

2011014531 EASE \$33.00
10/20/2011 02:24:40P 10 PGS
Jim Fielder
Monroe County Recorder IN
Recorded as Presented

Cross-Reference

The easement conveyed by this instrument burden and benefit certain real estate described in Instrument Numbers 2009012719, 2009012718, and 2009012721 in the office of the Recorder of Monroe County, Indiana.

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (the "Declaration"), is made on October 18, 2011, by **David J. Kenworthy and Sharon L. Kenworthy, Trustees, or their successor(s) in trust, under THE DAVID J. KENWORTHY AND SHARON L. KENWORTHY LIVING TRUST, dated August 5, 2008, and any amendments thereto** (the "Declarant"):

BACKGROUND FACTS:

a. Declarant owns in fee simple certain real property located in Monroe County, Indiana, which is more particularly described in the attached **Exhibit "A-1"** and **Exhibit "A-2"** (the "Kenworthy Tract"). The Kenworthy Tract was conveyed to David James Kenworthy, of legal age ("Kenworthy"), by two warranty deeds recorded, respectively, on August 7, 1990, in Deed Record 377, page 123 (**Exhibit "A-1"**) and Deed Record 377, page 124 (**Exhibit "A-2"**) in the office of the Recorder of Monroe County, Indiana, which is the office for all recording references in this instrument.

b. On March 7, 1991, the subject real estate was platted by Kenworthy into three lots (the "Lots") as Kenworthy Subdivision, the plat being recorded in Plat Cabinet C, Envelope 11 (the "Plat"), a copy of which is attached as **Exhibit "B"**.

c. By three Quit-Claim Deeds dated April 29, 2009, Kenworthy conveyed the Lots to Declarant, the deeds being recorded on July 20, 2009, as Instrument Numbers 2009012719 (Lot 1), 2009012718 (Lot 2), and 2009012721 (Lot 3).

d. The Plat depicts the Lots and a 33-foot ingress, egress, and utility easement (the "Easement") running north-south along the westerly portions of Lot 1 and Lot 2 which Easement benefits all Lots and burdens Lot 1 and Lot 2.

e. Although the Plat depicts the Lots and the Easement and contains covenants and restrictions, it does not contain specific grants of the Easement nor terms and conditions of its use and maintenance.

f. Because Declarant may convey one or more Lots to third parties, Declarant desires to grant benefits and burdens of the Easement, establish terms and conditions of its use and maintenance, and create its perpetual and non-exclusive existence on, over, and across portions of the Kenworthy Tract which are shown on the Plat, all for the purposes and upon the terms and conditions set forth below.

DECLARATION:

NOW, THEREFORE, Declarant hereby creates the following Easement, on the following terms and conditions:

Section 1. Access & Utility Easement Benefiting the Lots. Declarant hereby grants, creates, and makes a perpetual and non-exclusive access and utility easement to and for the benefit of the Lots, Declarant (as the owner of the Lots), Declarant's grantees, successors, and assigns, on, over, and across the area in which the Easement is depicted on the Plat (collectively, the "Easement Area"). The Easement and all rights in and to the Easement Area are declared, created, and made for the purposes of providing the Lots and the owners and occupants of all or a part of the same and their grantees, successors, and assigns with the right to use the Easement Area for placement of utilities and for vehicular and pedestrian ingress and egress to and from the Lots from and to Rhorer Road.

Section 2. Easement Rights. The owners of the Lots abutting the Easement Area may use their respective portions of the Easement Area for any purpose which is not inconsistent with the rights granted herein and temporarily to interrupt access to and from and the use of the Easement Area in the course of construction or maintenance of improvements on their respective Lots, or as otherwise required by law.

Section 3. Nature and Assignment of Easement and Rights. The Easement shall be permanent and perpetual, and, together with the obligations, rights, and benefits thereof, shall (a) run with the Easement Area, and (b) inure to the benefit of and bind the owner and occupants of the Easement Area and their grantees, successors, and assigns. Each instrument which conveys, grants, transfers, creates, or assigns any interest in a part of the Lots shall be deemed to assign, as an appurtenance thereto, the right to the non-exclusive use and benefits of the Easement benefiting the Lots, and the burdens and obligations of the Easement burdening such Lots (whether or not the instrument of conveyance expressly assigns that right or burden).

