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LAKE COUNTY  
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STATE OF INDIANA  
COUNTY OF LAKE

SAM ORLICH  
RECORDER LAKE COUNTY

**STOP**

CROSS ACCESS EASEMENT AGREEMENT

BY AND BETWEEN

INSITE HOBART, L.L.C.  
an Illinois limited liability company

AND

FRANK'S Nursery & Land INC.  
a Michigan corporation

Date August 14, 1998

THIS DOCUMENT EFFECTS REAL AND PERSONAL PROPERTY SITUATED IN THE STATE OF  
INDIANA, COUNTY OF LAKE.

Anderson & Huber  
9211 Broadway  
Merle 46410

HOVO  
000482  
CK# 2/22  
CP

Plat # 98070408

## CROSS ACCESS EASEMENT AGREEMENT

**THIS CROSS ACCESS EASEMENT AGREEMENT** (this "Agreement") is made as of the 14th day of August, 1998, by and between Franks Nursery & Crafts, Inc., a Michigan corporation ("Franks"), and InSite Hobart, L.L.C., an Illinois limited liability company ("InSite").

WHEREAS, InSite is or will be the owner of fee simple title to real property located in the town of Hobart, County of Lake, State of Indiana, which is legally described on the attached Exhibit A (the "InSite Parcel"); and

WHEREAS, Franks is or will be the owner of fee simple title to real property located adjacent to the InSite Parcel, which property is legally described on the attached Exhibit B (the "Franks Parcel"). The Franks Parcel and the InSite Parcel are sometimes singularly referred to herein as "Parcel" or collectively as "Parcels".

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Franks and InSite agree as follows:

1. Access Easement Over InSite Parcel. InSite hereby grants and conveys to Franks, his successors and assigns, a non-exclusive easement and right-of-way on, across and over the InSite Parcel for the purposes described in this Section 1. The easement described in this Section 1 shall be for the purposes of granting to Franks and its assigns, representatives, customers, and invitees non-exclusive easements and rights of use of the access and entrance drives, as the same may exist from time to time, on the InSite Parcel for the purpose of pedestrian and vehicular, including delivery trucks, ingress and egress (but not parking). Initially, it is anticipated that the access and entrance drives shall be located as indicated on Exhibit C attached hereto. Notwithstanding the forgoing, the access and entrance drives crosshatched on Exhibit C and legally defined on Exhibit D shall not be modified, relocated or reconfigured without the mutual consent of both Franks and InSite.

2. Access Easement Over Franks Parcel. Franks hereby grants and conveys to InSite, its successors and assigns, a non-exclusive easement and right-of-way on, across and over the Franks Parcel for the purposes described in this Section 2. The easement described in this Section 2 shall be for the purposes of granting to InSite and their representatives, customers, and invitees non-exclusive easements and rights of use of the access and entrance drives, as the same may exist from time to time, on the Franks Parcel for the purpose of pedestrian and vehicular, including delivery trucks, ingress and egress (but not parking). Initially, it is anticipated that the access and entrance drives shall be located as indicated on Exhibit C attached hereto. Notwithstanding the forgoing, the access and entrance drives crosshatched on Exhibit

C and legally defined on Exhibit D shall not be modified, relocated or reconfigured without the mutual consent of both Franks and InSite.

3. Signage Easement. InSite hereby grants and conveys to Franks, its successors and assigns, an easement for the installation, use and maintenance of the monument sign located on the InSite Parcel as depicted on Exhibit C attached hereto. The design and construction of the monument sign is subject to InSite's prior written approval. Initially, Franks shall have the right to the entire sign panel on the monument sign and all costs and expenses relating to the use, maintenance, utilities, construction and installation shall be the sole responsibility of Franks. Additionally, Franks shall be initially solely responsible to maintain the monument sign to the standard provided for herein. In the event that Franks shall fail to maintain the monument sign to the standard required herein, InSite shall have the right to conduct such maintenance upon the same terms and conditions as set forth in Section 6 of this Agreement. In the event that at any time in the future InSite desires to utilize the monument sign, InSite shall pay Franks one-half of the unamortized cost of the monument sign and shall, at its sole costs and expense, replace the signage on the monument such that InSite's signage occupies the top one half of the monument sign panel and Franks signage occupies the bottom one half of the monument sign panel. Upon InSite utilization of the monument sign: (a) InSite shall be solely responsible for the maintenance of the signage located in the top one half of the sign panel; (b) Franks shall be solely responsible for maintenance of any signage placed on the bottom one half of the monument sign panel; (c) InSite shall, except as provided in (b) above, be responsible for maintaining the monument sign and shall bill Franks its portion of the cost of such reasonable and necessary maintenance and the cost of utility service as provided in (d) below; and (d) the costs for maintaining the monument sign and utility service to the monument sign shall be split equally between InSite and Franks. In the event Franks, within twenty (20) days after receipt of an invoice, fails to pay InSite the costs and expenses incurred in conjunction with such maintenance, InSite may place a lien on the Franks Parcel for such amount. The standard for such maintenance, shall be that which would be equal in quality at least to that maintained by owners of facilities of the same type in the vicinity of the Parcels. In the event that InSite shall fail to maintain the monument sign to the standard required herein, Franks shall have the right to conduct such maintenance upon the same terms and conditions as set forth in Section 6 of this Agreement.

