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DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER

ELKHART COUNTY RECORDER
PROPERTY CLERK
FILED FOR RECORD

Sept. 7 1988
Charles R. Miller AUDITOR
04596

DEED OF EXCHANGE
FEE AND EASEMENTS

THIS DEED, made the day and year set forth below, by and between H & S Industries, Inc., an Indiana corporation, having its principal office located at 2620 South Main St., Elkhart, IN 46517, hereinafter referred to as "H & S" and First National Bank, Elkhart, Indiana, as Executor of the Estate of Wayne H. Bonamarte, having its principal offices located at P.O. Box 460, Elkhart, IN 46515, hereinafter called "ESTATE", and Robert Wade Hoffer, an individual, hereinafter sometimes referred to as "HOFFER", whose mailing address is 2501 Lexington Ave., Elkhart, Indiana 46514, and all being of Elkhart County, Indiana,

WITNESSETH:

WHEREAS, H & S owns and is developing certain real property in Elkhart County, Indiana located in the South half (1/2) of Section One (1) and a part of the North half (1/2) of Section Twelve (12), Township Thirty-seven (37) North, Range Four (4) East, including property known as Haines' Lexington Landing, and which property is located on the St. Joseph River and is adjacent to real estate which Estate is selling to Hoffer on contract, and

WHEREAS, a disagreement has arisen between Hoffer and H & S which they wish to resolve by agreement, and they have reached certain mutual agreements involving the exchange of land and granting of various easements.

NOW THEREFORE, in consideration of and for the mutual grants hereinafter set forth, the receipts of which are hereby acknowledged, the parties hereto make hereby the following conveyances:

PART I

H & S hereby conveys and warrants unto Estate and its successors and assigns the following real estate in Elkhart County, in the State of Indiana, to-wit:

A part of the Southeast Quarter of Section 1, Township 37 North, Range 4 East, Cleveland Township, Elkhart County, City of Elkhart, Indiana, being more particularly described as follows:

Commencing at the most northerly corner of Lot #76 as said lot is known and designated on the Recorded Plat of HAINES' LEXINGTON LANDING, as recorded in Plat Book 16 page 57 in the Elkhart County Recorder's Office, also being the point of beginning of this description; thence South 28 degrees 04 minutes 57 seconds West along the northwesterly line of said Lot 76, a distance of 132.79 feet to the intersection with the East line of land conveyed to Joseph R. and Anna R. DePlanche as described in Elkhart County Deed Record 187, page 452, (also the east line of land as described in Deed Record 354, page 319); thence North 0 degrees 21 minutes 57 seconds East, along said east line and along the east line of land conveyed to Wayne H. Bonamarte as described in Elkhart County Deed Record

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400, page 33, a distance of 150.00 feet to the southwesterly right of way line of Lexington Avenue; thence South 61 degrees 55 minutes 03 seconds East along said right of way line, a distance of 69.76 feet to the point of beginning of this description. Containing approximately 0.106 of an acre and subject to all easements, restrictions and public right of ways recorded prior to this description. Also subject to taxes.

PART II

Estate and Hoffer hereby convey and warrant to H & S, its successors and assigns, the following real estate in Elkhart County, State of Indiana, to-wit:

A part of the Southeast Quarter of Section 1, Township 37 North, Range 4 East, Cleveland Township, Elkhart County, City of Elkhart, Indiana, being more particularly described as follows:

Commencing at the most northerly corner of Lot #76 as said lot is known and designated on the Recorded Plat of "HAINES' LEXINGTON LANDING" as recorded in Plat Book 16, page 57 in the Elkhart County Recorder's Office; thence South 28 degrees 04 minutes 57 seconds West along the northwesterly line of said Lot #76, a distance of 132.79 feet to the intersection with the east line of land conveyed to Joseph R. and Anna R. DePlanche as described in Deed Record 187, page 452 (also the east line of land as described in Deed Record 354, page 319), said point being the point of beginning of this description; thence continuing South 28 degrees 04 minutes 57 seconds West, a distance of 132.79 feet to the southerly line of said DePlanche land, said Deed Record 354, page 319 and a lot line of the aforesaid Lot #76; thence South 61 degrees 55 minutes 03 seconds East parallel with the southwesterly right of way line of Lexington Avenue and along the southwesterly line of said DePlanche land, said Deed Record 354, page 319 and said lot line of Lot #76, a distance of 69.76 feet to the southeast corner of said DePlanche land and the southeast corner of said Deed Record 354, page 319; thence North 0 degrees 21 minutes 57 seconds East along the east line of said DePlanche land, the east line of said Deed Record 354, page 319, and a west line of said Lot #76, a distance of 150.00 feet to the point of beginning of this description. Containing approximately 0.106 of an acre and subject to all easements, restrictions and public right of ways recorded prior to this description. Also subject to taxes.