Section 4. Maintenance Provisions. The Easement Area shall be maintained to a reasonable standard, taking into account cost, safety, purpose, and environmental matters. Each Lot owner shall contribute equally to payment of the maintenance expenses, payment to be made within 30 days after maintenance is performed. Provided, however, the owner of Lot 1 will not be required to pay for maintenance expenses for portions of the Easement Area lying south of Lot 1. Provided, further, the owner of Lot 1 will not have a vote for maintenance decisions for portions of the Easement Area lying south of Lot 1. Otherwise, maintenance decisions shall be made by majority vote of the owners of the three Lots, owners of each Lot owner having one vote. Provided, however, for maintenance decisions for portions of the Easement Area lying south of Lot 1, the owner of Lot 3 shall have two votes but shall give due regard to the preferences of the owner of Lot 2. For voting purposes, multiple owners of a Lot will constitute a single owner which will have but one vote.

Section 5. Non-Dedication of Easement. This Declaration shall not be deemed to dedicate the Easement Area for public or private purposes or dedicate the Easement Area to any municipality or other political subdivision or governmental body or agency.

Section 6. Severability. The invalidity or unenforceability of any covenant, condition, term or provision in this Declaration shall not affect the validity and enforceability of any other covenant, condition, term or provision.

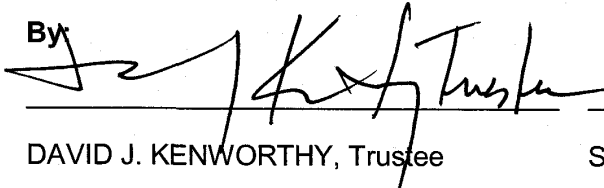
Section 7. Governing Law. The covenants, conditions, terms and provisions of this Declaration shall be governed by (and construed in accordance with) the internal laws of the State of Indiana. The Section headings are included only for convenience, and shall not be construed to modify or affect the covenants, terms or provisions of any Section.

**** THE BALANCE OF THIS PAGE WAS LEFT BLANK INTENTIONALLY ****

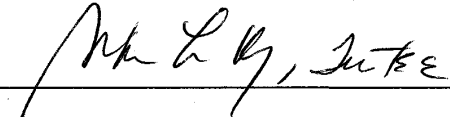
IN WITNESS WHEREOF, Declarant has duly executed this Declaration as of the date provided for above.

David J. Kenworthy and Sharon L. Kenworthy, Trustees, or their successor(s) in trust, under THE DAVID J. KENWORTHY AND SHARON L. KENWORTHY LIVING TRUST, dated August 5, 2008, and any amendments thereto

By



DAVID J. KENWORTHY, Trustee

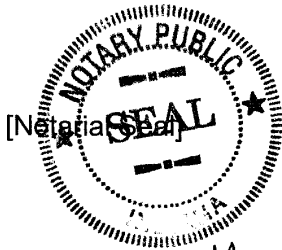


SHARON L. KENWORTHY, Trustee

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for the County and State referenced above, personally appeared David J. Kenworthy and Sharon L. Kenworthy, Trustees, under THE DAVID J. KENWORTHY AND SHARON L. KENWORTHY LIVING TRUST, dated August 5, 2008, and any amendments thereto, who, having been first duly sworn, acknowledged the execution of the foregoing Declaration of Easement on behalf of said limited liability partnership and stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 18th day of October, 2011.



[Signature]
Signature
MORRIS H. ERICKSON
Printed Name Notary Public

I am a resident of MONROE County, Indiana.
My commission expires: 10/18/14

This instrument was prepared by Morris H Erickson, Attorney, Bloomington, Indiana

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document unless required by law: Morris H. Erickson

Perry

009604

RECORDED
A.M. 11:02 P.M. ✓
AUG 07 1990

Grantee's Address:
1420 Rhorer Rd.
Bloomington, IN 47401

D. Kelly
RECORDER MONROE CO., IN

File #MC-6212.90

WARRANTY DEED

THIS INDENTURE WITNESSETH, That VIRGINIA L. CAPSHEW, the unmarried widow of John W. CapsheW, Of Legal Age ("Grantor"), of Monroe County, in the State of Indiana, CONVEYS AND WARRANTS to DAVID JAMES KENWORTHY, Of Legal Age ("Grantee"), of Monroe County, in the State of Indiana, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Monroe County, in the State of Indiana, to-wit:

A part of the North half of the East half of the Northeast quarter of Section Twenty-one (21), Township Eight (8) North, Range One (1) West, described as follows, to-wit: Commencing at the Northeast corner of said North half of said East half; thence West Ten (10) rods; thence South Eighty (80) rods and to the South line of said North half of said East half; thence East Ten (10) rods; thence North Eighty (80) rods to the place of beginning, but EXCEPTING THEREFROM the lands heretofore conveyed to said grantees and described as follows, to-wit: Commencing at the Northeast corner of said North half of said East half; thence South on the line of said East half of said above described lands Twenty (20) rods; thence West Eight (8) rods; thence North Twenty (20) rods to the North line of said above described lands, thence East Eight (8) rods to the place of beginning, containing in said exception one acre, more or less.