4. Duration and Modification. The easements and rights-of-ways herein granted are perpetual, shall run with both the InSite Parcel and the Franks Parcel and shall bind their respective successors and assigns.

5. Private Use. Nothing contained in this Agreement shall ever be deemed to create a gift or dedication of all or any portion of the Franks Parcel or the InSite Parcel to the general public or for any public use or public purpose whatsoever. Franks and InSite shall each have the right to close any portion of the Franks Parcel or the

InSite Parcel, respectively, for a reasonable period of time to the extent required by law to prevent prescriptive rights from accruing as to such Parcel. In the event that Franks and/or InSite shall close a portion of their parcels as provided above, a reasonable alternative method of access must be provided during such closure. InSite agrees that in event InSite closes, pursuant to this Section, the access and entrance drives crosshatched on Exhibit C, Franks shall have the right to use the drive aisles on the northern side of the InSite Parcel as also indicated on Exhibit C. Franks and InSite shall each have the right to grant a license, right or permission to their respective officers, employees, tenants, business invitees and all licensees and guests to use any of the easement areas or avail themselves of any rights granted herein, but any action to enforce any such rights may be maintained only by Franks, InSite or their respective successors and assigns.

6. Maintenance and Costs. The costs and expenses incurred in connection with any construction of roadways, entrances, parking areas or other improvements and necessary for the use of the easement rights granted herein (the "Improvements") shall be borne entirely by the Party upon whose Parcel the Improvements are located. Similarly, with regard to maintenance, the party upon whose Parcel any such Improvements are located shall be solely responsible for such costs. In addition, each party shall be responsible for the maintenance, landscaping, cleaning, repair, insuring and lighting, of the Improvements constituting any common entrances or roadways located on the Parcel owned by each such party and the costs thereof shall be borne by the party upon whose Parcel any such improvements are located. The Improvements shall be maintained in good condition and repair, clean and free of rubbish and other hazards. The standard for such maintenance, shall be that which would be equal in quality at least to that maintained by owners of facilities of the same type in the vicinity of the Parcels. In the event that the Improvements on the InSite Parcel or the Franks Parcel are not maintained to such level, either party (the "Maintaining Party") may, after giving the other party (the "Responsible Party") not less than sixty (60) days prior written notice, commence to make repairs at the sole reasonable cost of the owner/Responsible Party of such Parcel. In the event the Responsible Party, within twenty (20) days after receipt of an invoice, fails to pay the Maintaining Party the costs and expenses incurred in conjunction with such maintenance, the Maintaining Party may place a lien on the Responsible Party's parcel for such amount. Ad valorem taxes and assessments, and other requirements or incidentals of ownership shall be borne by the party owning the Parcel to which such ad valorem taxes or assessments attach, and nothing herein shall impose any specific obligation or requirement with respect to the ownership, operation or maintenance of the property owned by such party, except as expressly set forth herein.

7. Indemnification.



(a) Franks agrees to defend, indemnify and hold harmless InSite from any and all liability or damages which InSite may suffer as a result of claims, demands, costs, liens, judgments or awards against InSite arising from injury to person or property and occurring on the Franks Parcel except if caused by the negligent or intentional acts of InSite, its agents, employees or contractors.

(b) InSite agrees to defend, indemnify and hold harmless Franks from any and all liability or damages which Franks may suffer as a result of claims, demands, costs, liens, judgments or awards against Franks arising from injury to person or property occurring on the InSite Parcel except if caused by the negligent or intentional acts of Franks, its agents, employees or contractors.

(c) From and after the date that an owner of a Parcel transfers its interest in a Parcel, such owner shall have no further liability under this Agreement for events occurring from and after the date of such transfer.

8. Insurance. Each owner of all or any portion of a Parcel shall, with respect to its Parcel and the operations thereon (including the construction of any Improvements), at all times during the term of this Agreement, maintain in full force and effect comprehensive public liability insurance in a minimum dollar amount of \$1,000,000.00 with a financially responsible insurance company or companies which shall specifically extend to the contractual obligation of the insured party arising out of the indemnification obligation set forth in Section 6 above.

9. Waiver and Subrogation. Each party to this Agreement (the "**Releasing Party**") hereby releases and waives for itself and on behalf of its insurer, the other party (the "**Released Party**") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Parcels, which loss or damage is of the type generally covered by fire insurance with an extended coverage endorsement, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried. Each party to this Agreement agrees to obtain, if needed (and to the extent obtainable), appropriate endorsements to its policies of insurance with respect to the foregoing release; it being understood, however, that failure to obtain such endorsements shall not affect the release hereinafter given. Each party to this Agreement ("**Indemnitor**") covenants and agrees to indemnify, defend and hold harmless the other party ("**Indemnitee**") from and against all claims asserted by or through any occupant of the Indemnitor's Parcel for any loss or damage to the property of such occupant located upon the respective Indemnitor's Parcel, which loss or damage is of the type generally covered by fire insurance with extended coverage irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

10. Estoppel Certificate. Franks and InSite each hereby severally covenants that upon written request from time to time of the other, it will issue an estoppel

certificate stating: (i) whether the party to whom the request has been directed knows of any default by the requesting party under this Agreement, (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof), and (iii) that to the party's knowledge this Agreement as of that date is in full force and effect. Such statement shall act as a waiver of any claim by the party furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement.

