF WHITEWATER, JEFFERSON
COUNTY, WISCONSIN

RE: Lots 1 through 127, inclusive, in the
plat of Park Crest, in the City of
Whitewater, Jefferson County,
Wisconsin

Park Crest, LLC, a Wisconsin Limited
Liability Company (the "Developer"), owner of
the real estate in the City of Whitewater, Jefferson
County, Wisconsin, which has been platted as the
Plat of Park Crest (the "Plat"), hereby declares that
Lots 1 through 127, inclusive, being all of the Lots
in the Plat, are subject to the following restrictions,
covenants, and conditions:

THIS SPACE RESERVED FOR RECORDING DATA

Return to:

Jim Ring

Park Towne Corporation

402 Gammon Place, Ste. 300

Madison, WI 53719

Tax Parcel No: 292-0515-3232-001
292-0515-3141-000

VOL 1147 PAGE 649

RECEIVED FOR RECORD
at 8:00 o'clock A. M.

MAY 05 2000

Register of Deeds
Jefferson County, WI

Article 1: Architectural Control

The Architectural Control Committee (the "Committee") shall be responsible for
controlling and enforcing this declaration.

- 1.1 Developer Control. Until such time as the Developer ceases to have title to
any Lot in the Plat or unless Committee control is earlier ceded by the
Developer, the Developer shall be deemed "Committee" for all purposes as
that term is used in this Declaration and have sole authority to control and
enforce this Declaration.
- 1.2 Committee Control. When Developer no longer has title to any Lot that is
subject to this Declaration or upon Developer ceding committee control, the
Committee shall be comprised of three owners elected by the majority of
owners holding title to any Lot subject to this Declaration. The owner or
owners of each Lot shall have one vote for this purpose. This election of said
Committee shall be held annually on the second Monday in January at a site in
the City of Whitewater selected by the Developer or by the prior Committee.
The remaining members of the Committee shall fill vacancies created between
elections.
- 1.3 Procedures for Approval. No building, outbuilding, structure, fence, deck,
swimming pool, patio, antenna, satellite dish, above or below ground tank, or

any other similar improvement may be erected or placed on any Lot nor may the exterior appearance of existing buildings or structures be altered, including but not limited to, exterior remodeling including without limitation repainting or reshingling without the prior written approval of the Committee.

- (a) An Owner desiring to make an improvement must first submit plans, specifications and a site plan showing the following information:
 - (i) Construction details for all building structures, fences, decks, etc.
 - (ii) Proposed facades of any building, including style and location of eaves and windows.
 - (iii) Description of the materials being used.
 - (iv) Color scheme of all improvements.
 - (v) Landscape plans and specifications.
 - (vi) Mature tree preservation measures (see Section 2.1(r) of this Declaration.
 - (vii) Such other materials as the Committee may deem necessary.
 - (viii) FAA Determination of No Hazard letter if required.
- (b) The Committee may approve, conditionally approve or disapprove the proposed plans, specifications and site plan.
- (c) If the Committee does not approve or reject such plans, specifications and plot plan within 21 days after all required information has been submitted to the approving authority, approval shall be deemed to have been granted. If after the Developer no longer owns any Lot in the Plat the owners fail to designate a Committee, then such approval shall not be required.
- (d) Owners must make all improvements in conformity with approved plans and specifications. Any change or deviation from any such plans or specifications that would affect the exterior appearance of any building, structure or improvement must be submitted for further approval.

- 1.4 Liability of Committee. Neither the Developer nor the Committee shall be responsible for obtaining any approvals required by the ordinances of the City of Whitewater or Jefferson County or any other governmental bodies nor shall the Developer or the Committee be responsible in any way for compliance with applicable building codes. No action by the Developer or the Committee shall be deemed to be a representation that the plans or specifications are structurally sound or shall meet applicable codes. Neither the Developer nor the Committee shall be liable for any loss suffered on the basis of approval or disapproval of plans and specifications, all such claims for loss being specifically waived by each Lot Owner.