SUBJECT TO all public highways and rights-of-way.

SUBJECT TO the second installment of real estate taxes for 1989, due and payable in November, 1990, and all subsequent taxes and assessments.

Grantor herein states that she took title to the above-described real estate by Warranty Deed dated September 28, 1948 and recorded April 19, 1949, in Deed Record 106, at page 303, in the office of the Recorder of Monroe County, Indiana, with John W. CapsheW, as husband and wife; that he died intestate on the 13th day of April 1973; that all expenses and taxes have been paid as a result of his death; and that she succeeds as record titleholder by operation of law.

In Witness Whereof, Grantor has executed this Warranty Deed this 3rd day of August, 1990.

Virginia L. CapsheW
VIRGINIA L. CAPSHEW

STATE OF INDIANA
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, this 3rd day of August, 1990, at which time VIRGINIA L. CAPSHEW personally appeared and acknowledged the execution of the above and foregoing WARRANTY DEED to be a voluntary act and deed.

My Commission Expires: Sandra L. Keen
Notary Public

SANDRA L. KEEN, Notary Public.
My commission expires February 14, 1992.
Residing in Monroe County, IN.

Name Printed _____
County of Residence _____

Exhibit "A-1"

This Instrument Prepared By
MORRIS H. ERICKSON, Attorney at Law
COTNER, ANDREWS, MANN & CHAPMAN
528 North Walnut Street, P.O. Box 247B
Bloomington, Indiana 47402-247B

DULY ENTERED
FOR TAXATION

AUG 7 1990

Margaret Cook
Auditor Monroe County, IN

1000 J

009605

RECORDED
A.M. 12:26 P.M.
AUG 07 1990

890 377 PAGE 124

Grantee's Address:
1420 Rorer Rd.
Bloomington, IN 47401

RECORDER MONROE CO., IN

File #MC-6212.90

WARRANTY DEED

THIS INDENTURE WITNESSETH, That VIRGINIA L. CAPSHEW, the unmarried widow of John W. Capshew, Of Legal Age ("Grantor"), of Monroe County, in the State of Indiana, CONVEYS AND WARRANTS to DAVID JAMES KENWORTHY, Of Legal Age ("Grantee"), of Monroe County, in the State of Indiana, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Monroe County, in the State of Indiana, to-wit:

A part of the North Half (1/2) of the East Half (1/2) of the Northeast Quarter (1/4) of Section Twenty-one (21), Township Eight (8) North, Range One (1) West, described as follows, to-wit: Commencing at the Northeast corner of said North Half (1/2) of said East Half (1/2), thence South on the line of said East Half (1/2) of said above described land Twenty (20) rods, thence West Eight (8) Rods, thence North Twenty (20) rods to the North line of said above described land, thence East Eight (8) rods to the place of beginning, containing one acre, more or less.

SUBJECT TO all public highways and rights-of-way.

SUBJECT TO the second installment of real estate taxes for 1989, due and payable in November, 1990, and all subsequent taxes and assessments.

Grantor herein states that she took title to the above-described real estate by Warranty Deed dated September 28, 1948 and recorded February 27, 1958, in Deed Record 126, at page 189, in the office of the Recorder of Monroe County, Indiana, with John W. Capshew, as husband and wife; that he died in testate on the 13th day of April 1973; that all expenses and taxes have been paid as a result of his death; and that she succeeds as record titleholder by operation of law.

In Witness Whereof, Grantor has executed this Warranty Deed this 3rd day of August, 1990.

Virginia L. Capshew
VIRGINIA L. CAPSHEW

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, this 3rd day of August, 1990, at which time VIRGINIA L. CAPSHEW personally appeared and acknowledged the execution of the above and foregoing WARRANTY DEED to be a voluntary act and deed.

My Commission Expires: *Sandra L. Keen*
Notary Public

SANDRA L. KEEN, Notary Public,
My commission expires February 14, 1992.
Residing in Monroe County, IN.

