

**DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS AND EASEMENTS FOR THE DEVELOPMENT OF  
A TRACT OF LAND LOCATED IN HUNTINGTON COUNTY,  
INDIANA, BY NORTHPOINT BUSINESS PARK, INC.**

This Declaration is being made this 23rd day of September, 1997, by NORTHPOINT BUSINESS PARK, INC. an Indiana Corporation (the "Developer" and the "Owner", hereinafter collectively referred to as the "Declarant").

WHEREAS, Developer/Owner possesses the fee simple title to the following described real estate, the ("Tract"), located in Huntington County, Indiana, to-wit:

Beginning at the Southeast corner of tract No.5 in the Reserve of 10 Sections of land granted to John B. Richardville at the Forks of the Wabash River, thence North 00 degrees 20 minutes 09 seconds East 1792.68 feet along the East line of said Tract No.5, thence South 89 degrees 36 minutes 25 seconds West 1326.41 feet to a post corner, thence South 00 degrees 44 minutes 02 seconds West 226.50 feet to a post corner, thence North 89 degrees 54 minutes 14 seconds West 925.96 feet to a wood post, thence South 00 degrees 25 minutes 31 seconds West 1253.62 feet to a pipe, thence South 90 degrees 00 minutes 00 seconds East 714.00 feet, thence South 00 degrees 25 minutes 34 seconds West 305.05 feet to the South line of said Tract No.5 and Centerline of Hauenstein Road, thence South 90 degrees 00 minutes 00 seconds East 1542.30 to the point of beginning and containing 82.66 acres.

Being 82.66 acres in the Northwest quarter of Section 9, Township 28 North, Range 9 East, Huntington County, Indiana and subject to existing easements and rights-of-way for Hauenstein Road.

And:

Beginning at a point on the South line of Tract No. 5 in the Reserve of 10 Sections of land granted to John B. Richardville at the Forks of the Wabash River, said point being on the North-South centerline of said Tract No.5, thence North 90 degrees 00 minutes 00 seconds

East 714.00 feet along said South line and centerline of County Road 450 North, thence North 00 degrees 33 minutes 09 seconds East 305.05 feet, thence South 90 degrees 00 minutes 00 seconds West 714.00 feet to a property line fence, thence South 00 degrees 33 minutes 09 seconds West 305.05 feet to the point of beginning and containing 5.00 acres.

EXCEPTING THEREFROM a tract of land located in Tract No.5 in the Reserve of Ten Sections granted to John B. Richardville at the forks of the Wabash River, in Township 28 North, Range 9 East, in Huntington County, the State of Indiana, more fully described as follows:

Commencing at the Southeast Corner of said Tract No.5 marked by a Railroad spike found this survey; thence West (Record), along the South line of said Tract No. 5, for 284.00 feet to the point of beginning marked by a Railroad Spike set this survey; thence continuing West, along the South line of said Tract No.5, for 550.00 feet to a Railroad Spike set this survey; thence N 00° 03' 25" E for 446.00 feet to a Rebar set this survey; thence East, parallel to the South line of said Tract No.5, for 550.00 feet to a Rebar set this survey; then S 00° 03' 25" W for 446.00 feet to the point of beginning, said tract containing 5.63 Acres, more or less, and being subject to all public road rights-of-way and all easements of record.

WHEREAS, Declarant, by execution of this Declaration, hereby creates a tract of land to be known as "Northpoint Business Park", to be used for the development of commercial business locations for individual ownership by persons or entities desiring to own the same.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

#### ARTICLE I.

Definition: The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

Section 1. "Parcel", shall mean one of the tracts of land within Northpoint Business Park, which is purchased from Declarant in order to develop a business building location.

Section 2. "Owner" shall mean the purchaser of a fee simple ownership interest in a parcel of real estate acquired from Declarant.

Section 3. "Common Area" shall mean all areas dedicated by the Declarant for the common use and enjoyment of the owners of all parcels of real estate located within the tract being developed by the Declarant.

Section 4. Northpoint Lake Association, Inc. shall be a corporation which may be formed by the Declarant which shall be comprised of owners of all parcels within Northpoint Business Park which make use of Northpoint Lake for purposes of storm water drainage control; said association will be responsible for maintenance of the lake, fountain, drainage areas and common areas surrounding the lake and such other matters as are associated with the lake and the continued use and maintenance of the same.

Section 5. "Northpoint Property Owners Association, Inc." shall mean a not-for-profit Indiana Corporation to be formed by the Declarant.

Section 6. "Board of Directors" shall mean the governing body of the Northpoint Property Owners Association, Inc. elected by the co-owners in accordance with the By-Laws of the Association.