Article 2: General Restrictions

2.1 Restrictions, Prohibitions, and Conditions.

- (a) All Lots within the Plat shall be used for single family residential purposes only. Such use may include a professional or business office when such use is incidental to principal use as a single family residence, is less than 300 square feet in area, and the business is conducted without an identification sign or label displayed or goods for sale on the premises, and without any non-family employees. Deliveries to such an office may only be made between the hours of 8:00 a.m. and 6:00 p.m.
- (b) The following size restrictions reflect the minimum floor area for all Lots within the Plat.
- | | |
|-----------|------------------------------|
| Ranch | 1,150 SF |
| 2 Story | 1,400 SF; 700 SF main level |
| Bi-level | 1,150 SF on upper level |
| Tri-level | 1,150 SF on upper two levels |

For the purpose of determining floor area, stair openings shall be included but open or screen porches, three season rooms, attached garages and basements, even if finished off for residential use, shall be excluded.

- (c) The elevation of the Lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding Lots or the elevation or the grade of any utility easement.
- (d) No owner shall grade or obstruct any swale or drainage way, whether protected by easement or not, which is in existence at the time of

development or on Exhibit A hereto so as to impede the flow of surface water from other Lots through such swale or drainage ways. This shall include any swales or drainage ways along a public road.

- (e) No structure, planting or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with the installation and maintenance of utilities or which may change the direction or impede the flow of surface water in drainage channels in the easement.
- (f) The easement area of each Lot and all improvements therein shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- (g) All single family residential dwellings shall not exceed two stories in height and must have an attached garage and such garage must contain not less than two (2) and no more than four (4) stalls.
- (h) No plywood siding shall be allowed.
- (i) All chimneys and flues shall be fully enclosed.
- (j) All structures must be setback a minimum of 25 feet from the front lot line and corner side lot line, 10 feet from the interior side lot lines, and 30 feet from the rear lot line, unless otherwise provided on the face of the plat.
- (k) All driveways must be paved, concrete, or constructed with suitable brick pavers.
- (l) Construction of all dwellings or other improvements shall be completed within twelve (12) months of issuance of the building permit.
- (m) All vehicles shall be parked on a paved surface such as a driveway or street. There shall be no parking on grass or plant-covered areas.
- (n) Storage of commercial or service vehicles, boats, travel trailers, mobile homes, campers and other recreational vehicles, unlicensed or inoperable vehicles shall be prohibited, unless kept in the garage. For this purpose, "storage" shall mean leaving standing for a continued period of 72 hours or more. This does not prohibit the temporary parking of such vehicles for the purpose of loading or unloading.

- (o) Except for shrub and garden areas, all yard areas shall be sodded or seeded in grass lawn. All yards shall be kept free from noxious weeds. No natural or prairie lawns shall be permitted.
- (p) The owner of the Lot shall be responsible for the upkeep of the yard, including the trimming of grass and plantings, as to maintain a neat condition.
- (q) Within one (1) year of completion of home construction, owner shall install a minimum \$500 of landscaping in the form of shrubs and/or trees in the front yard.
- (r) No tree over two and one-half (2 ½) inches in diameter (trunk size) measured at a point six feet above ground shall be damaged or removed except with the permission of the Committee. During site grading and home construction, the Owner shall take all reasonable measures, including temporary fencing, to minimize potential root damage from heavy equipment and excessive grading to such trees to be preserved. In the event that such tree is damaged or removed without approval, the Committee may require the replanting or replacement of same, the cost to be borne by the Owner.

Oak trees are not to be disturbed between April 15 and July 31 every year to avoid the introduction of oak wilt. For lots 1 through 9 inclusive and 27 through 29 inclusive, home placement, site work and driveway locations shall be such so as to minimize or not impact existing oak trees, including locating foundations outside of the tree canopy where possible.

Any time there are diseased trees upon the lot, Owner agrees to prune or remove those trees promptly and under the direction of an arborist or a tree expert.

- (s) No firewood piles shall be kept outside a dwelling unless it is neatly stacked and placed in rear yard, adjacent to the residence.
- (t) No high intensity indiscriminate yard lighting shall be used.
- (u) Clothes poles and lines must be located in the rear yard and may not be permanent fixtures. Temporary clothes poles must be removed daily.