Name Printed

County of Residence

DULY ENTERED
FOR TAXATION

AUG 07 1990

Exhibit "A-2"

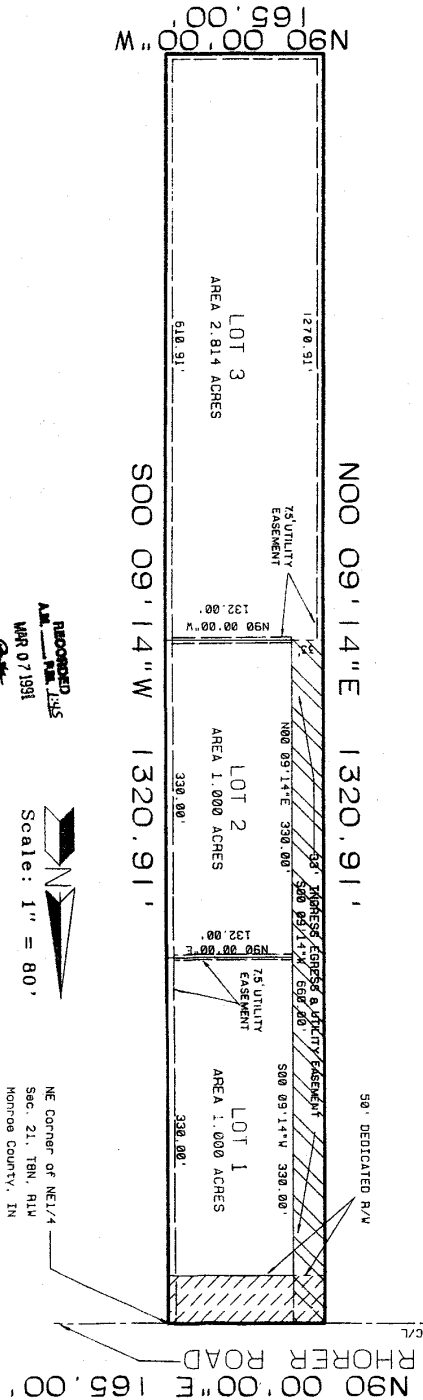
This Instrument Prepared By
MORRIS H. ERICKSON, Attorney at Law
COTNER, ANDREWS, MANN & CHAPMAN
528 North Walnut Street, P.O. Box 2478
Bloomington, Indiana 47402-2478

Margaret Cook
Auditor Monroe County, Indiana

Exhibit "B"

INSTRUMENT NO. 102635

PLAT CABINET C ENVELOPE II



CERTIFICATE OF APPROVAL OF
PLAN COMMISSION AND BOARD OF PUBLIC WORKS

WHEREAS THE AUTHORITY PROVIDED BY CHAPTER 174, ACTS OF 1947, GRANTED BY THE
GENERAL ASSEMBLY OF THE STATE OF INDIANA AND ORDINANCE WAS GIVEN APPROVAL BY
THE BOARD OF PUBLIC WORKS OF MONROE COUNTY, INDIANA, THIS PLAN WAS GIVEN APPROVAL BY
THE BOARD OF PUBLIC WORKS OF MONROE COUNTY, INDIANA, THIS PLAN WAS GIVEN APPROVAL BY
THE BOARD OF PUBLIC WORKS OF MONROE COUNTY, INDIANA, THIS PLAN WAS GIVEN APPROVAL BY
THE BOARD OF PUBLIC WORKS OF MONROE COUNTY, INDIANA, THIS PLAN WAS GIVEN APPROVAL BY

[Signature]
Chairman

[Signature]
Member

[Signature]
Member

[Signature]
Member

**DULY ENTERED
FOR TAXATION**
MAR 07 1991

[Signature]
Auditor Monroe County, Indiana

RECORDED
MAR 07 1991
AMERICAN TITLE & TRUST CO., INC.

Scale: 1" = 80'

NE Corner of NE 1/4
Sec. 21, T8N, R1W
MONROE COUNTY, IN

KENWORTHY SUBDIVISION
JOB NO. 1620

A part of the Northeast Quarter of Section 21, Township 8 North, Range 1 West,
Monroe County, Indiana, and more particularly described as follows:
Beginning at the Northeast corner of said Northeast quarter; thence SOUTH 00
degrees 09 minutes 14 seconds WEST (assumed bearing) along the East line of
said Northeast quarter 1320.91 feet; thence NORTH 90 degrees 09 minutes 14
seconds EAST along the North line of said Northeast quarter 14 seconds EAST
1320.91 feet to the North line of said Northeast quarter; thence NORTH 90
degrees 00 minutes 00 seconds EAST along said North line 165.00 feet to the
point of beginning, containing 5.00 acres more or less.

This certification does not take into consideration additional facts that an
accuses and correct title search and/or examination might disclose.
Evidence of easements have not been located in the field and are not shown on
this survey drawing. I hereby certify that the survey work
subject to the above jurisdiction, I hereby certify that the survey work
shown on this plat was performed either by me or under my
direct supervision and control and that all information shown is
correct to the best of my knowledge and belief.

