

STATE OF INDIANA
LAKE COUNTY
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P.O. Box 3261
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AMASA G. COLLEY
CLERK DEPT. OF RECORDS
JAN 23 1995

SAM ORLICH
AUDITOR LAKE COUNTY

SECOND AMENDMENT TO AND RESTATEMENT OF AGREEMENT

This SECOND AMENDMENT TO AND RESTATEMENT OF AGREEMENT ("Second Amendment") is made and entered into this 12th day of December, 1994, by and between Lake County Trust Company as Trustee under Trust Agreement dated December 29, 1981, as amended, and known as Trust Number 3188, and Lake County Trust Company, as Trustee under Trust Agreement dated December 29, 1981, as amended, and known as Trust Number 3189, whose address is 2200 N. Main Street, Crown Point, Indiana 46307 ("Lake County Trust"); ATG Development Company LLC, an Indiana limited liability company, whose address is One Professional Center, Suite 304, Crown Point, Indiana 46307 ("ATG") and Mercantile National Bank and Trust Company as Trustee under Trust Agreement dated July 30, 1990 and known as Trust Number 5305, whose address is c/o Olthof Development, P. O. Box 3261, St. John, IN 46373 ("Mercantile Trust").



WITNESSETH:

WHEREAS, Lake County Trust, ATG and Mercantile Trust entered into that certain Agreement, dated July 20, 1994 (the "Agreement"), as amended by that certain First Amendment to Agreement, dated September 30, 1994 (the "First Amendment"); and

WHEREAS, the parties desire to further amend the Agreement, as amended, to recognize and implement certain requirements imposed upon Mercantile Trust (including Frederick A. Olthof and Olthof Homes, Inc.) as part of the subdivision approval granted by the Town of Highland with respect to the Whispering Oaks subdivision on the Mercantile Trust Parcel; and

WHEREAS, to provide clarity with respect to the modifications to the Agreement as set forth in the First Amendment and this Second Amendment, the parties desire to amend and restate the Agreement, as amended, as set forth herein; and

WHEREAS, Lake County Trust is the owner of that certain real property located in the Town of Highland, County of Lake, State of Indiana, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Lake County Trust Parcel"); and

WHEREAS, ATG is the developer of Lake County Trust Parcel; and

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STATE OF INDIANA
LAKE COUNTY
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WHEREAS, Mercantile Trust is the owner of that certain real property located in the Town of Highland, County of Lake, State of Indiana, as more particularly described on Exhibit B attached hereto and made a part hereof (the "Mercantile Trust Parcel"); and

WHEREAS, it is hereby proposed that as part of the development of the Lake County Trust Parcel, ATG shall (i) install or have installed a sanitary sewer line running from the existing manhole on the south line of the right-of-way of the Grand Trunk Railroad south through the Lake County Trust Parcel to the north border of the Mercantile Trust Parcel, constructed at a size and depth sufficient to service the Lake County Trust Parcel, the Mercantile Trust Parcel and other real estate (the "Sanitary Sewer"), (ii) cause Lake County Trust to provide an easement through the Lake County Trust Parcel to accommodate the installation, repair and maintenance of the Sanitary Sewer (the "Lake County Trust Sanitary Sewer Easement"), and (iii) as the Lake County Trust Parcel is developed, eventually fill in the "North-South Ditch" (as defined below) and install or have installed the necessary on-site and off-site storm detention and/or retention ponds, ditches and storm sewer pipe to accommodate permanent storm water drainage for the Lake County Trust Parcel, the Mercantile Trust Parcel and other real estate (the "Storm Water Drainage System"); and

WHEREAS, it is hereby proposed that as part of the development of the Mercantile Trust Parcel, Mercantile Trust shall install or have installed (a) a road improvement (including earthwork, stone base, asphalt binder and surface course, curbs, seeding and engineering, including storm sewer and water main within the right-of-way of said road) running from Indianapolis Boulevard (Route 41) west to its intersection with Prairie Avenue in the northeast quadrant of the Mercantile Trust Parcel, in accordance with plans approved by the Town of Highland and the Indiana Department of Transportation, and approximately in the location shown on Exhibit C attached hereto and made a part hereof, but excluding any "apron" improvements within the right-of-way of Indianapolis Boulevard (Route 41) ("103rd Avenue"), (b) a road improvement (including earthwork, stone base, asphalt binder and surface course, curbs, seeding, engineering, and any utilities required by the Town of Highland within the right-of-way of such road) running from Main Street north to its intersection with 103rd Avenue, approximately in the location shown on Exhibit D attached hereto and made a part hereof ("Prairie Avenue"), and (c) the earthwork necessary to improve and redefine the storm water drainage ditch (the "North-South Ditch") running from the north border of the Mercantile Trust Parcel north through the Lake County Trust Parcel to the existing ditch located adjacent to the south line of the right-of-way of the Grand Trunk Railroad, in accordance with the specifications of that certain plan, entitled Whispering Oaks Temporary N/S Ditch Improvement, Highland, Indiana, dated 11/17/94, by R.A. Dugan & Associates Ltd. (the "North-South Ditch Plan"), which specifications include, without limitation, a two foot (2'0") width at the base of the North-South Ditch (the foregoing North-South Ditch improvements are hereinafter referred to as the "North-South Ditch Improvement"); and

WHEREAS, in consideration of the fact that ATG has caused Lake County Trust to grant the "North-South Ditch License" to Mercantile Trust (as defined in Section 5 hereof), and in consideration of ATG's installation of the Storm Water Drainage System as aforesaid, Mercantile Trust is desirous of paying certain funds simultaneously herewith and providing a letter of credit securing the payment of additional funds as the consideration for and contribution of the Mercantile Trust Parcel for the grant of the North-South Ditch License and ATG's installation of the Storm Water Drainage System, and making other commitments set forth in this Agreement.

NOW, THEREFORE, in consideration of the recitals above, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, it is agreed as follows:

1. Sanitary Sewer Cost: Mercantile Trust Storm Contribution: 103rd Avenue Letter of Credit: Prairie Avenue Cost: ATG shall install or have installed the Sanitary Sewer pursuant to this Agreement at its sole cost and expense.

As Mercantile Trust's consideration for the grant of the North-South Ditch License and ATG's agreement to fill in the North-South Ditch at such time as ATG installs the Storm Water Drainage System, Mercantile Trust has paid ATG the amount of Two Thousand Five Hundred Dollars (\$2500.00) simultaneously herewith. As Mercantile Trust's contribution (the "Storm Water Contribution") toward the remaining costs of the Storm Water Drainage System (other than the costs described in the previous sentence), Mercantile Trust shall pay ATG the amount of Eighty-Five Thousand and 00/100 Dollars (\$85,000.00) on the earlier to occur of the following dates: (A) the date Mercantile Trust records a final plat of subdivision with respect to any portion of the Mercantile Trust Parcel in the Office of the Recorder of Lake County, and (B) June 1, 1995 (the "Storm Water Contribution Payment Date"). ATG hereby affirms receipt and possession of that certain irrevocable letter of credit securing Mercantile Trust's payment of the Storm Water Contribution from The Steel City Bank of Chicago ("Bank") showing ATG as the beneficiary in the amount of Eighty-Five Thousand and 00/100 Dollars (\$85,000.00), a copy of which is attached hereto as Exhibit E (the "Storm Water Drainage Letter of Credit"). The parties hereto agree that Mercantile Trust's failure to pay the Storm Water Contribution to ATG on or before the Storm Water Contribution Payment Date shall be a condition of default entitling ATG to draw upon the Storm Water Drainage Letter of Credit.

Mercantile Trust shall install or have installed 103rd Avenue pursuant to this Agreement at its sole cost and expense. ATG hereby affirms receipt and possession of that certain irrevocable letter of credit securing Mercantile Trust's obligation to install 103rd Avenue from Bank showing ATG as the beneficiary in the amount of One Hundred Fifty-Five Thousand Dollars (\$155,000.00), a copy of which is attached hereto as Exhibit E-1 and made a part hereof (the "103rd Avenue Letter of Credit").

Mercantile Trust shall also install or have installed Prairie Avenue pursuant to this Agreement at its sole cost and expense.

2. Lake County Trust Right-of-Way. ATG has caused Lake County Trust to provide a recordable right-of-way forty (40) feet in width along the south border of the Lake County Trust Parcel, running from Indianapolis Boulevard (Route 41) west to the point where said right-of-way meets the north border of the Mercantile Trust Parcel, approximately in the location shown on Exhibit F attached hereto and made a part hereof, in favor of the Town of Highland for the construction, maintenance and repair of 103rd Avenue (the "Lake County Trust Right-of-Way").