- (v) No animals, other than household pets such as cats and dogs may be raised or kept on any Lot. No animals shall be bred, raised or kept for commercial purposes on any Lot.
- (w) No Lot, as platted, shall be re-subdivided except that with the permission of the Committee a Lot may be divided and attached to adjacent Lots.
- (x) The owners of Lots 74 through 76, 84 and 85, shall be responsible for maintaining the grades, berms and plantings within the 30 foot wide landscaping buffer easement along CTH N. Any changes to the landscaping within the easement area, except for customary pruning and replacement of dead plantings, may be made only with the approval of the Committee and the City of Whitewater.

Article 3: General Provisions

- 3.1 **Termination; Amendment.** This Declaration shall run with the land and be binding upon all of the Owners of the Lots for a period of twenty five (25) years from the date this Declaration is recorded, after which time it will automatically stand renewed for successive five (5) year periods unless terminated in writing by the Owners of 2/3rds of the Lots. This Declaration may, however, be terminated at any time by an instrument signed both by: (a) those persons who in the aggregate own the fee simple interest in not less than 2/3rds of the Lots; and (b) the Developer, so long as the Developer owns any Lot. Furthermore, this Declaration may be amended at any time by a written instrument executed and acknowledged by both: (a) those persons who in the aggregate own the fee simple interest in not less than 2/3rds of the Lots; and (b) the Developer, so long as the Developer owns any Lot.
- 3.2 **Enforcement.** Any owner of any Lot shall have standing to bring proceedings at law or in equity against any owner who shall violate or attempt to violate any provision of this declaration.
- 3.3 **Applicable Laws.** All Lots are subject to all applicable zoning laws, ordinances and building codes. If there is any conflict between the declaration and any such laws, ordinances or codes, the most restrictive provision shall control.
- 3.4 **Partial Invalidity.** Invalidation of any one of these covenants or any severable part of any covenant by judgement or court order shall in no way effect any of the other provisions that shall remain in full force and effect.

- 3.5 Variances. The Committee may grant variances from the strict application of the provisions of these covenants when in the judgement of the Committee such variance is in harmony with the overall development of the Plat and will not be adverse to the development of the Plat.
- 3.6 Owner. For purposes of this Declaration, the term Owner includes a land contract purchaser but excludes a land contract seller. A land contract purchaser shall be considered an Owner holding title.
- 3.7 Plat Identification Sign. The Committee is hereby granted a plat identification sign easement of an area 15 feet by 15 feet at the southwest corner of lot 76 and the northeast corner of lot 3. The Committee may erect a plat identification sign in such easement area. Any such sign shall be architecturally designed and maintained in a good and neat appearance and maintained by the Committee. The Committee may also landscape such sign easement and such landscaping shall be likewise maintained in a good and neat appearance by the Committee. The Owner of the Lot with said sign easement shall maintain the lawn in the easement area.
- 3.8 Notice of Airport Noise. This subdivision is directly south of a privately-owned, public use airport. Standard flight patterns will result in aircraft passing over the property at altitudes of less than 1,000 feet.

Dated this 11th day of April, 2000

Park Crest, LLC



By: James J. Ring

Managing Member of JMJ Investments, LLC, sole member of Park Crest, LLC

Subscribed and sworn to before me this 11 day of April, 2000.



Notary Public, State of Wisconsin

My Commission Expires: 12/7/03

This Instrument Drafted by:
James J. Ring

1036527

VOL 1147 PAGE 656

**NOTICE OF ADJACENT AIRPORT,
GRANT OF AVIGATION EASEMENT,
ACKNOWLEDGMENT OF NOISE IMPACT
AREA AND LIMITED WAIVER OF RIGHTS**

In Re: Plat of Park Crest, in the City of Whitewater,
Jefferson County, State of Wisconsin.

This Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgment of Noise Impact Area and Limited Waiver of Rights is made this 11th day of April, 2000, by Park Crest, LLC, hereinafter referred to as Grantor, for the benefit of M. Eugene Gutzmer, owner of land known as Twin Oaks Airport more particularly described in Exhibits A, B and C, and Twin Oaks Airport, Inc. a Corporation organized and existing under the laws of the State of Wisconsin, d/b/a Twin Oaks Airport, operator of the airport, hereinafter referred to collectively as Grantee, witnesseth:

WHEREAS the Grantor is the owner in fee of the Plat of Park Crest in the City of Whitewater, Jefferson County, State of Wisconsin; and

WHEREAS the Grantee is the owner and operator of the Twin Oaks Airport; and

WHEREAS the Grantor proposes to use said Plat of Park Crest for and to develop thereon a single family lot development, which use and development has been conditioned by the City of Whitewater, a Wisconsin municipal corporation, upon the granting of this Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgement of Noise Impact Area and Limited Waiver of Rights; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and conditions contained herein, the Grantor hereby agrees and acknowledges, for itself and its successors and assigns, as follows:

1. Grantor, for itself and each purchaser of a Lot or Outlot in the Plat of Park Crest, acknowledges the following regarding the current and potential future operation of certain adjacent property located to the north of the Plat of Park Crest, more particularly described in Exhibit A:
 - A. This property is operated as Twin Oaks Airport.
 - B. Twin Oaks Airport is privately owned but open to public air traffic.

RECEIVED FOR RECORD
at 8:00 o'clock A. M

MAY 05 2000
[Signature]
Register of Deeds
Jefferson County, WI

THIS SPACE RESERVED FOR RECORDING DATA

Return to:

Jim Ring
Park Towne Corp.
402 Gammon Pl. Ste. 300
Tax Parcel No.: Madison, WI 53719

004-0515-2933-000
004-0515-3044-000 ✓
004-0515-3111-000 ✓
004-0515-3114-000 ✓
292-0515-3141-000
292-0515-3232-001 -

- C. The runway is of sod construction and configured such that standard flight patterns will result in aircraft passing over the Plat of Park Crest at altitudes of less than one thousand feet.
- D. The airport controls sufficient property for the potential construction of a new runway that would run in a general northeast to southwest direction past the northwest corner of the Plat of Park Crest.
- E. Twin Oaks Airport is not presently operated during winter months.
- F. Primary usage of Twin Oaks Airport is by ultra-light aircraft, and non-ultra-light single and double piston engine airplanes.
- G. Subject to government regulation and approval, the ownership, configuration, and use of the airport is subject to change.

2. Grantor does hereby grant a permanent avigation easement to Grantee over that portion of the following outlot and lots of the Plat of Park Crest, in the City of Whitewater, Jefferson County, State of Wisconsin, all as hereinafter set forth:

- A. The easement area shall be over that area of Outlot 4 and Lots 12 through 17 inclusive, 63 through 67 inclusive, 93 through 96 inclusive, and 105 through 109 inclusive, above a 20:1 slope that begins at the center point of the south end of the now existing runway, to wit: latitude 42-5-00.0 and longitude 088-45-33.4, elevation 822.20 USGS datum.
- B. No landscaping, crops, or structures of any kind shall be allowed within said easement area, to wit, above the above-defined slope.
- C. Prior to any construction on certain Lots within the Plat of Park Crest, the owner of the Lot must file a notice with the Federal Aviation Administration on FAA form 7460-1, Notice of Proposed Construction or Alteration, providing information on the proposed location and elevation of the construction. Prior to Developer's approval of the construction plans pursuant to the Declaration of Protective Covenants, Restrictions, and Conditions for the Plat of Park Crest, and the owner's start of construction, the owner must receive a Determination of No Hazard Letter from the FAA and provide a copy of same to the Developer. Based upon present guidelines provided by the Federal Aviation Administration, the Lots identified in 2.A. above will require said notice to be filed and said determination letter to be issued. The Federal Aviation Administration may determine that other Lots within the Plat of Park Crest will require said notice to be filed and said determination letter issued.
- D. Notwithstanding the foregoing, it is acknowledged that the present surface elevation of Outlot 4 is above the above-defined slope. This Notice of

Adjacent Airport, Grant of Avigation Easement, Acknowledgment of Noise Impact Area and Limited Waiver of Rights shall not require Grantor, or permit Grantee or any third party without the authorization of Grantor, to lower the present surface elevation of Outlot 4. Grantor further does and shall continue to have the right to maintain ground cover and crops on Outlot 4 provided that same does not exceed the height of mature corn.