Section 7. "By-Laws" shall mean the By-Laws of Northpoint Property Owners Association, Inc. which provide for the administration and management of the parcels within Northpoint Business Park as required in conformity with the Declaration and the Restrictions contained herein.

## ARTICLE II.

### PROPERTY RIGHTS

Section 1. Owners' Easement Of Enjoyment. Every Owner

shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Parcel, subject to the following:

The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Any such dedication or transfer shall be signed by the President and Secretary of said Association unless the corporate By-Laws provide otherwise.

### ARTICLE III.

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Parcel which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Parcel which is subject to assessments.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be entitled to one vote for each Parcel owned. More than one person may hold an interest in any Parcel, but in no event shall more than one { 1 } vote be cast with respect to any Parcel.

Class B. The Class B member{s} shall be Northpoint Business Park, Inc. which shall be entitled to one hundred { 100 } votes for all undivided land owned by Declarant. Class B membership shall cease upon the happening of the following event.

When title to all Parcels in Northpoint Business Park have been conveyed or when Declarant relinquishes Class B membership, whichever event shall first occur.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation Of The Lien and Personal Obligation Of Assessments.

Each Owner of any Parcel, excepting Northpoint Business Park, Inc. by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual or special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the parcel and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to said Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment.

(a) The annual assessment shall not exceed the sum of Five Hundred Dollars (\$500.00) and shall be paid by the Owner of each Parcel, excepting Northpoint Business Park, Inc. upon the conveyance of a deed from Northpoint Business Park, Inc. to the Owner and annually thereafter on January 2, of each year immediately following the year of conveyance. During the first year of conveyance there shall be no pro- ration of the annual assessment.

(b) After December 31, 1998 the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year by a vote or written consent by fifty-one percent (51%) of each class of members.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount stipulated in (a) or (b) above.

Section 4. Special Assessments For Capital Improvements.

In addition to the annual assessments authorized above, the Declarant, or the Association, may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. The special assessment shall not exceed the sum of Five Hundred Dollars (\$500.00) without the prior written consent of a majority of the Parcel Owners.

Section 5. Uniform Rate or Percentage of Assessment.

Both annual and special assessments must be fixed at a uniform or percentage rate for all Parcels and may be collected on a quarterly or annual basis.

Section 6. Date of Commencement of Annual Assessments:

Due Dates. The annual assessments provided for herein shall commence on the date of the sale of the first Parcel. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year from the date of the conveyance of the first Parcel. The Declarant, or the Board of Directors shall fix the amount of the annual assessment against each Parcel at least thirty (30) days in advance of each annual assessment period which, with the exception of the first annual assessment year, shall be determined on a calendar year basis. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Declarant, or the Board of Directors. The Declarant, or the Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Parcel have been paid.

Section 7. Effect of Nonpayment of Assessments: Remedies of

Declarant or the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Declarant, or the Association may bring an action at

law against the Owner personally obligated to pay the same, or foreclose the lien against the property and shall be entitled to collect all costs and expenses associated with the enforcement thereof, including attorney fees.

Section 8.            Subordination of the Lien to Mortgages. –The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V.

### ARCHITECTURAL CONTROL

Section 1.    The Architectural Control Committee is to be comprised of the Declarant only. For the improvement of any Parcel, two (2) sets of all drawings, together with a copy of the computer program and landscaping plan shall be first submitted to the Architectural Control Committee for approval of the site plan, type of structure, use of materials, landscaping plan, location of improvements and such other determination as might be determined by the committee. No improvements may be commenced upon any parcel without the written approval of the Architectural Control Committee.

Section 2.    At such time as the Declarant determines that all parcels have been sold that will be sold in the project, then, at that time, the job and function of the Architectural Control Committee shall revert to and be administered by the Board of Directors of the Northpoint Property Owners Association, Inc. and/or their assignees.

ARTICLE VI.

GENERAL PROVISIONS

Section 1. No building shall be built on any Parcel having a ground floor area upon the foundation of less than one thousand five hundred (1500) square feet for a one-story building, and not less than one thousand fifty (1050) square feet on the ground floor for a building of more than one (1) story with a total of not less than two thousand, one hundred (2,100) square feet for both floors, without prior written consent of the Architectural Control Committee.

Section 2. No building shall be located on any Parcel nearer to the front line, or nearer to the side street line than the minimum building set back line as required by the zoning requirement of the City of Huntington, Indiana. In any event, no building shall be located nearer than a distance of ten (10) feet to an interior Parcel line.

Section 3. There shall be no further subdivision of Parcels unless the Architectural Control Committee has reviewed the change and approved the same.

Section 4. No house trailer, mobile structure, shack, barn, outbuilding or temporary structure shall be placed upon any developed Parcel other than shall be reasonably necessary during the construction phase of any building or structure being erected upon the Parcel. A mobile office used off-site in connection with the business operated from a Parcel may be allowed if proper screening is provided, after receiving written permission from the Architectural Control Committee.