3. Torbatti Right-of-Way. Mercantile Trust and ATG have caused the owner of that certain real property located in the Town of Highland, County of Lake, State of Indiana, as more particularly described on Exhibit G attached hereto and made a part hereof (the "Torbatti Parcel") to provide a recordable right-of-way forty (40) feet in width along the north border of the Torbatti Parcel, running from Indianapolis Boulevard (Route 41) west to the west border of the Torbatti Parcel (the "Torbatti Right-of-Way").

Reference is made to that certain Agreement, dated as of the date hereof, by and between ATG, Emanuel Torbati, Deborah Torbati a/k/a Deborah Torbati and Roger A. Slosser (the "Torbati Reimbursement Agreement"), which is hereby incorporated herein by reference. Provided that Mercantile Trust is not then in default hereunder and that this Agreement is then in full force and effect, Mercantile Trust shall receive the "Torbati 103rd Avenue Contribution" (as defined in the Torbati Reimbursement Agreement), plus any interest accrued thereon pursuant to Section 9 of the Torbati Reimbursement Agreement. In the event that the preceding sentence is not operative, ATG shall receive the "Torbati 103rd Avenue Contribution", plus any interest accrued thereon pursuant to Section 9 of the Torbati Reimbursement Agreement. ATG shall also receive the "Torbati Route 41 Apron Improvement Contribution" (as defined in the Torbati Reimbursement Agreement), plus any interest accrued thereon pursuant to Section 9 of the Torbati Reimbursement Agreement, and the "Torbati Storm Water Drainage System Contribution" (as defined in the Torbati Reimbursement Agreement), plus any interest accrued thereon pursuant to Section 9 of the Torbati Reimbursement Agreement.

4. Mercantile Trust Right-of-Way. Mercantile Trust has provided a recordable right-of-way in the northeast quadrant of the Mercantile Trust Parcel, running from the east border of the Mercantile Trust Parcel southwesterly to the intersection of 103rd Avenue and Prairie Avenue (with a stub north to the border of the Lake County Trust Parcel), approximately in the location shown on Exhibit H attached hereto and made a part hereof (the "Mercantile Trust Right-of-Way").

5. North-South Ditch Drainage License. The parties hereto acknowledge that ATG has caused Lake County Trust to provide Mercantile Trust a temporary license to perform or have performed the earthwork necessary to improve and redefine the North-South Ditch in accordance with the North-South Ditch Plan for temporary storm water drainage through the North-South Ditch until such time as the Storm Water Drainage System is installed (the "North-South Ditch License"), a copy of which is attached hereto as Exhibit I and made a part hereof. At such time as the Storm Water Drainage System is installed, ATG and/or Lake County Trust shall provide Mercantile

Trust a permanent easement by plat or otherwise to accommodate the storm water drainage of the Mercantile Trust Parcel through the Storm Water Drainage System (the "Future Permanent Storm Easement").

6. ATG Improvements. ATG shall, as part of the development of the Lake County Trust Parcel, install or have installed the Sanitary Sewer, Storm Water Drainage System and the "apron" improvements within the right-of-way of Indianapolis Boulevard (Route 41) (the "Route 41 Apron Improvements"). The Sanitary Sewer, Storm Water Drainage System and Route 41 Apron Improvements shall be constructed in accordance with the specifications of the Town of Highland, Indiana and any other governmental body having jurisdiction thereof.

The parties hereto acknowledge that installation of the Sanitary Sewer has commenced pursuant to permit granted by the Indiana Department of Environmental Management (the "IDEM Permit"). At such time as installation of the Sanitary Sewer is substantially complete, the design engineer of the Sanitary Sewer (the "ATG Design Engineer") shall certify in a letter to ATG, Lake County Trust and Mercantile Trust that installation of the Sanitary Sewer is substantially complete (the "Sanitary Sewer Completion Certification"). The date of the Sanitary Sewer Completion Certification is referred to herein as the "Sanitary Sewer Completion Date".

At such time as installation of the Storm Water Drainage System is substantially complete, the ATG Design Engineer shall certify in a letter to ATG, Lake County Trust and Mercantile Trust that installation of the Storm Water Drainage System is substantially complete (the "Storm Water Drainage Completion Certification").

7. Mercantile Trust Improvements. Mercantile Trust shall, as part of the development of the Mercantile Trust Parcel, install or have installed 103rd Avenue, Prairie Avenue and the North-South Ditch Improvement. 103rd Avenue, Prairie Avenue and the North-South Ditch Improvement shall be constructed in accordance with the specifications of the Town of Highland, Indiana, and any other governmental body having jurisdiction thereof.

At such time as installation of 103rd Avenue is substantially complete, the design engineer of 103rd Avenue (the "Mercantile Trust Design Engineer") shall certify in a letter to ATG, Lake County Trust and Mercantile Trust that the installation of 103rd Avenue is substantially complete (the "103rd Avenue Completion Certification"). The date of the 103rd Avenue Completion Certification is referred to herein as the "103rd Avenue Completion Date".

At such time as installation of Prairie Avenue is substantially complete, the Mercantile Trust Design Engineer shall certify in a letter to ATG, Lake County Trust and Mercantile Trust that the installation of Prairie Avenue is substantially complete (the "Prairie Avenue Completion Certification"). The date of the Prairie Avenue Completion Certification is referred to herein as the "Prairie Avenue Completion Date".

At such time as installation of the North-South Ditch Improvement is substantially complete, the Mercantile Trust Design Engineer shall certify in a letter to ATG, Lake County Trust and Mercantile Trust that the installation of the North-South Ditch Improvement is substantially complete (the "North-South Ditch Completion Certificate"). The date of the North-South Ditch Completion Certificate is referenced to herein as the "North-South Ditch Completion Date".

8. Overall Commencement Date. The parties hereto acknowledge that the Plan Commission of the Town of Highland, Indiana has granted preliminary approval to the subdivision application of Frederick A. Olthof and Olthof Homes, Inc. The parties hereto further acknowledge that as of the date hereof (the "Overall Commencement Date"), the IDEM Permit has been received, the North-South Ditch License has been granted to Mercantile Trust by Lake County Trust, construction of the Sanitary Sewer has commenced and the Lake County Trust Sanitary Sewer Easement, Lake County Trust Right-of-Way, Torbati Right-of-Way and Mercantile Trust Right-of-Way have been duly executed by the necessary parties and submitted to the Town of Highland for recording in the Office of the Recorder of Lake County, Indiana. Where pertinent, all conditions precedent to the Overall Commencement Date shall be deemed to have occurred.

9. Completion of North-South Ditch Improvement. In the event that the North-South Ditch Completion Date does not occur on or before June 1, 1995, then, at the election of ATG, either (A) the North-South Ditch Completion Date shall be extended to the actual later date (after June 1, 1995) of the North-South Ditch Completion Certification, or (B) ATG may, upon written notice to Mercantile Trust on or before June 4, 1995 (the "ATG North-South Ditch Completion Notice"), commence to complete and diligently pursue completion of such work as is necessary to cause the Mercantile Trust Design Engineer to provide the North-South Ditch Completion Certification (the "ATG North-South Ditch Completion Work"). ATG shall be deemed to have elected option "(A)" set forth above in this paragraph in the event that ATG does not timely provide Mercantile Trust the ATG North-South Ditch Completion Notice.

In the event that ATG timely provides Mercantile Trust the ATG North-South Ditch Completion Notice, Mercantile Trust shall pay ATG the direct costs and expenses of the ATG North-South Ditch Completion Work (the "ATG North-South Ditch Cost of Completion"). The amount of the ATG North-South Ditch Cost of Completion shall be supported by an itemized list of costs and expenses directly related to the ATG North-South Ditch Completion Work, including any supporting documentation reasonably necessary to verify the ATG North-South Ditch Cost of Completion. Mercantile Trust shall pay ATG the amount of the North-South Ditch Cost of Completion within thirty (30) days of invoice therefor.

In the event Mercantile Trust fails or refuses to make a payment required to be made by it under or with respect to this Section 9, ATG may make such payment and/or may exercise such rights and remedies as are available at law (provided, the legal remedy shall be limited to an action to collect amounts owed hereunder) and in equity (including the right to lien any portions of the Mercantile Trust Parcel then owned by

Mercantile Trust), provided ATG shall not have the right to pursue any other right or remedy at law against Mercantile Trust related thereto.