E. If at any time any portion of the runway at Twin Oaks Airport or successor is reconstructed as to remove any of the aforementioned Outlot and or Lots from the Small Aircraft Approach Category Protection Zone as determined by the Federal Aviation Administration, this paragraph 2 shall become null and void as to said Outlot or Lots.

3. All exterior lighting within Plat of Park Crest, in the City of Whitewater, Jefferson County, Wisconsin shall be designed and installed as downlighting. No uplighting shall be permitted.

4. Grantor acknowledges that Plat of Park Crest is within a Noise Impacted Area by virtue of its location adjacent to Twin Oaks Airport or successor.

5. Except as set forth at paragraph 6 below, Grantor, for itself and its successors and assigns, waives its right to seek to restrain, enjoin or impede the use of Twin Oaks Airport or its successor, because of noise arising from the use of said airport provided that the airplanes utilizing said airport are limited to ultra-light aircraft and non-ultra-light single and double piston engine airplanes or aircraft of similar or less noise level and the runway is limited to the existing runway (whether sod or paved) or the runway specified in paragraph 1.d. above (whether sod or paved), and further provided that said airport and the airplanes utilizing same utilize usual and customary operational practices.

6. Notwithstanding this Notice of Adjacent Airport, Grant of Aviation Easement, Acknowledgment of Noise Impact Area and Limited Waiver of Rights, Grantor, for itself and its successors and assigns, does not release any claim for damages against Grantee or those utilizing Twin Oaks Airport or successor by virtue of physical damage to property or life lying below the easement area nor from noise arising from the operation of Twin Oaks Airport or successor arising from other than usual and customary practices operation of the airport and/or airplanes utilizing said airport.

7. This Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgment of Noise Impact Area, and Limited Waiver of Rights shall run with the land, as hereinabove described, for the benefit of the Grantee, and its successors and assigns in the ownership, use and operation of the aforesaid Twin Oaks Airport or successor.

8. Grantee, its successors and assigns, shall have and hold this Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgment of Noise Impact Area and Limited

- 4 -

Waiver of Rights and all rights appertaining thereto until said airport shall be abandoned and shall cease to be used for airport purposes, at which time this Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgement of Noise Impact Area and Limited Waiver of Rights shall become null and void.

9. Notwithstanding that this Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgment of Noise Impact Area and Limited Waiver of Rights is made for the benefit of Grantee and its successors and assigns, subject to and only with the written consent of the City of Whitewater as authorized by its Common Council, this Notice of Adjacent Airport, Grant of Avigation Easement, Acknowledgment of Noise Impact Area and Limited Waiver of Rights may be amended or terminated at any time by the Grantor, and when Grantor no longer owns any Outlot or Lot within the Plat of Park Crest by two thirds majority of its successors and assigns.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal the day and year first above written.

PARK CREST, LLC

By: James J. Ring (SEAL)
James J. Ring, Managing Member of JMJ
Investments, LLC, sole member of Park Crest, LLC

NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) ss.:
COUNTY OF DANE)

Personally, came before me, this 11 day of April, 2000, James J. Ring to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Mary L. Feldt
Notary Public, State of Wisconsin
My Commission: 12/7/03

Prepared By: J. Ring

EXHIBIT "A"

PARCEL A

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Part of the SW 1/4 of the SW 1/4 of Section 29 and parts of the NE 1/4 of NE 1/4 and SE 1/4 of SE 1/4 of Section 30, T 5 N, R 15 E, Town of Cold Spring, Jefferson County, Wisconsin described as follows:

Commencing at the 1 1/4" I.D. pipe of record at the SE corner of said Section 30 (SW corner of Section 29) and being the POINT OF BEGINNING of this description; thence N 89° 53' 36" W (assumed bearing) on the section line, 1283.69' to a 1" I.D. pipe at the top of a ditch embankment; thence continue N 89° 53' 36" W 35.30' to a point in a north-south ditch; thence N 0° 56' 35" W, 1557.20' to a point of intersection of said ditch and the southwesterly right of way line of CTH "N"; thence S 49° 56' 56" E on said right of way line, 20.65' to a 1" I.D. pipe; thence continue S 49° 56' 56" E on the right of way line, 175.03' to a 1" I.D. pipe; thence S 49° 20' 56" E on said right of way line, 390.75' to a 1" I.D. pipe; thence continue S 49° 20' 56" E on said right of way line, 1145.35' to a 1" I.D. pipe at a point of curve; thence Southeasterly, 534.20' along the arc of a 1096.28' radius curve to the right on said southwesterly right of way line of CTH "N", chord bearing S 35° 23' 22" E, 528.93' to a 1" I.D. pipe at the intersection of said right of way with the south line of Section 29; thence S 89° 39' 41" W on the section line, 276.91' to the POINT OF BEGINNING. Containing 31.4013 acres, more or less, as surveyed and subject to utility easement recorded or unrecorded as same may exist.

PARCEL B

Part of the SW 1/4 of the SW 1/4 of Section 29 and part of the SE 1/4 of the SE 1/4 of Section 30, T 5 N, R 15 E, Town of Cold Spring, Jefferson County, Wisconsin described as follows:

Commencing at the 1 1/4" I.D. pipe of record at the SW corner of said Section 29; thence N 89° 39' 41" E (assumed bearing) on the Section line, 383.43' to a point at the intersection with the easterly right of way line of CTH "N" and being the POINT OF BEGINNING; thence Northwesterly, 621.27' along the arc of a 1196.28' radius curve to the left on the northeasterly right of way line of CTH "N", chord bearing N 34° 28' 16" W, 614.31' to a 1" I.D. pipe at the point ending of said curve; thence N 49° 20' 56" W on said right of way line, 1061.31' to a 1" I.D. pipe at the intersection with the southwesterly right of way line of Trewyn Road, a Town Road (formerly CTH "N"); thence continue N 49° 20' 56" W on the northeasterly right of way of CTH "N", 78.45' to a point; thence N 40° 39' E, 13.52' to a 1" I.D. pipe on the extended centerline of Trewyn Road; thence S 64° 00' 12" E on the centerline of Trewyn Road according to previous recorded Certified Survey Maps and the mentioned extension thereof, 1343.24' to a 1/2" I.D. pipe; thence S 00° 32' 12" E along the centerline of right of way for Trewyn Road, 670.41' to a 1" I.D. pipe at the intersection with the south line of said Section 29; thence S 89° 39' 41" W on the section line, 10.10' to the POINT OF BEGINNING. Containing 7.2203 acres, more or less, as surveyed and being subject to an easement for overhead utility lines along the right of way of Trewyn Road and subject to a 33' right of way for Trewyn Road along the northerly and easterly lines of the above described parcel.