Section 5. No building or improvement shall be constructed upon any Parcel which makes use of a foundation or basement support structure made primarily of wood construction. It is intended that all basement walls and foundations are to be constructed with approved strength concrete of which shall be of a 2,500 PSI load strength or greater.

Section 6. Easements for the installation and maintenance of utilities and drainage facilities shall be reserved on each Parcel as shown on the development plan as approved by the



Architectural Control Committee. No Owner of any Parcel shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the business park) .Nothing herein shall be construed to prohibit street lighting or ornamental lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Parcels and shall carry not less than three (3) wires and have a capacity of not less than two hundred (200) amperes. Any public or private utility or service provider charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such public, or private utility or service provider shall be responsible for damage it does to walks, driveways, lawn or landscaping which may result from the installation, repair or maintenance to such utility or service.

Section 7. No structure of a temporary character, trailer, boat, boat trailer, camper or camping trailer,~ basement, tent, shack, garage, barn or other outbuilding shall be used on any Parcel as a residence either temporarily or permanently.

Section 8. The owners of all Parcels shall be required to have graded and seeded lawns and to have their property landscaped, which yards and landscaping shall be fully completed within sixty (60) days from the time of the occupancy of the Owner. The sixty (60) day time period shall commence from the date that the owner takes occupancy of the premises, or from the date that the growing season for landscaping shrubbery and lawns first begin and shall be completed within that time period so as to have been finished by the time that said growing season ends, all on an annual basis. All lawns are to be mowed and maintained on a regular basis and are to be kept free from rubbish and debris.

Section 9. Surface drainage easements and Common Areas used for drainage purposes are intended for either periodic or occasional use as conductors for the flow of surface water runoff

to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the City Engineer or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed. All parcels utilizing Northpoint Lake shall be a member of the Northpoint Lake Association, Inc. and shall be subject to its rules and regulations.

Section 10. No noxious, illegal, or offensive activity shall be conducted upon any Parcel, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or surrounding community.

Section 11. No boat, boat trailer, recreational vehicle, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked on any Parcel for periods in excess of forty-eight (48) hours. A pick-up truck or a van would be exempt from this restriction. However, trucks, other than a pick-up or van, which are rated at more than one (1) ton shall not at any time be permitted to be parked for any period of time other than for purposes of loading or unloading, entering or exiting the vehicle, unless the Architectural Control Committee has given express written authority therefore.

Section 12. No billboards of any kind shall be displayed on any Parcel. All signage shall be restricted to the business use of the occupant of the improvements located within each Parcel. All signage is to be approved by the Architectural Control Committee and all signage is to be in compliance with local sign regulations, or ordinances. Declarant may establish areas for common signage within the development, all at the discretion of the Declarant.

Section 13. There shall not be permitted on any Parcel any television or satellite receiving dish or radio antenna unless approved in writing by the Architectural Control Committee, as to size, location, type and screening of the same.

Section 14. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Parcel. No derrick or other structure

designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Parcel.

Section 15. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Parcel.

Section 16. No Parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All dumpsters, or trash containers shall be enclosed from view by a brick, masonry, or sided enclosure as approved by the Architectural Control Committee. No incinerators or outside incinerators shall be kept or allowed on any Parcel.

Section 17. All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building on any Parcels of said Business Park, and no exposed roll roofing of any description or character shall be used on the roof of any building on any of said Parcels except applications in valleys and areas trapped that need to have special application to prevent leaking. There shall be no unpainted vertical walls, roofs, or structures of any kind constructed upon any parcel without the prior written consent of the Architectural Control Committee.

Section 18. All driveways from the street to the improvements shall be poured concrete or asphalt and not less than sixteen (16) feet in width. All parking or drive areas shall be poured concrete or asphalt. There shall be no unpaved vehicle surfaces. All paved or concrete surfaces are to be properly maintained and are to be constructed and completed within sixty (60) days of occupancy unless otherwise agreed to in writing by the Architectural Control Committee.

Section 19. Each parcel shall be subject to a ten (10) foot drainage and utility easement on all said property lines and along the rear property line of each parcel or such other footage as may be required by any zoning rule or regulation, or as required by any utility service provider, or Architectural Control Committee. Said easements are to be reserved and granted to all public utility companies and their respective successors and assigns or the City

of Huntington, or the Architectural Control Committee to install, lay, erect, construct, renew, operate, repair, replace, maintain every type of gas main, water main, sewer main, and storm water drainage, or electrical service as may be required to provide utility services and storm water drainage throughout the development and to service each and every parcel thereof. All utilities are to be buried underground. No above ground utility services will be permitted.