10. Completion of Sanitary Sewer. In the event that the Sanitary Sewer Completion Date does not occur on or before June 1, 1995, then, at the election of Mercantile Trust, either (A) the Sanitary Sewer Completion Date shall be extended to the actual later date (after June 1, 1995) of the Sanitary Sewer Completion Certification, or (B) Mercantile Trust may, upon written notice to ATG and Lake County Trust on or before June 4, 1995 (the "Mercantile Trust Sanitary Sewer Completion Notice"), enter upon the Lake County Trust Parcel to commence to complete and diligently pursue completion of such work as is necessary to cause the ATG Design Engineer to provide the Sanitary Sewer Completion Certification (the "Mercantile Trust Sanitary Sewer Completion Work"). Mercantile Trust shall be deemed to have elected option "(A)" set forth above in this paragraph in the event that Mercantile Trust does not timely provide ATG and Lake County Trust the Mercantile Trust Sanitary Sewer Completion Notice.

In the event that Mercantile Trust timely provides ATG and Lake County Trust the Mercantile Trust Sanitary Sewer Completion Notice, ATG shall pay Mercantile Trust the direct costs and expenses of the Mercantile Trust Sanitary Sewer Completion Work (the "Mercantile Trust Sanitary Sewer Cost of Completion"). The amount of the Mercantile Trust Sanitary Sewer Cost of Completion shall be supported by an itemized list of costs and expenses directly related to the Mercantile Trust Sanitary Sewer Completion Work, including any supporting documentation reasonably necessary to verify the Mercantile Trust Sanitary Sewer Cost of Completion. ATG shall pay Mercantile Trust the Mercantile Trust Sanitary Sewer Cost of Completion within thirty (30) days of receipt of invoice therefor.

In the event that Mercantile Trust timely provides ATG and Lake County Trust the Sanitary Sewer Completion Notice, Lake County Trust shall within ten (10) days of the date of the Sanitary Sewer Completion Notice, grant Mercantile Trust a temporary license for installation of the Sanitary Sewer Improvement (the "Sanitary Sewer Completion License"), which license shall expire ninety (90) days after the date of the Sanitary Sewer Completion Notice. Mercantile Trust shall include in the Sanitary Sewer Completion Notice a written revocation of the Sanitary Sewer Completion License, signed by Mercantile Trust and dated ninety (90) days after the date of the Sanitary Sewer Completion Notice. Mercantile Trust hereby agrees to indemnify and hold harmless ATG and Lake County Trust from any loss, cost, claim, liability or damages arising out of or in connection with the Sanitary Sewer Ditch Completion Work, and in addition shall not allow any liens or other encumbrances to be created upon the Lake County Trust Parcel. Mercantile Trust covenants that all of the Sanitary Sewer Ditch Completion Work will be performed pursuant to "no-lien" contracts. Mercantile Trust agrees that as a condition of the Sanitary Sewer Completion License, Mercantile Trust shall provide ATG and Lake County Trust a signed, sworn statement from each contractor that performs any of the Sanitary Sewer Ditch Completion Work, stating that said contractor shall not lien or encumber the Lake County Trust Parcel as a result of the non-payment of any funds by Mercantile Trust.

In the event ATG fails or refuses to make a payment required to be made by it under or with respect to this Section 10, Mercantile Trust may make such payment and/or may exercise such rights and remedies as are available at law (provided, the legal remedy shall be limited to an action to collect amounts owed hereunder) and in equity (including the right to lien any portions of the Lake County Trust Parcel then owned by ATG), provided Mercantile Trust shall not have the right to pursue any other right or remedy at law against ATG, and Mercantile Trust shall not have the right to lien any portion of the Lake County Trust Parcel owned by Lake County Trust or to pursue any other remedy against Lake County Trust related thereto.

11. Completion of Storm Water Drainage System. ATG shall install or have installed the Storm Water Drainage System as the Lake County Trust Parcel is developed. At such time as installation of the Storm Water Drainage System is complete (and thereby replaces the North-South Ditch to accommodate the storm water drainage of the Mercantile Trust Parcel), ATG or Lake County Trust shall provide Mercantile Trust the Future Permanent Storm Easement (as defined in Section 5 hereof).

12. Completion of 103rd Avenue. In the event that the 103rd Avenue Completion Date does not occur on or before June 1, 1995, then, at the election of ATG, either (A) the 103rd Avenue Completion Date shall be extended to the actual later date (after June 1, 1995) of the 103rd Avenue Completion Certification, or (B) ATG may, upon written notice to Mercantile Trust (the "ATG 103rd Avenue Completion Notice") on or before June 4, 1995, draw upon the 103rd Avenue Letter of Credit and use the proceeds (the "Letter of Credit Proceeds") thereof to commence to complete and diligently pursue completion of such work as is necessary to cause the Mercantile Trust Design Engineer to provide the 103rd Avenue Completion Certification (the "ATG 103rd Avenue Completion Work"). ATG shall be deemed to have elected option "(A)" set forth in this paragraph in the event that ATG does not timely provide Mercantile Trust the 103rd Avenue Completion Notice.

In the event that ATG timely provides Mercantile Trust the 103rd Avenue Completion Notice (in which event ATG shall draw upon the Letter of Credit Proceeds), ATG shall apply the Letter of Credit Proceeds toward the payment of the direct costs and expenses of the ATG 103rd Avenue Completion Work (the "ATG 103rd Avenue Cost of Completion"). The amount of the ATG 103rd Avenue Cost of Completion shall be supported by an itemized list of costs and expenses directly related to the ATG 103rd Avenue Completion Work, including any supporting documentation reasonably necessary to verify the ATG 103rd Avenue Cost of Completion. In the event that (C) the Letter of Credit Proceeds, is greater than (D) the ATG 103rd Avenue Cost of Completion, ATG shall pay Mercantile Trust the difference of (C) minus (D) within ten (10) days of the date of the 103rd Avenue Completion Certification. In the event that (E) the Letter of Credit Proceeds, is less than (F) the ATG 103rd Avenue Cost of Completion, Mercantile Trust shall pay ATG the difference of (F) minus (E) within thirty (30) days of receipt of invoice therefor. In the event ATG or Mercantile Trust fails or refuses to make a payment required to be made by it under or with respect to this

Section 12, the non-defaulting party may make such payment and/or may exercise such rights and remedies available at law (provided, the legal remedy shall be limited to an action to collect amounts owed hereunder) and in equity (including the right to lien the Mercantile Trust Parcel or any portions of the Lake County Trust Parcel then owned by ATG), provided said non-defaulting party may not pursue any other right or remedy available at law as against the defaulting party, and Mercantile Trust shall not have the right to lien any portion of the Lake County Trust Parcel owned by Lake County Trust or to pursue any right or remedy against Lake County Trust related thereto.

13. Completion of Prairie Avenue. In the event that the Prairie Avenue Completion Date does not occur on or before June 1, 1995, then, at the election of ATG, either (A) the Prairie Avenue Completion Date shall be extended to the actual later date (after June 1, 1995) of the Prairie Avenue Completion Certification, or (B) ATG may, upon written notice to Mercantile Trust on or before June 4, 1995 (the "ATG Prairie Avenue Completion Notice") commence to complete and diligently pursue completion of such work as is necessary to cause the Mercantile Trust Design Engineer to provide the Prairie Avenue Completion Certification (the "ATG Prairie Avenue Completion Work"). ATG shall be deemed to have elected option "(A)" set forth above in this paragraph in the event that ATG does not timely provide Mercantile Trust the ATG Prairie Avenue Completion Notice.

In the event that ATG timely provides Mercantile Trust the ATG Prairie Avenue Completion Notice, ATG shall, after the date of Prairie Avenue Completion Certification, provide Mercantile Trust an invoice for the direct costs and expenses of the ATG Prairie Avenue Completion Work (the "ATG Prairie Avenue Cost of Completion"). The amount of the ATG Prairie Avenue Cost of Completion shall be supported by an itemized list of costs and expenses directly related to the ATG Prairie Avenue Completion Work, including any supporting documentation reasonably necessary to verify the ATG Prairie Avenue Cost of Completion. Mercantile Trust shall pay ATG the ATG Prairie Avenue Cost of Completion within thirty (30) days of the date of the ATG invoice therefor. In the event Mercantile Trust fails or refuses to make a payment required to be made by it under or with respect to this Section 13, ATG may make such payment and/or may exercise such rights and remedies as are available at law to (provided, the legal remedy shall be limited to an action to collect amounts owed hereunder) and in equity (including the right to lien the Mercantile Trust Parcel), provided ATG may not pursue any other right or remedy at law against Mercantile Trust related thereto.

14. Storm Consultant Cost. The term "ATG Principal Storm Design Engineer" as used herein shall mean the engineer that principally designs the Storm Water Drainage System. Mercantile Trust shall be responsible for the payment of all fees and costs of Lindley & Sons, Inc. for preparation of that certain storm water drainage study entitled Whispering Oaks and White Oak Estates, Lindley & Sons, Inc. Project No. 94082, dated October 31, 1994 (the "Lindley Study"). In the event that as part of the subdivision and engineering of the Lake County Trust Parcel, ATG is required by the Town of Highland, Indiana or other governmental entity to submit a storm water study prepared by an engineer other than the ATG Principal Storm Design Engineer (a

"Consulting Engineer"), ATG shall incur no cost or expense related to the Lindley Study. In the event that as part of the subdivision and engineering of the Lake County Trust Parcel, ATG is not required by the Town of Highland, Indiana or other governmental entity to submit a storm water study prepared by a Consulting Engineer, ATG shall tender to Mercantile Trust fifty percent (50%) of the cost of the Lindley Study.

15. Off-Site Grand Trunk Ditch Cleaning. ATG and Mercantile Trust shall clean or cause to be cleaned that portion of the existing ditch running adjacent to the south line of the right-of-way of the Grand Trunk Railroad (the "Grand Trunk Ditch") from (A) the point where the existing ditch running north from the north line of the subdivision commonly known as White Oak Estates in the Town of Munster, Indiana intersects the Grand Trunk Ditch, to (B) White Oak Avenue in the Town of Munster, Indiana. ATG and Mercantile Trust shall each pay fifty percent (50%) of the cost of cleaning said portion of the Grand Trunk Ditch. Said cleaning work shall not commence until ATG, Lake County Trust and Mercantile Trust have provided the Town of Munster, Indiana and property owners adjacent to said portion of the Grand Trunk Ditch written notice of the cleaning work to be performed.

16. Documents. The parties agree to provide each other easements, right-of-ways and other documents reasonably necessary to effectuate this Agreement.

17. Lake County Trust. The obligations of Lake County Trust hereunder shall be limited to the granting of easements and licenses as required by the terms of this Agreement. The sole remedy ATG and Mercantile Trust shall have against Lake County Trust is an action for specific performance with regard to the license referred to in Section 10. All other rights and remedies at law or in equity are hereby waived. Lake County Trust may, but shall not be obligated to, perform and/or exercise the rights and acts of ATG to be performed hereunder.

18. Governing Law. This Agreement shall be governed by the laws of the State of Indiana.

19. Lake County Trust Capacity. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee, are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purposes of binding only that portion of the Trust Property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability is assumed by nor shall at any time be asserted or enforceable against the Lake County Trust Company on account of this instrument or on account of any warranty, indemnity,

representation, covenants, undertaking or agreement of said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Nothing contained herein shall be construed as creating any liability on Lake County Trust Company, personally, under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other federal, state or local rule or regulation. Lake County Trust Company, personally, is not a "Transferor" under the Act or regulation. Lake County Trust Company, personally, is not a "Transferor" under the Act and makes no representations or warranties concerning any possible environmental defects. In making any representation or warranty herein, the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any representation or warranty in this instrument.

The information contained in this instrument has been furnished the undersigned by the beneficiaries and the statements made herein are made solely in reliance thereon and no responsibility is assumed by the undersigned, in its individual capacity for the trust or accuracy of the facts herein stated.

20. Counterparts. The parties hereto agree that this Second Amendment may be executed in counterparts, each of which shall be deemed an original, and shall be deemed effective as of the date hereof if fully executed within ten (10) days of the date hereof.

21. Effect of Second Amendment and Restatement. This Second Amendment hereby modifies, amends and restates the Agreement, as amended by the First Amendment. In the event of any conflict between the Agreement, First Amendment and this Second Amendment, this Second Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment To and Restatement of Agreement as of the date first written above.

LAKE COUNTY TRUST:

Lake County Trust Company,
as Trustee under Trust Agreement
dated the 29th day of December,
1981, as amended, and known as Trust Number 3188

By: *Elaine M. Worstell*

Its: ELAINE M. WORSTELL
Trust Officer

Attest: *Sandra L. Stutz*

Its: SANDRA L. STUTZ
Trust Officer

Lake County Trust Company,
as Trustee under Trust Agreement
dated the 29th day of December,
1981, as amended, and known as Trust Number 3189

By: *Elaine M. Worstell*

Its: ELAINE M. WORSTELL
Trust Officer

Attest: *Sandra L. Stutz*

Its: SANDRA L. STUTZ
Trust Officer

ATG:

ATG Development Company 2, LLC,
an Indiana limited liability company

By: *[Signature]*

Its: *[Signature]*

MERCANTILE TRUST:

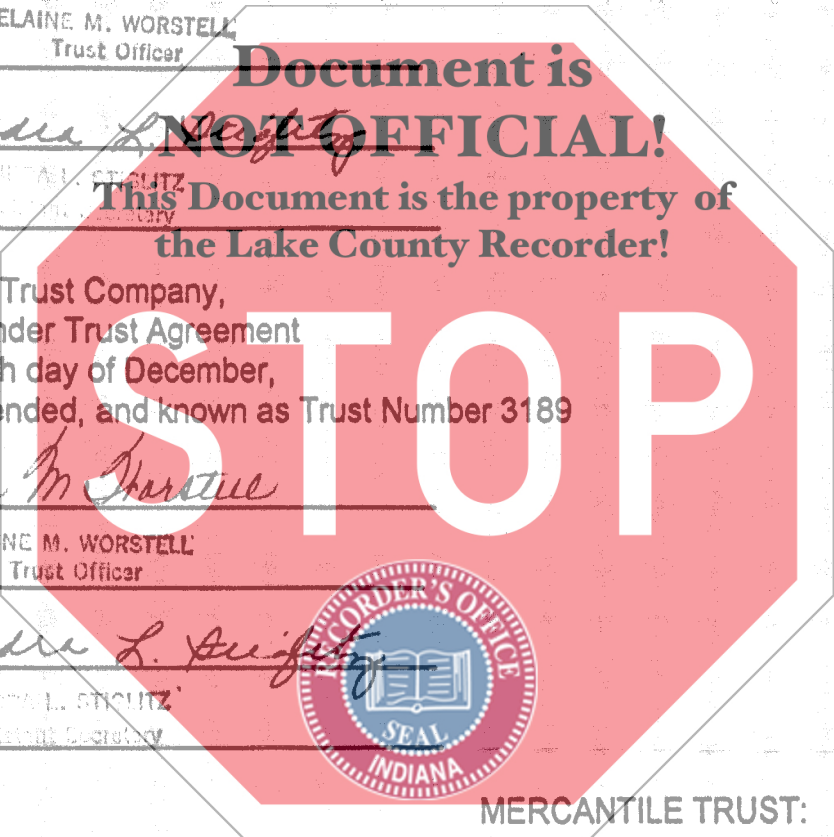
Mercantile National Bank and Trust
Company as Trustee under Trust
Agreement dated July 30, 1990
and known as Trust Number 5305

By: SEE SIGNATURE PAGE ATTACHED

Its: _____

Attest: _____

Its: _____



27-27-2

The East 50 acres of the North Half of the Southeast Quarter of Section 32, Township 36 North, Range 9 West of the 2nd P.M., except the East 30 feet thereof; and

27-27-1

The West 30 acres of the North Half of the Southeast Quarter of Section 32, Township 36 North, Range 9 West of the 2nd P.M., all in the Town of Highland, in Lake County, Indiana.

27-26-2

The Northeast Quarter of Section 32, Township 36 North, Range 9 West of the Second Principal Meridian, except the East 30 feet thereof and except the right of way of the Chicago and Grand Trunk Railway Company;

excepting therefrom all that part of the above described real estate lying northeasterly of the northerly right of way line of the Chicago and Grand Trunk Railway Company;

excepting further: commencing at a point on the South line of the North Half of Section 32-36-9 which is 88.277 feet west of the Southeast corner of the North Half of Section 32-36-9 thence west along the South line of the North Half of Section 32-36-9 a distance of 1415.0 feet. Thence North at an angle of 90 degrees with the South line of the North Half of Section 32-36-9 a distance of 912.0 feet to the Southwesterly right of way line of the Grand Trunk Railroad; thence in a southeasterly direction along said Southwesterly right of way line, a distance of 1451.8 feet to the Southwesterly right of way line of U.S. Highway #41, thence in a Southeasterly direction along said Southwesterly right of way line a distance of 451.9 feet to the point of beginning, containing 21.721 acres, more or less, all in Lake County, Indiana;



Part of the Northeast quarter of Section 32, Township 36 North, Range 9 West of the 2nd Principal Meridian, in the Town of Highland, Lake County, Indiana, described as follows: Beginning at the intersection of the South line of said Northeast quarter and a line which is 60 feet westerly of, measured at right angles, and parallel to the Westerly right of way line of U.S. Highway No. 41; thence Northwesterly, along said parallel line, to a point which is 195.5 feet Southeasterly, measured along said parallel line, from the intersection of said parallel line with a line which is 60 feet Southerly of, measured at right angles, and parallel to the Southwesterly right of way line of the Grand Trunk Railroad; thence West, parallel to the South line of said Northeast quarter, a distance of 168.58 feet; thence North, at right angles, to the Southwesterly right of way line of the Grand Trunk Railroad; thence Northwesterly, along said Southwesterly line, to a point on a line which is perpendicular to the South line of said Northeast quarter and intersects said South line at a point 1503.277 feet West of the Southeast corner of said Northeast quarter; thence South along said perpendicular line to the South line of said Northeast quarter; thence east along said South line to the point of beginning.

INSURANCE
LILLIAN A. BLASTICK
RECORDER, LAKE COUNTY
CROWN POINT, INDIANA 46307
MAY 2
STATE OF INDIANA
FILED

EXHIBIT B

Total Legal Description:

Approximately twenty-eight (28) acres described as follows, to-wit:

27-27-3
The North half of the South Half of the Southeast Quarter of Section 32, Township 36 North, Range 9 West of the Second P.M.; (excepting the following described parcel of land: Commencing at the Southeast corner of said Section 32; thence Northerly on the East line of said Section 32, a distance of 899.35 feet; then Westerly on a line parallel to and 425.00 feet South of the North line of the North 425 feet of the South Half of the Southeast Quarter of said Section 32, a distance of 81.06 feet to the place of beginning, said point of beginning, also lying on the West right of way line of U.S. Highway No. 41; thence continuing Westerly on a line parallel to and 425.00 feet South of said North line, a distance of 672.80 feet; thence Northerly on a line parallel to and 753.86 feet West of the East line of said Section 32, a distance of 212.50 feet; thence Westerly on a line parallel to and 212.50 feet South of said North line, a distance of 100.00 feet; thence Northerly on a line parallel to and 853.86 feet West of the East line of said Section 32, a distance of 212.50 feet; thence Easterly on said North line of the North 425.00 feet of the South Half of the Southeast Quarter of said Section 32, a distance of 792.46 feet to a point, said point lying on the West right of Way line of U.S. Highway No. 41; thence Southerly on said West right of way line, a distance of 425.15 feet to the place of beginning, all in the Town of Highland, Lake County, Indiana, and also excepting the road right of way easement of U.S. Highway No. 41), all in Lake County, Indiana.

This Document is the property of
the Lake County Recorder!

Excepting therefrom the following two (2) parcels, to-wit:

PARCEL 1:

The N 1/2 of the S 1/2 of the SE 1/4 of Section 32, Township 36 North, Range 9 West of the 2nd p.m.; (excepting the following described parcel of Land: Commencing at the southeast corner of said Section 33; thence northerly on the east line of said Section 32, a distance of 899.35 feet; thence westerly on a line parallel to and 425.00 feet south of the North line of the North 425 feet on the South half of the southeast quarter of said section 32, a distance of 81.06 feet to the point of beginning, said point of beginning also lying on the west right-of-way line of U.S. Highway 41; thence continuing westerly on a line parallel to and 425.00 feet south of said north line, a distance of 672.80 feet; thence northerly on a line parallel to and 753.86 feet west of the east line of said Section 32, a distance of 212.50 feet; thence westerly on a line parallel to and 212.50 feet south of said north line, a distance of 100.00 feet thence northerly on a line parallel to and 853.86 feet west of the east line of said Section 32, a distance of 212.50 feet; thence easterly on said north line of the north 425.00 feet on the south half of the southeast quarter of said Section 32, a distance of 792.48 feet to a point, said point lying on the west right-of-way line of U.S. Highway 41; thence southerly on said west right-of-way line, a distance of 425.15 feet to the point of beginning, containing 7.147 acres more or less, all in the Town of Highland, Lake County, Indiana and also excepting the road right-of-way easement of U.S. Highway 41.)
Lake County, Indiana

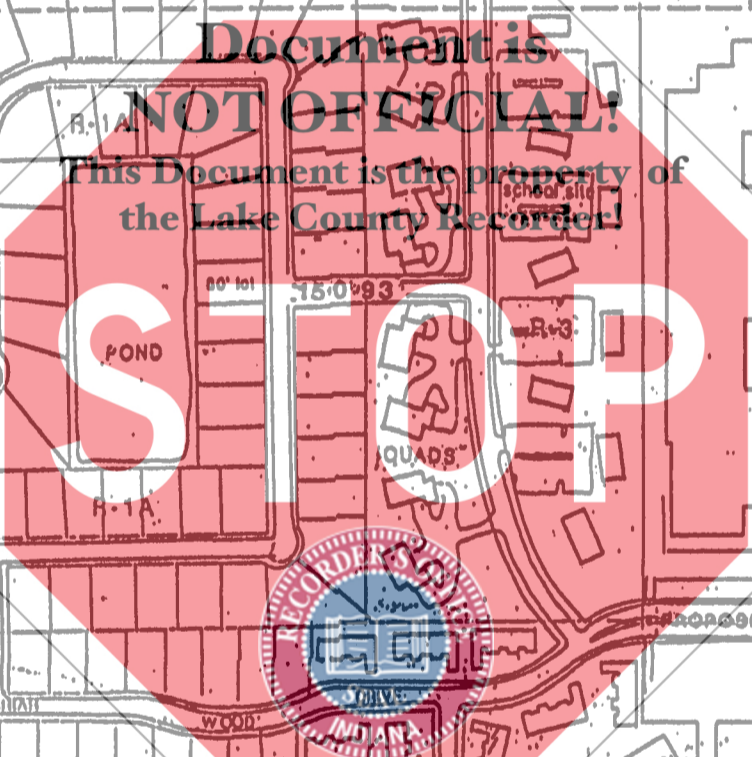
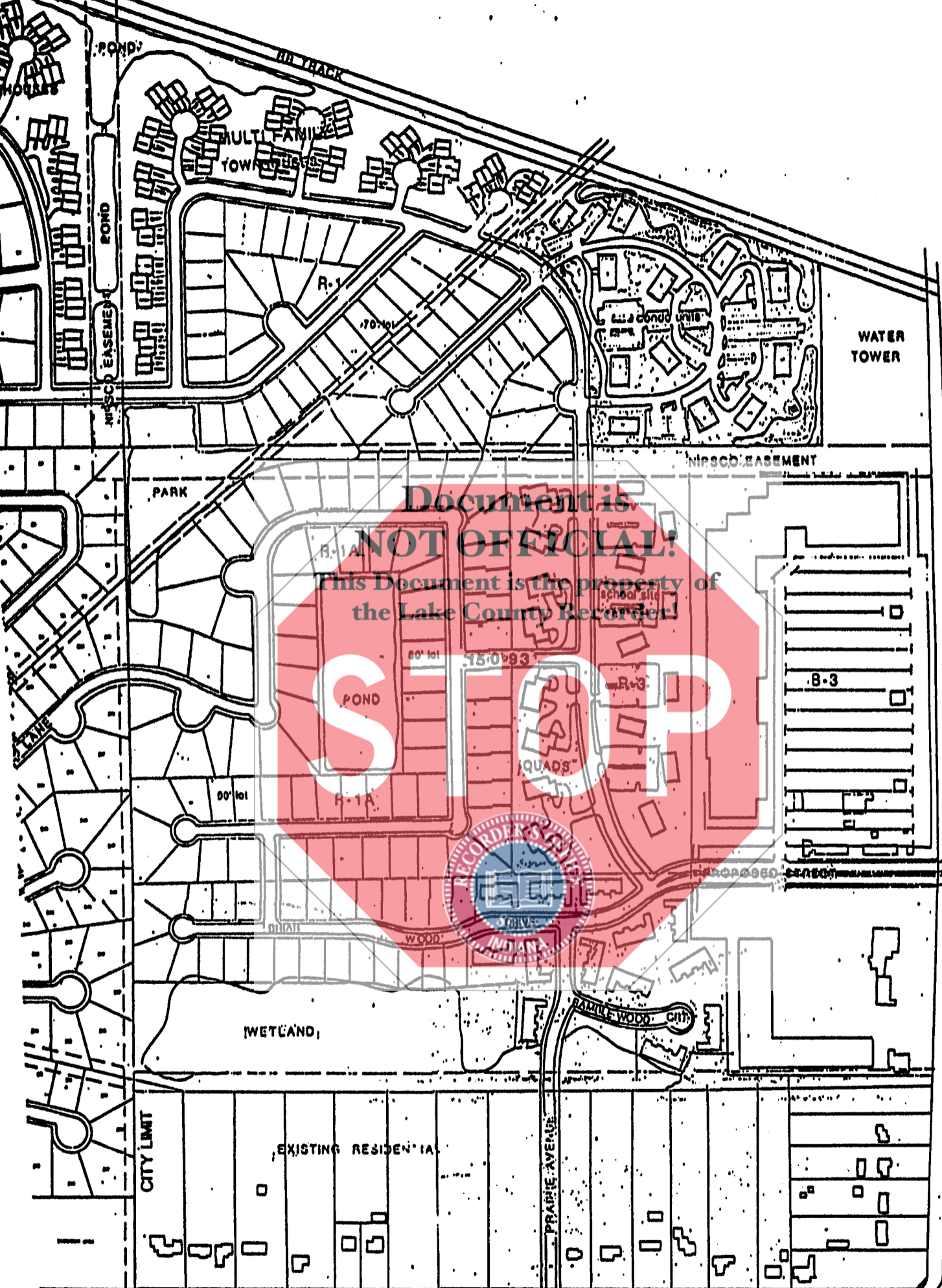
EXHIBIT B Continued

PARCEL 2:

Being a part of the North Half of the South Half of the Southeast Quarter of Section 32, Township 36 North, Range 9 West of the Second Principal Meridian more particularly described as follows: Commencing at the Southeast corner of said Section 32; thence Northerly on the East line of said Section 32, a distance of 899.35 feet; thence Westerly on a line parallel to and 425.00 feet South of the North line of the South Half of the Southeast Quarter of said Section 32, a distance of 81.06 feet to the point of beginning, said point of beginning also lying on the West right of way line of U.S. Highway 41; thence continuing Westerly along the last described line, a distance of 672.80 feet; thence Southerly on a line parallel to and 753.86 feet West of the East line of said Section 32, a distance of 238.05 feet to a point lying on the North line of the South half of the South half of the Southeast Quarter of said Section 32, said line also being the North line of a subdivision known as Highland Acres as shown on the recorded plat thereof in the Office of the Recorder of Lake County, Indiana, thence Easterly along the North line of the South half of the South half of the Southeast Quarter of said Section 32, a distance of 661.79 feet to a point lying on the Westerly right of way line of U.S. Highway 41; thence Northerly along said Westerly right of way line, a distance of 238.12 feet to the point of beginning, containing 3.647 acres, more or less, in Highland, Lake County, Indiana.



MUNSTER HIGHLAND



US RTE 41

RESS DRIVE

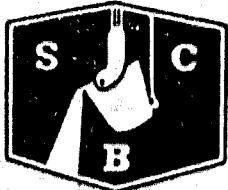
CITY LIMIT

SCHERERVILLE

UN CREEK DRIVE

INDIANAPOLIS BLVD

EXHIBIT E
THE STEEL CITY BANK



OF CHICAGO

3030 East 92nd Street, Chicago, Illinois 60617-4583
10200 South Ewing Avenue, Chicago, Illinois 60617-6023
17130 Torrence Avenue, Lansing, Illinois 60438-1000

312/768-1900
312/768-0502-03
708/474-1010

July 20, 1994

ATG Development Company 2, LLC,
An Indiana Limited Liability Company
One Professional Center
Suite 304
Crown Point, Indiana 46307

Reference No.: 2132-94

Dear Sir:

We hereby issue in your favor our Irrevocable Credit for the account of OLTHOF HOMES, INC., for an amount or amounts not to exceed in the aggregate U.S. Dollars EIGHTY FIVE THOUSAND AND NO/100 (\$85,000.00), available by your drafts on THE STEEL CITY BANK OF CHICAGO, July 20, 1994, and expiring at our office on July 20, 1995, at 4:00 p.m.

Funds under this Credit are available against your draft(s) mentioning our Credit Number as it appears above.

The below mentioned documents must be presented at sight to our Commercial Loan Department at 17130 Torrence Avenue, Lansing, Illinois, during regular business hours on or before the expiry date on this instrument in accordance with the terms and conditions of this Letter of Credit.

Beneficiary's signed statement that the amount drawn represents funds due and owing pursuant to the agreement dated July 20, 1994, between Mercantile National Bank and Trust Company, as Trustee under Trust Agreement dated July 30, 1990 and known as Trust Number 5305, ATG Development Company 2, LLC, an Indiana Limited Liability Company, and Lake County Trust as Trustee under Trust Agreements, dated December 29, 1981, as amended, and known as Trust Numbers 3188 and 3189.

This Credit is subject to the Uniform Customs and Practice for Document Credits (1993 Revision) International Chamber of Commerce, Publication Number 500.

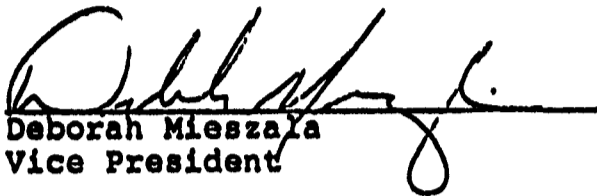
We engage with you that drafts drawn under and in conformity with the terms of this Credit will be duly honored on presentation on or before the expiry date. The original Letter of Credit must accompany the documents required under this credit.

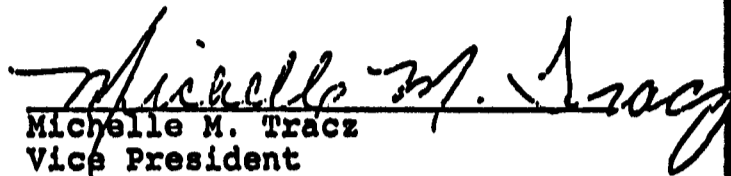
MEMBER — STEEL CITY BANCORPORATION, INC.

Page 2
ATG Development Company 2, LLC
July 20, 1994

Please address all correspondence regarding this Letter of Credit to the attention of the Commercial Loan Department, mentioning our Reference Number as it appears above.

Very truly yours,


Deborah Mieszala
Vice President


Michelle M. Tracz
Vice President

DM:MMT:ls





DEBORAH MIESZALA
Vice President
Corporate Loan Division

December 16, 1994

ATG Development Company 2, LLC,
and Indiana Limited Liability Company
One Professional Center
Suite 304
Crown Point, IN 46307

Re: Amendment to Irrevocable Letter of Credit No. 2132-94 dated July 20, 1994 in the amount of \$85,000.00 issued by U.S. BANK, formerly known as THE STEEL CITY BANK OF CHICAGO, for the account of OLTHOF HOMES, INC.

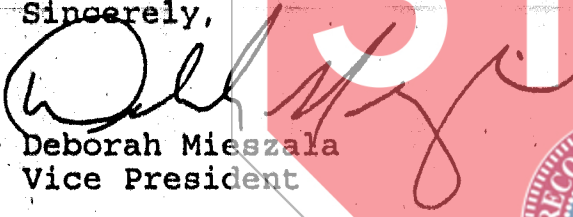
Gentlemen:

We hereby amend Letter of Credit No. 2132-94 by adding the following language to Paragraph 4 of the above referenced letter of credit as follows:

"Beneficiary's signed statement that the amount drawn represents funds due and owing pursuant to the agreement dated July 20, 1994, as amended by First Amendment to Agreement, dated September 30, 1994, as further amended by Second Amendment To and Restatement of Agreement, dated December 12, 1994, etc."

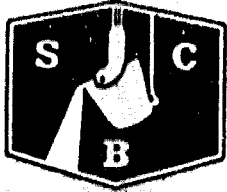
In all other respects, said Letter of Credit No. 2132-94 shall remain in full force and effect.

Sincerely,


Deborah Mieszala
Vice President

dm

EXHIBIT E 1
THE STEEL CITY BANK



OF CHICAGO

3030 East 92nd Street, Chicago, Illinois 60617-4583
10200 South Ewing Avenue, Chicago, Illinois 60617-6023
17130 Torrence Avenue, Lansing, Illinois 60438-1000

312/768-1900
312/768-0502-03
708/474-1010

July 20, 1994

ATG Development Company 2, LLC,
An Indiana Limited Liability Company
One Professional Center
Suite 304
Crown Point, Indiana 46307

Reference No.: 2133-94

Gentlemen:

We hereby issue in your favor our Irrevocable Credit for the account of OLTHOF HOMES, INC., for an amount or amounts not to exceed in the aggregate U.S. Dollars ONE HUNDRED FIFTY FIVE THOUSAND AND NO/100 (\$155,000.00), available by your drafts on THE STEEL CITY BANK OF CHICAGO, July 20, 1994, and expiring at our office on July 20, 1995, at 4:00 p.m.

Funds under this Credit are available against your draft(s) mentioning our Credit as the property of

The below mentioned documents must be presented at sight to our Commercial Loan Department at 17130 Torrence Avenue, Lansing, Illinois, during regular business hours on or before the expiry date on this instrument in accordance with the terms and conditions of this Letter of Credit.

Beneficiary's signed statement that the amount drawn represents funds due and owing pursuant to the agreement dated July 20, 1994, between Mercantile National Bank and Trust Company, as Trustee under Trust Agreement dated July 30, 1990 and known as Trust Number 5305, ATG Development Company 2, LLC, an Indiana Limited Liability Company, and Lake County Trust as Trustee under Trust Agreements, dated December 29, 1981, as amended, and known as Trust Numbers 3188 and 3189.

This Credit is subject to the Uniform Customs and Practice for Document Credits (1993 Revision) International Chamber of Commerce, Publication Number 500.

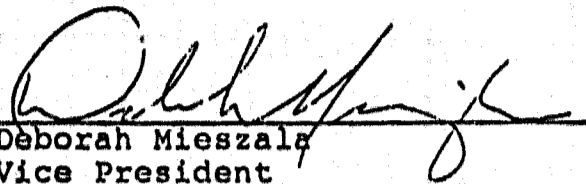
We engage with you that drafts drawn under and in conformity with the terms of this Credit will be duly honored on presentation on or before the expiry date. The original Letter of Credit must accompany the documents required under this credit.

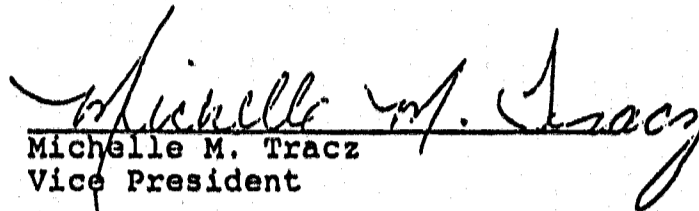
MEMBER — STEEL CITY BANCORPORATION, INC.

Page 2
ATG Development Company 2, LLC
July 20, 1994

Please address all correspondence regarding this Letter of Credit to the attention of the Commercial Loan Department, mentioning our Reference Number as it appears above.

Very truly yours,


Deborah Mieszala
Vice President


Michelle M. Tracz
Vice President

DM:MMT:ls





DEBORAH MIESZALA
Vice President
Corporate Loan Division

December 16, 1994

ATG Development Company 2, LLC,
and Indiana Limited Liability Company
One Professional Center
Suite 304
Crown Point, IN 46307

Re: Amendment to Irrevocable Letter of Credit No. 2133-94 dated July 20, 1994 in the amount of \$155,000.00 issued by U.S. BANK, formerly known as THE STEEL CITY BANK OF CHICAGO, for the account of OLTHOF HOMES, INC.

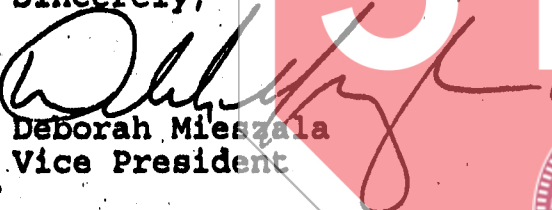
Gentlemen:

We hereby amend Letter of Credit No. 2133-94 by adding the following language to Paragraph 4 of the above referenced letter of credit as follows:

"Beneficiary's signed statement that the amount drawn represents funds due and owing pursuant to the agreement dated July 20, 1994, as amended by First Amendment to Agreement, dated September 30, 1994, as further amended by Second Amendment to and Restatement of Agreement, dated December 12, 1994, etc."

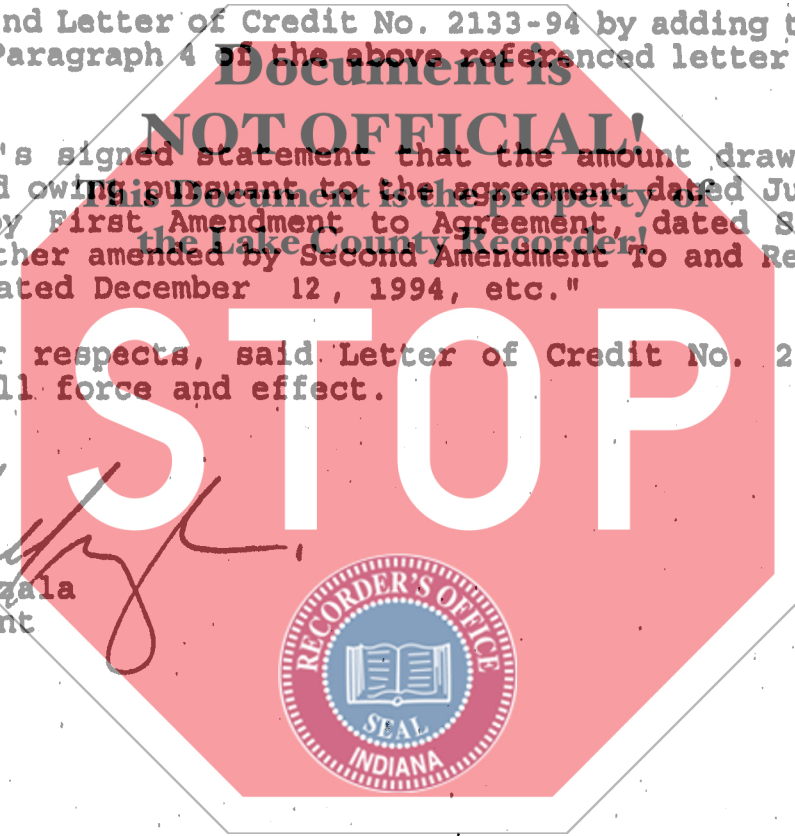
In all other respects, said Letter of Credit No. 2133-94 shall remain in full force and effect.

Sincerely,



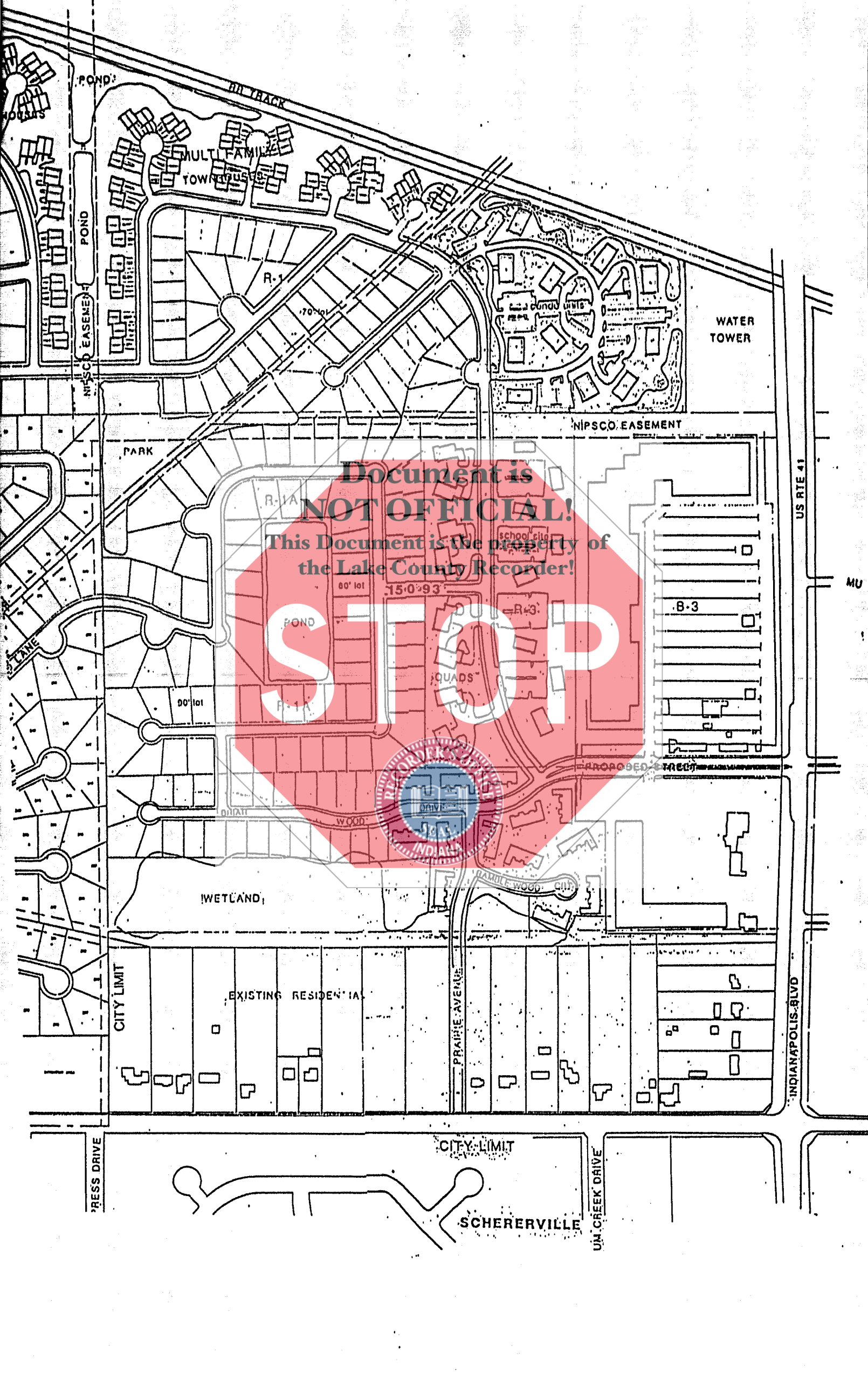
Deborah Mieszala
Vice President

dm

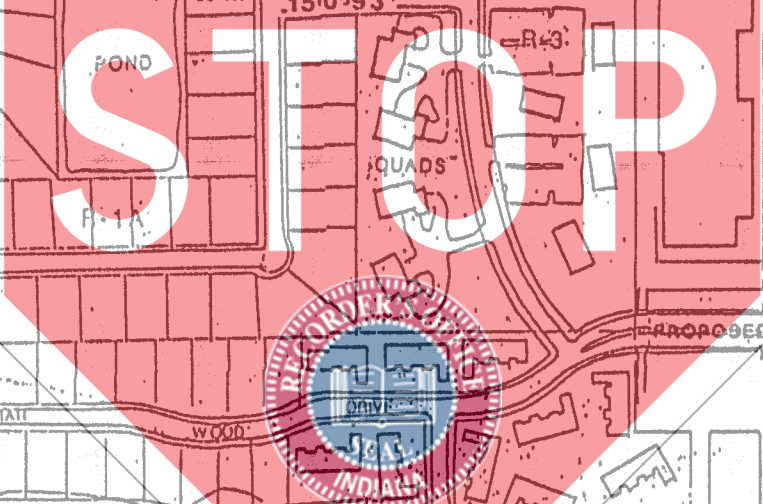


17130 Torrence Avenue, Lansing, Illinois 60438, (708) 474-1010
16255 S. Harlem Avenue, Tinley Park, Illinois 60477, (708) 532-7200

MUNSTER HIGHLAND



Document is
NOT OFFICIAL!
 This Document is the property of
 the Lake County Recorder!



US RTE 41

MU

INDIANAPOLIS BLVD

PRESS DRIVE

CITY LIMIT

UM CREEK DRIVE

SCHERERVILLE

TEMPORARY DRAINAGE LICENSE

LAKE COUNTY TRUST COMPANY, as Trustee under the provisions of a Trust Agreement dated December 29, 1981, as amended, and known as Trust No. 3188 of Lake County, and State of Indiana ("Grantor"), in consideration of One and 00/100 Dollar (\$1.00) and other good and valuable consideration; the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to **MERCANTILE NATIONAL BANK AND TRUST COMPANY**, as **TRUSTEE** under the provisions of a Trust Agreement dated July 30, 1990 and known as Trust Number 5305 of Lake County, and State of Indiana ("Grantee") and its successors and assigns, a temporary license to install, improve, erect, maintain, repair and replace a storm water drainage ditch together with all rights and privileges necessary or consequent for the full use or enjoyment thereof, for the purposes herein described, including the right of ingress and egress to and from the license parcel over adjoining lands of Grantor, in, across, over and under the portion owned by Grantor of that certain parcel of real estate located in the Town of Highland, County of Lake, State of Indiana, and more particularly described on Exhibit A attached hereto and made a part hereof (the "License Parcel"). The license described herein is to be appurtenant to and shall run with the land and shall be for the benefit and use of that certain parcel of real estate located in the Town of Highland, County of Lake, State of Indiana, and more particularly described on Exhibit B attached hereto and made a part hereof (the "Dominant Parcel") and shall continue and exist so long and until such time as Grantor fills in said storm drainage ditch and installs and dedicates for public use a storm sewer drain and/or other storm drainage facilities over and upon all or part of the License Parcel, and shall automatically terminate in such event. In the event of such termination, Grantee shall thereupon provide Grantor a recordable quit-claim deed to the License Parcel upon Grantor's written request.

Grantee shall be responsible for the construction, maintenance and repair of said storm water drainage ditch until said storm sewer drain and/or other storm drainage facilities is/are dedicated to and accepted by the Town of Highland, Lake County, Indiana over and upon the License Parcel. Grantee shall install and improve said storm drainage ditch pursuant to the specifications of that certain plan, entitled Whispering Oaks Temporary N/S Ditch Improvement, Highland, Indiana, dated 11/17/94, by R.A. Dugan & Associates, Ltd., which has been submitted to and approved by the Town of Highland, Indiana. In the event there is dirt remaining after completion of construction of said storm water drainage ditch, Grantee shall stockpile excess dirt from such work on the property of Grantor at a location designated by Grantor. If the Grantor agrees to utilize the excess dirt, then in such event, the Grantor shall do so in an appropriate manner for the enhancement and development of its property. If the Grantor does not agree to utilize said excess dirt, Grantee shall remove said excess dirt from the property of Grantee within a reasonable time.

In the event the Grantee, its successors or assigns shall fail to properly maintain said storm drainage ditch, the Town of Highland, its successors and assigns may, upon ten (10) days prior written notice, have the right to enter upon the lands of Grantor adjoining the License Parcel to perform, or have performed on the Town of Highland's behalf, any maintenance work to or upon the said storm drainage ditch reasonably necessary to ensure adequate storm water storage and flow of storm water through the said storm drainage ditch. The Town of Highland shall be reimbursed by Grantee for the cost of such work.

Grantee does further covenant and agree in the exercise of the rights herein granted to accomplish the same in a good, reasonable and workmanlike manner, and to indemnify and hold harmless Grantor and the beneficial owners of Grantor from any loss, cost, claim, liability, judgement, damages and reasonable attorney's fees arising out of or in connection with Grantee's exercise of the rights herein granted, and in addition shall not allow any liens or other encumbrances to be created upon any real estate owned by Grantor. Grantee covenants that all of the work contemplated hereby will be performed pursuant to "no-lien" contracts. Grantee agrees that as a condition of this temporary license, Grantee shall, prior to commencement of any work hereunder, provide Grantor a signed, sworn statement from each contractor that performs any of the work contemplated hereby stating that said contractor shall not lien or encumber any real estate owned by Grantor as a result of the non-payment of any funds by Grantee.

Grantee shall, prior to commencement of any work hereunder, provide and maintain during the period of this temporary drainage license a public liability and property damage insurance policy in the usual form insuring Grantor and Grantee against injury to person and property by reason of Grantee's use of the License Parcel with limits of not less than One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence. Grantee shall from time to time furnish Grantor with current certificates of insurance evidencing such coverage with insurance companies reasonably acceptable to Grantor.

Grantee agrees to restore the real estate of Grantor used by Grantee for ingress and egress to the License Parcel to its condition prior to the use thereof.

The Grantee, its heirs, executors, administrators, successors and assigns, does hereby covenant and agree that without further act, deed or release on its part to be executed or performed that all right, title and interest of the Grantee, its heirs, executors, administrators, successors and assigns, in and to the license herein granted shall terminate and cease upon the dedication of the License Parcel as a public storm water drainage easement.

Grantee for itself, its successors and assigns, does further covenant and agree that in the event Grantor, its successors and assigns, and the Town of Highland, Indiana do determine that that certain parcel of real estate located in the Town of Highland, County of Lake, State of Indiana and more particularly described on Exhibit C attached hereto, and made a part hereof (the "Servient Parcel") can best be improved/developed by providing storm water drainage at a different location than the License Parcel, Grantor may at its expense remove the installations made by Grantee and provide storm water drainage at a location to be selected by Grantor and approved by the Town of Highland, Indiana. Grantee, upon the request of Grantor and the granting of an equivalent easement/dedication, agrees to release all right in and to the license granted herein by recordable written release or Quit-Claim Deed.

It is understood and agreed by Grantor and Grantee that the easement described herein is subject to and conditioned upon the reservation by Grantor, and the Grantor does hereby reserve, to itself and to the successor in title of Lake County Trust No. 3188, the right to drain surface and sub-surface water into and through the License Parcel at no cost to Grantor.

These presents shall be binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Grantor, and upon the Grantee, its heirs, executors, administrators, successors and assigns.

In the event it becomes necessary to enforce any provisions hereof caused by the default of either party, the defaulting party shall pay all reasonable costs and attorney fees of the non-defaulting party to enforce the same.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trust Company on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, bind expressly waived and released.