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PART III

Estate and Hoffer hereby convey and warrant to H & S, its successors and assigns, a landscape easement 15 feet wide by parallel lines adjacent to the southeastern boundary of the tract described below and also a landscape easement 60 feet wide by parallel lines adjacent to the southwest boundary of the land described below, which land is located in Elkhart County, State of Indiana, to-wit:

Part of the Southeast Quarter of Section 1, Township 37 North, Range 4 East, situate in Cleveland Township, Elkhart County, State of Indiana, lying within the corporate limits of the City of Elkhart, and being more particularly described as follows:

Commencing at a point where the center line of West Lexington Avenue is intersected by the east line of said Section 1, said point being Three Hundred Forty and eighty-eight hundredths (340.88) feet north of the southeast corner of said Section 1; thence North Sixty-two (62) degrees seventeen (17) minutes west along the center line of said West Lexington Avenue, a distance of Two Thousand One Hundred Thirty and forty-one hundredths (2130.41) feet to the place of beginning of this description, said place of beginning being the northeasterly corner of land conveyed to Joseph R. DePlanche and Anna R. DePlanche, husband and wife, in Elkhart County Deed Record 187, page 452; thence continuing north sixty-two (62) degrees seventeen (17) minutes west along the center line of said West Lexington Avenue a distance of Two Hundred Forty-eight (248) feet to a point; thence south twenty-seven (27) degrees forty (40) minutes west a distance of Two Hundred Ninety-five and eighty-three hundredths (295.83) feet to a point on the southerly line of said DePlanche land; thence south sixty-two (62) degrees seventeen (17) minutes east along the southerly line of said DePlanche land a distance of 333.33 feet to a corner of land conveyed by Grantors to H & S Industries, Inc. in Part II hereof; thence north along the boundary between the land of the Grantors and the lands of the Grantee following the conveyances of Part I and Part II hereof, 28 degrees 57 seconds east, 265.58 feet to the most northerly corner of Lot #76 as the Lot is known and designated in the Recorded Plat of "HAINES' LEXINGTON LANDING" as recorded in Plat Book 16, page 57 in the Elkhart County Recorder's Office; thence north 61 degrees 55 minutes 03 seconds west a distance of 69.76 feet; thence north 0 degrees 21 minutes 57 seconds east to the center line of West Lexington Avenue and the place of beginning of this description.

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Subject however, to the reservation by Estate and Hoffer of a strip of land 20 feet wide by parallel lines intersecting and crossing the 60 foot landscape easement which 20 foot strip is adjacent to the

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northwest boundary of the above described tract and which strip of land is reserved for a ramp for boat launching and removal.

This grant of landscape easements is subject to all prior easements and restrictions.

Grantors and Grantee each agree not to erect any structures within the landscape easements granted herein. Grantee, its successors and assigns, may engage in such landscaping as it desires within such easements, including but not limited to the establishing of surface grade, plantings, ground cover, and all other matters generally and broadly included within the concept of "landscaping", and shall at all times maintain such landscaping in a professional and tasteful manner.

PART IV

H & S hereby conveys and grants to Estate, its successors and assigns, an easement 20 feet wide by parallel lines with the northwest boundary of said easement being the northwest boundary line extended of the strip of land reserved for a boat ramp described in Part III above and which will run from the southwest corner of land of Estate being sold to Hoffer to the water's edge, and including the right to construct a pier, a boat launch-ramp, and placement of a fuel pump on channel being dredged by Grantor, all subject to the terms and conditions below:

A. The easement shall be limited to and for the following purposes:

(1) Installation of a pier (not to exceed 20 feet in length) and boat launch/ramp.

(2) Installation of a fuel pump.

(3) Sale of gas, oil, marine items and gum, candy, and pop to the public on the river channel.

(4) Construction of a small building to house supplies, and items being sold.

(5) No alcoholic beverages shall ever be sold on the easement property, and the then holder of the easement shall use all reasonable efforts to exclude alcoholic beverages from the easement premises.

B. The design and construction of pier, and design, location and construction of the small building shall be subject to the prior written approval of H & S, which will not be unreasonably withheld. The pier shall be designed and constructed so as to permit the water to flow freely under it.

C. No toilet facilities may be constructed within the easement.

D. H & S intends to construct a way for pedestrian and bicycle traffic along the edge of the channel, which will be used for, among other things, access to boats docked in the channel. Said way will cross the easement granted herein to Estate, and the easement is subject to such way. The parties agree to cooperate with each other in the installation of any facilities by Estate, and installation of the way by H & S as to not unreasonably interfere with each other. Further, Estate agrees that the operation of the facilities in the easement will be conducted in such fashion so as to not unreasonably interfere with the use of said way.

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E. No fuel tanks shall be installed in the easement premises, but instead the fuel tanks for the fuel pump shall be installed above the 60 foot landscape easement on the property described in Part III.

F. H & S agrees that no pier shall be constructed on land bordering either side of the easement closer than 15 feet to the edge of the easement. The intention of the parties by this provision is to permit room for boat maneuvering.

G. The use of this easement is conditioned upon the requirement that any ramp constructed by Estate or its successors in interest in the 20 foot strip reserved or granted for boat launching or removal shall be a hard surface ramp, which hard surface may include either concrete or blacktop, shall be tasteful in appearance, and shall be well maintained. Further, any utility services or piping in connection with fuel shall be located within said 20 foot strip.

H. A further condition of the use of this easement as granted herein is that the easement shall not be used for public access to the channel or to the St. Joseph River. The use of the ramp and the easement granted herein shall be limited to removal, storage, and launching of boats being serviced by or stored by Estate or its successors and assigns and/or boats used by residents of Haines' Lexington Landing or any addition thereto, and not for the general public.

I. The parties acknowledge that H & S is concerned over appearance of the ramp, pier, and any structures connected therewith, and appurtenant grounds, and is attempting to encourage and create a high quality development on the adjacent property. All construction, maintenance and operations conducted within the easement or the ramp area by Estate or its successors or assigns shall be of good quality and of good appearance. Further, the holder of the easement and the successors or assigns, agrees and shall be responsible to assure that at all times:

1. The ramp, pier, and all improvements on the easement shall be maintained in good condition and repair at all times; and

2. The easement premises shall not be used for any unlawful purpose; and

3. No waste will be permitted upon the easement premise nor will the easement premises be used in an obnoxious manner; and

4. No nuisance will be permitted or created on the easement premises; and

5. Both the easement area and the ramp area shall be maintained in good condition and in a clean and sightly fashion at all times.

J. The failure of the Estate or its successors or assigns to comply with the requirements set forth above shall be a basis for denial of use of the easement by H & S, its successors and assigns.

PART V

The provisions of this part apply to Parts I through IV above unless the sense of the provision provides otherwise.

1. All of the parties hereto acknowledge that all of the covenants contained herein shall be binding upon the

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parties, their transferees, successors, assigns and personal representatives. The easements granted to H & S by Estate shall run with that part of the land of H & S which is adjacent to said easements and inure to the benefit of and be enforceable by the successors and assigns of H & S with respect thereto. The easements conveyed to Estate as provided herein shall run with the land of Estate adjacent thereto and inure to the benefit of and be enforceable by the successors and assigns of Estate with respect thereto, provided, however, that if the land of Estate being sold to Hoffer is divided into more than one parcel, the rights contained in said grant of easement to the Estate shall be limited to only the parcel then contiguous to the easement granted to Estate.

2. Hoffer joins in the execution of this agreement as the contract purchaser of the real estate from Estate and agrees with all terms contained herein and to be bound thereby. As contract purchaser, Hoffer shall have the rights of a successor to Estate, and shall discharge all obligations of Estate and indemnify and hold harmless Estate with respect thereto.

3. The undersigned persons executing this deed on behalf of H & S and on behalf of Estate represent and certify that they are duly elected or appointed officers of H & S and First National Bank, and have been fully empowered, by proper resolution of the Board of Directors of their respective corporations, to execute and deliver this deed; that H & S and First National Bank, respectively, have full corporate capacity to make the conveyances set forth herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

4. H & S hereby certifies there is no gross income tax due to the State of Indiana by virtue of this deed.

PART VI

Disagreements And Remedies

A. In the event a party to this deed, or their successors or assigns deems another party, or their successors or assigns to be in violation of the terms of this Deed of Exchange, written notification of such violation shall be given to the person allegedly in violation specifying the violation and the remedies sought. In the event the parties are unable to resolve their disagreement, they agree to submit the same to arbitration, with each party or their successor in interest designating a representative and the two representatives so selected designating a third representative. Each party agrees to designate a representative within fourteen (14) days of a written request to do so, which request shall also identify the matter to be arbitrated, and upon failing to so designate a representative the disagreement shall be determined by the representative appointed. In the event both parties designate a representative, a third representative shall be selected within fourteen (14) days of the appointment of the second representative.

B. The disagreement which is the subject of arbitration shall be determined by the representative so selected. The decision of the representative shall be binding upon the parties, their successors and assigns. Each party shall bear the cost of their representative and split the cost of the third representative. Other costs of arbitration shall be split equally between the parties.

C. Either party hereto may secure injunctive relief, without bond, to enforce their rights hereunder, including the decision of arbitration as provided above.

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D. In the event a party or the successors or assigns fail to abide by the determination of the arbitration, the parties so failing to comply with the decision of the representative shall pay all reasonable costs, including reasonable attorney fees, incurred by the other parties in enforcing the arbitration decision and the terms of this Deed of Exchange with respect to the matter arbitrated.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the 26th day of July, 1988.

H & S INDUSTRIES, INC.

By *Roger Haines*
Roger Haines, President

FIRST NATIONAL BANK, ELKHART,
INDIANA, AS EXECUTOR OF THE
ESTATE OF WAYNE H. BONAMARTE

By *Daniel G. Areaux, AVP*
Daniel G. Areaux, Assistant Vice-President

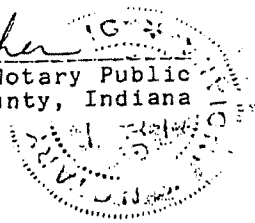
Robert Wade Hoffer
Robert Wade Hoffer

STATE OF INDIANA)
)SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, this 26 day of July, 1988, personally appeared Roger Haines, President of H & S Industries, Inc., and acknowledged that as said officer he executed the foregoing Deed of Exchange for and on behalf and in the name of said Corporation, for the uses and purposes therein mentioned, and that he was authorized so to do.

WITNESS my hand and notarial seal.

Timothy Gruther
Timothy Gruther Notary Public
Residing in Elkhart County, Indiana



My Commission Expires:
7-25-89

STATE OF INDIANA)
)SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, this 20th day of June, 1988, personally appeared Daniel G. Areaux, Assistant Vice-President of First National Bank, Elkhart, Indiana, as Executor of the Estate of Wayne H. Bonamarte, and acknowledged that as said officer he/she executed the foregoing Deed of Exchange for and on behalf and in the name of said Bank, for the uses and purposes therein mentioned, and that he/she was authorized so to do.

WITNESS my hand and notarial seal.

Gregory A. Hartzler
Gregory A. Hartzler, Notary Public
Residing in Elkhart County, Indiana

My Commission Expires:

6-12-89

STATE OF INDIANA)
)SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, personally appeared the above named Robert Wade Hoffer and acknowledged the execution of the foregoing Deed of Exchange this 26 day of July, 1988.

WITNESS my hand and notarial seal.

Timothy K. Gintner
Timothy K. GINTNER Notary Public
Residing in Elkhart County, Indiana

My Commission Expires:

7-25-89

Prepared by Gregory A. Hartzler, Yoder, Ainlay, Ulmer & Buckingham
130 N. Main Street, Goshen, Indiana 46526 (219) 533-1171

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