Section 20. No rain and storm water run off or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewage System, which shall be a separate sewer system from the storm water and surface water run off sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned storm water and surface water run off sewer system.

Section 21. Before any Parcel may be used or occupied such user or Owner shall first obtain from the Huntington City Zoning Administrator, an Improvement Location Permit and Certificate of Occupancy as required by the Huntington City Zoning Ordinance.

Additionally, all improvements constructed upon any parcel shall be so constructed and used in compliance with all state and local laws, ordinances, municipal and/or county codes, including the rules and regulations of the County Board of Health, as the same now exists, or as they may hereinafter be amended or modified.

Declarant reserves the right to insist upon strict compliance therewith and any Parcel Owner receiving notice of non-compliance with said laws, rules or regulations shall have ten (10) days from the date of said notice to correct the violation and upon failure to do so, Declarant may remedy the violation within a reasonable time thereafter and all costs, fines, penalties, damages and expenses whatsoever associated therewith, including attorneys fees shall be paid to the Declarant forthwith upon receipt of an itemized statement thereof from Declarant.

Failure to forthwith pay the same shall entitle Declarant to hold a lien against the involved Parcel and to foreclose the lien in the same manner as mortgages are foreclosed and Declarant may

seek a personal money judgment for the same from the Parcel Owner, or occupant of the involved Parcel.

Additionally, Declarant may seek injunction relief to restrain future violations if deemed necessary by Declarant.

Section 22. Yard Lights. A dusk to dawn light of a type and location approved by the Architectural Control Committee shall be installed by the Parcel Owner on each Parcel in front of a building line to be located no further than 15 feet from the front Parcel line or roadway right-of-way.

Section 23. The Declarant, Northpoint Business Park, Inc., or any other Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 24. There shall be no outside storage of any materials, supplies, or inventory of any kind or nature whatsoever without the approval of the Architectural Control Committee.

Section 25. All vehicles on or about each Parcel are to be properly licensed, registered with the Bureau of Motor Vehicles, and be operable so as to be readily driveable. All Parcel development plans must be designated so as to permit trucks to have access to loading and unloading areas without additional maneuvering requirements upon the public streets within the development.

There shall be no parking of vehicles permitted on any streets within the development. All vehicle parking must be off street and within the designated parking areas developed within and on each Parcel.

Section 26. There shall be no fencing whatsoever without the prior written consent of the Architectural Control Committee.

Section 27. Declarant hereby reserves unto itself within its name the word "Northpoint" .No Owner of any Parcel is to incorporate the word "Northpoint" into its business name without the prior written consent of the Declarant.

Section 28. No Parcel within this development, other than a Parcel sold or to be sold to AmeriHost Development, Inc. shall be used for hotel or motel lodging purposes for a period of ten (10) years from the date that this Declaration is recorded in the Office of the Recorder of Huntington County, Indiana.

Section 29. The covenants and restrictions herein contained shall run with the land, and be effective for a term of thirty (30) years from the date these covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these covenants and restrictions may be amended at any time by the Declarant prior to the time the Declarant has sold all of the parcels within the development project, or by the Northpoint Property Owners Association, Inc. after the Declarant has sold all Parcels within the development project.

Section 30. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 31. Enforcement of any of the restrictive covenants may be insisted upon by the Declarant or by the Northpoint Business Owners Association, Inc. and in the event legal counsel is employed for purposes of enforcement of these restrictions any Parcel Owner(s) found to be in violation of the same shall be responsible for and pay all costs and expenses incurred by the Declarant or the Association in enforcing compliance with the same and shall be entitled to recover their legal costs and attorneys fees from the Parcel Owner against whom enforcement remedies were sought. The collection of said costs and fees shall be made and collected as mortgages or mechanic's liens are foreclosed against real estate.

IN WITNESS WHEREOF, Northpoint Business Park, Inc., an Indiana Corporation, the Owner and Declarant of said real estate described herein by its duly authorized President, Wayne Grigsby sets its

hand, this 23rd day of September, 1997.

NORTHPOINT BUSINESS PARK, INC.

Wayne Grigsby - President  
By: Wayne Grigsby, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF ALLEN )

Before me the undersigned, a Notary Public for said County and State, personally appeared Northpoint Business Park, Inc. By Wayne Grigsby and acknowledged the execution of this instrument this 23rd day of September, 1997.

My Commission Expires:  
September 24, 2000

Carla A. Wise  
Carla A. Wise, Notary Public

A resident of Allen County, Indiana

This instrument prepared by: A. Dale Bloom, Attorney at Law, 203 E. Berry St., Suite 1500, Fort Wayne, Indiana 46802-2786; Telephone: (219) 424-5930

RECORDER: Mail To: