

DECLARATION OF RESTRICTIVE COVENANTS AND DEDICATION OF PUBLIC FRONTAGE ROAD

94-063027

RECITALS:

A: The undersigned (individually or collectively called "Owner") is the owner of certain real estate located in Allen County, Indiana, which real estate is legally described as follows: BLOCK 'A' IN THE PLAT OF LIMA MEADOWS, SECTION 1 AS RECORDED IN PLAT CABINET C PAGE 40 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA ("Real Estate").

B. The Real Estate has its frontage along LIMA ROAD in Allen County, Indiana, and concern has been expressed over possible increased traffic flow on LIMA ROAD which may be generated by development of certain neighboring real estate legally described as follows: A PART OF THE PLAT OF ROUSSEAU'S OUT LOTS AS RECORDED IN PLAT BOOK 7B PAGE 50 AND MORE FULLY DESCRIBED AS FOLLOWS: THE NORTH 168 FEET OF THE WEST 220 FEET OF LOT #2 IN ROUSSEAU'S OUT LOTS, AS RECORDED IN PLAT BOOK 7B PAGE 50 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, IN THE SOUTH ONE HALF OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 31 NORTH, RANGE 12 EAST. THE PROPERTY IS ALSO KNOWN AS ALLEN COUNTY REAL ESTATE KEY NUMBER 29-3804-0015 AND 29-3804-0022 ("Affected Real Estate").

94 NOV 4 PM 3:09
ALLEN COUNTY CLERK

C. To insure the orderly development of the Affected Real Estate, in conformity with the Comprehensive Plan of Allen County, Indiana, and in light of said traffic concerns, the Plan Commission has adopted the LIMA ROAD Access Plan, which is on file at the Plan Commission's office and is incorporated by reference in this document.

D. The Plan requires that in order to obtain Plan Commission approval of a development plan for use of the Affected Real Estate, an owner of property in it must agree to construct certain public access roads and to pay a pro rata share of the cost of construction of a permanent access and entrance to the Affected Real Estate, before such owner may be issued an occupancy permit by the Plan Commission for improvements constructed on his portion of the Affected Real Estate.

E. Owner has agreed to record certain restrictive covenants in the Office of the Recorder of Allen County, Indiana, on order to insure the orderly development of the Real Estate, in conformity with the Plan.

DECLARATION AND DEDICATION

Owner covenants that the following restrictions are imposed upon the Real Estate, and makes the following grants, dedication and agreements with regard to it:

1. Upon implementation of the Plan by the Plan Commission, and receipt by Owner of notification of such Plan implementation, Owner agrees to construct a road accessible to the public ("Public Frontage Road"), subject to the requirements set forth in this document, solely at Owner's expense, along the entire frontage of the Real Estate which is acceptable to the Plan Commission, within a reasonable period of time after such notification is made, weather permitting. Owner further agrees that written approval of plans and specifications for that written approval of plans and specifications for construction of the Public Frontage Road must be obtained from the Plan Commission, or its successor agency, prior to its construction.

DULY ENTERED FOR TAXATION

NOV 4 1994

INSTRUMENT 94 10172

Paul K. Riley
AUDITOR OF ALLEN COUNTY

10
ck
clo

9463027

2. Owner dedicates the Public Frontage Road for road purposes, to the general public as well as adjacent and nearby property owners and quasi-public parties, including by way of illustration and not by way of limitation, emergency vehicles, school vehicles, public utility vehicles, delivery vehicles and vehicles owned and operated by the general public; and grants a perpetual right and easement for such road purposes over and across the Public Frontage Road.
3. Owner agrees and understands that the Public Frontage Road will not be accepted by Allen County, Indiana as part of its public road system for maintenance or otherwise; that all maintenance responsibilities and maintenance expenses for the Public Access Road located on the Real Estate shall be borne by Owner; and that the Public Frontage Road shall be maintained in a manner acceptable to the Plan Commission, or its successor agency.
4. Should the Plan approved by the Plan Commission provide for construction of a permanent access road ("Permanent Access") directly from the Real Estate to the Road, the Permanent Access shall be constructed in a manner consistent with access standards as set forth in the Fort Wayne-New Haven-Allen County Access Standards Manual, and the Indiana Department of Highways Driveway Permit Handbook, if applicable.
5. Should the Plan not permit Permanent Access directly from the Real Estate to the Road, it is expressly agreed by Owner that any existing access from the Real Estate to the Road will not be for permanent use, and such existing access shall be completely closed and removed, including any pavement, surface or fill materials and other improvements, within one hundred twenty (120) days of the earlier of the following described events:
 - a. Completion of all improvements of an approved Public Frontage Road from the Real Estate to a Permanent Access to the Road in a manner acceptable to the Plan Commission.
 - b. Receipt by Owner, or his successor in title, of written notification from the Plan Commission, or its successor agency, such notice to be deemed satisfied by sending the same by certified mail, return receipt requested, that Owner's existing access to the Road must be closed as a result of the installation of an approved Permanent Access connecting the Real Estate to the Road.
6. At the time the Permanent Access must be constructed, Owner further agrees to pay for a pro rata share of the total cost of its construction, along with those owners of property within the Affected Real Estate who have by then submitted and received development plan approval from the Plan Commission for industrial or commercial developments upon their property.
7. Owner further agrees to construct upon the Real Estate, any necessary Public Frontage Road, upon the written request of the Plan Commission, and to have any road so constructed, inspected and approved by the Plan Commission, or its designee.
8. Owner further agrees that any Certificate of Occupancy issued by the Plan Commission for an improvement upon the Real Estate may be revoked by the Plan Commission if removal of an existing temporary access, payment of amounts due for construction of a Permanent Access, or repairs deemed necessary following inspection, are not timely and properly accomplished by Owner after written notice is furnished to him by the Plan Commission, or its designated representative.
9. Owner further agrees that a breach of any of the covenants on this document may be enforced by any aggrieved owner of property within the Affected Real Estate, or the Plan Commission, through all available legal or equitable remedies, including injunctive relief, together with the reasonable attorney fees and costs incurred by each enforcing party. The remedies provided to the Plan Commission in this paragraph 9 are cumulative to those remedies provided under paragraph 8 above.
10. Owner also agrees that the covenants contained in this document shall be deemed to be a part of every future conveyance, contract and transaction for the sale of all or any portion of the Real Estate; that they are intended

9 4 6 3 0 2 7

for the mutual benefit and protection of Owner, future grantees of the Real Estate, the public and adjacent property owners; that the covenants shall run with the land, inure to the benefit of and be enforceable by Owner, adjacent property owners and the Plan Commission; and that the covenants shall be binding upon Owner and Owner's legal and personal representatives, heirs, successors, grantees and assigns.


11. This dedication and grant is subject to the Plan, and the Plan is incorporated in by reference in this document, as the same exists on the date of execution of this document.

12. Owner further agrees that any amendment to this document or any release of the covenants and obligations imposed upon the Owner under it, must first be approved in writing by the Plan Commission, or its successor in interest.

13. Reference to the masculine gender shall include the feminine, or the neuter, as may be appropriate for a party. Likewise the singular includes the plural, if appropriate.

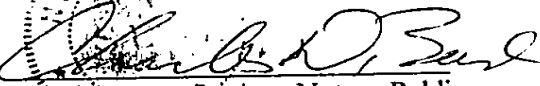
IN WITNESS WHEREOF, the parties hereto have executed this agreement on this 27th day of September, 1994.

The Westbridge Company, Inc.


M. Jack Powell, Jr., President
STATE OF INDIANA)

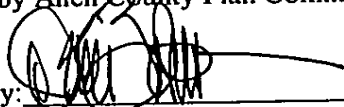
) ss:
COUNTY OF ALLEN)

*, President of The Westbridge Company, Inc.,
Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared M. JACK POWELL, JR. and acknowledged the execution of the foregoing instrument as his/her/their personal and individual act(s) and deed(s) for the uses and purposes therein set forth. WITNESS my hand and official seal this 27th day of September, 1994.


Charles D. Bash Notary Public
Resident of Allen County, Indiana

My Commission expires 1/30/96

Approved this 20th day of October, 1994 by Allen County Plan Commission

By: 
Dennis Gordon

Prepared by M. Jack Powell, Jr.

9 4 6 3 0 2 7