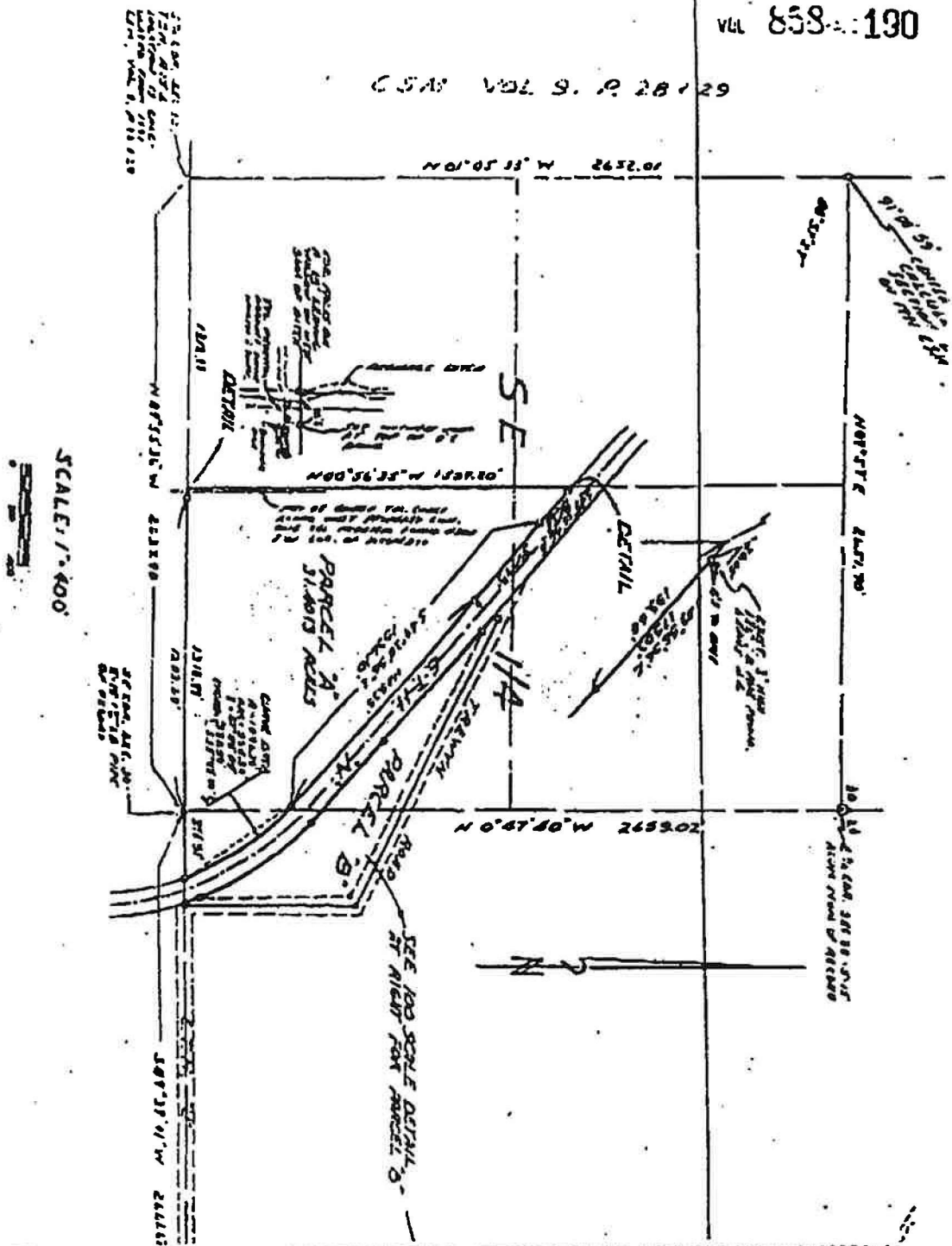
AS SHOWN on a field survey by ABEX Survey Company of Cambridge, WI on survey map Drg. No. 1844 a copy of which is annexed hereto as Exhibit "B" and by this reference made a part hereof.

BEING a portion of the premises conveyed to Grantor by Deed dated August 10, 1991, recorded in the Office of the Register for Jefferson County, Wisconsin on October 22, 1991, in Vol. 782 of Records, page 89R, as Document No. 478774.

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EXHIBIT "B"

C.S.A. VOL 9. P. 28/29



**EXHIBIT C
TO
NOTICE OF ADJACENT AIRPORT,
GRANT OF AVIGATION EASEMENT, ACKNOWLEDGMENT OF NOISE IMPACT
AREA AND LIMITED WAIVER OF RIGHTS**

LEGAL DESCRIPTION

Land situated in the County of Jefferson, State of Wisconsin, to-wit: the Northeast quarter of Northeast quarter of Section 31 and Southeast quarter of Northeast quarter of Section 31. All in Town 5 North, Range 15 East, town of Cold Spring, Jefferson County, Wisconsin.