Certified this 13th day of November, 1990.
[Signature]
Surveyor #80599



KENWORTHY SUBDIVISION



PREPARED BY: SMITH GULLMAN ASSOCIATES, INC. JOB NO. 1620

KENWORTHY SUBDIVISION
COMMENTS & RESTRICTIONS

The undersigned owner of the real estate above and described on sheet 1 of the plat referred to as the "Real Estate" does hereby set forth the conditions, restrictions, reservations, and provisions concerning said real estate. This subdivision shall be known and designated as the "Kenworthy Subdivision" and shall be subject to the conditions, restrictions, reservations and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.

Conditions, Restrictions, Reservations and Protective Comments:

1. **Use.** Each lot shall be used for residential purposes only. No other use shall be made thereon. The use of any lot shall be subject to the conditions, restrictions, reservations, and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.
2. **Size of Dwelling.** The area dwelling must consist of at least 2000 square feet (17.44 square meters) or 200 square feet per acre (4.54 square meters) (17.44 square meters) of finished floor area. The area dwelling must be constructed on the lot and shall be subject to the conditions, restrictions, reservations, and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.
3. **Setbacks on Plat.** All lots are subject to any and all setbacks, including utility, driveway, and drainage easements, as shown on the plat.
4. **Trash Enclosure.** All trash shall be kept in suitable containers and out of sight and under cover except on days of trash collection. All trash shall be kept in a clean, sanitary and functional condition. No trash shall be burned on the premises, except for construction debris. Other trees and trees shall be preserved. No other structures shall be constructed on the lot.
5. **Approval of Building Plans.** No construction shall be begun for a building or structure including utility structures, garages, and barns to be used for residential purposes until the plans for such building or structure have been approved in writing as to the conformity of site, design and construction with the conditions, restrictions, reservations and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.
6. **Use of Animals.** No animals, livestock, or poultry of any kind shall be raised, kept, or kept on said land, except that dogs, cats, or other normally kept animals shall be permitted on said land for the purpose of companionship and for any other purpose and do not constitute a nuisance or interfere with the use by other owners of their lots.
7. **Subdivision of a Lot Prohibited.** There shall be no subdivision of any lot, or lots, or any part thereof, except a portion of a lot may be sold to an adjoining lot owner if no new lot is created for the

purpose of these conditions and restrictions, all adjoining lots or parts thereof, and shall be subject to the conditions, restrictions, reservations and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.

8. **Use of Temporary Structures.** No structure of a temporary character, including but not limited to, a temporary structure, shall be erected on any lot, or any part thereof, except a portion of a lot may be sold to an adjoining lot owner if no new lot is created for the purpose of these conditions and restrictions.
9. **Landscaping.** Within ninety days after completion of the dwelling (whether partially) the owner agrees to have the front yard, extending from the front of the dwelling to the street, landscaped with suitable shrubs and plants. The landscaping shall be installed to cover the foundation of the front of the dwelling facing the street, and thereafter, to maintain shrubbery and plants in the front yard.
10. **Driveway.** Any driveway shall be constructed on the lot and shall be subject to the conditions, restrictions, reservations and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.
11. **Underground Utilities.** All telephone, electrical and cable television or similar connections from the utilities lines shall be underground from the street unless deemed impractical by the company providing such services. If deemed impractical, the connections shall be placed underground.
12. **No Above-ground Swimming Pools.** Above-ground swimming pools shall not be permitted on the Real Estate.
13. **General.** The foregoing covenants, restrictions, and reservations are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2015, at which time said covenants and restrictions shall terminate. The termination of the covenants and restrictions shall be subject to the approval of the Board of Directors of the Homeowners' Association of the subdivision. It is agreed to change such covenants or restrictions in whole or in part.

Installation of any one of the foregoing covenants or restrictions shall be subject to the conditions, restrictions, reservations and provisions hereinafter set forth which shall be binding upon the owners and their heirs and assigns.

Witness our hands and seals this 5th day of March, 1991.

STATE OF INDIANA)
COUNTY OF MONROE)
I, _____, a Majority Holder in and for said estate, personally appear and declare before me that the foregoing Kenworthy Subdivision Comments and Restrictions are true and correct and that the undersigned is the legal owner of the above described real estate on the date of this instrument.



KENWORTHY SUBDIVISION



PREPARED BY: SMITH QUILMAN ASSOCIATES INC. JOB NO. 1620