11. Notices. All notices, demands, statements and requests required or permitted to be given under this Agreement must be in writing and shall be sent by the United States mail, addressed to the appropriate party, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below. At such time as Franks or InSite transfers its respective Parcel or a portion thereof so as to create a new party to this Agreement, each shall send notice to the other of the name and address to which notice to that new party, when such is required herein, shall be sent. Until such time as Franks or InSite sends such notice, Franks and InSite respectively shall be deemed to be agents for such new party for purposes of service of notices.

To Franks:

*Franks Nursery + Crafts, Inc.*  
*1175 West Long Lake Road*  
*Troy, MI 48098*  
Attention: *Cathy Neunert*

To InSite:

InSite Hobart, L.L.C.  
1603 West Sixteenth Street  
Oak Brook, Illinois 60523  
Attention: General Counsel

All notices, demands and requests shall, be effective upon the earlier of: (i) actual receipt or (ii) three (3) business days after being deposited in the United States mail in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of change of address of which no notice was given, shall be deemed to be receipt of the notice of demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with provisions hereof, to change its respective address and to specify any other address within the United States of America; provided, however, notwithstanding anything herein contained to the contrary, in order for the notice of address change to be effective it must actually be received.

12. Governing Law. This Agreement and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Indiana.

13. Condemnation. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of either Parcel, that portion of the award attributable to the value of the land within the area covered by the reciprocal easement granted herein and so taken shall be payable to the owner in fee thereof and no claim thereon shall be made by the other owner; provided, however, that such other owner may file a collateral claim with the condemning authority over and above the value of the land within the easement area so taken, to the extent of any damages suffered resulting from the severance of the appurtenant easement area so taken.

14. Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Cross Access Easement Agreement, under seal as of the date first set forth above.

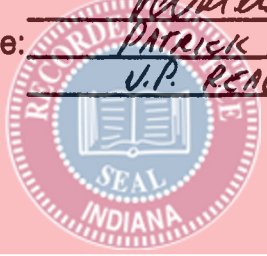
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INSITE HOBART, L.L.C., an Illinois limited liability company (SEAL)

By: Robin Eden Rash  
Robin Eden Rash, Manager  
(SEAL)

FRANKS Nursery + Crafts INC., a Michigan corporation

By: Patrick E. Valentine  
Name: PATRICK E. VALENTINE  
Its: V.P. REAL ESTATE



ATTEST:

By: Assistant  
Its: Assistant (Secretary)  
*Howard M. Ranieri Corporate Counsel and Assistant Secretary*  
(AFFIX CORPORATE SEAL)

**ACKNOWLEDGEMENTS**

STATE OF Michigan )  
 ) ss.  
COUNTY OF Oakland )

michigan

I, a Notary Public of the County and State aforesaid, certify that Howard M. Rankin personally came before me this day and acknowledged that he is [Assistant] Secretary of Frank's Nursery + Crafts, Inc., a North Carolina corporation, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by him as its [Assistant] Secretary.

Witness my hand and this official notarial seal, this 14th day of August, 1998.

CATHY A. NEUNER  
Notary Public, Macomb County, MI  
My Commission Expires Dec. 21, 2002

*This Document is the property of the Oakland County Recorder!*  
[Signature]  
Notary Public in and for the State and County aforesaid [SEAL]

My Commission Expires:  
\_\_\_\_\_

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF DuPAGE )

I, Debra J. Paskey, Notary Public of the County and State aforesaid, certify that Robin Eden Rash, a Manager of INSITE HOBART, L.L.C., an Illinois limited liability company, personally appeared before me and acknowledged the execution of the foregoing instrument as the authorized act of the said limited liability company.

OFFICIAL SEAL  
DEBRA J. PASKEY  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 10-1-2001

[Signature]  
Notary Public in and for the State and County aforesaid [SEAL]

My Commission Expires:  
\_\_\_\_\_



I, Henry H. Adams, the record title holder of the property covered by this Easement Agreement, hereby consents to the granting of said Easement.

Dated this 3rd day of September, 1998.

Henry H. Adams  
Henry H. Adams

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the Lake County Recorder!**

STATE OF INDIANA )

) SS:

COUNTY OF LAKE )

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 3rd day of September, 1998.



Denise Kessler  
Denise Kessler, Notary Public



**EXHIBIT A**  
**Legal Description of InSite Parcel**

Lot 1 Eastlake Industrial Park, as shown in Plat Book 53, page 47, Lake County,  
Indiana



**EXHIBIT B**  
**Legal Description of Franks Parcel**

Lots 2 and 3 in Eastlake Industrial Park, as per Plat thereof, recorded in Plat Book 53, Page 47 in the Office of the Recorder of Lake County, Indiana.



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**EXHIBIT C**  
**Initial Proposed Site Plan**

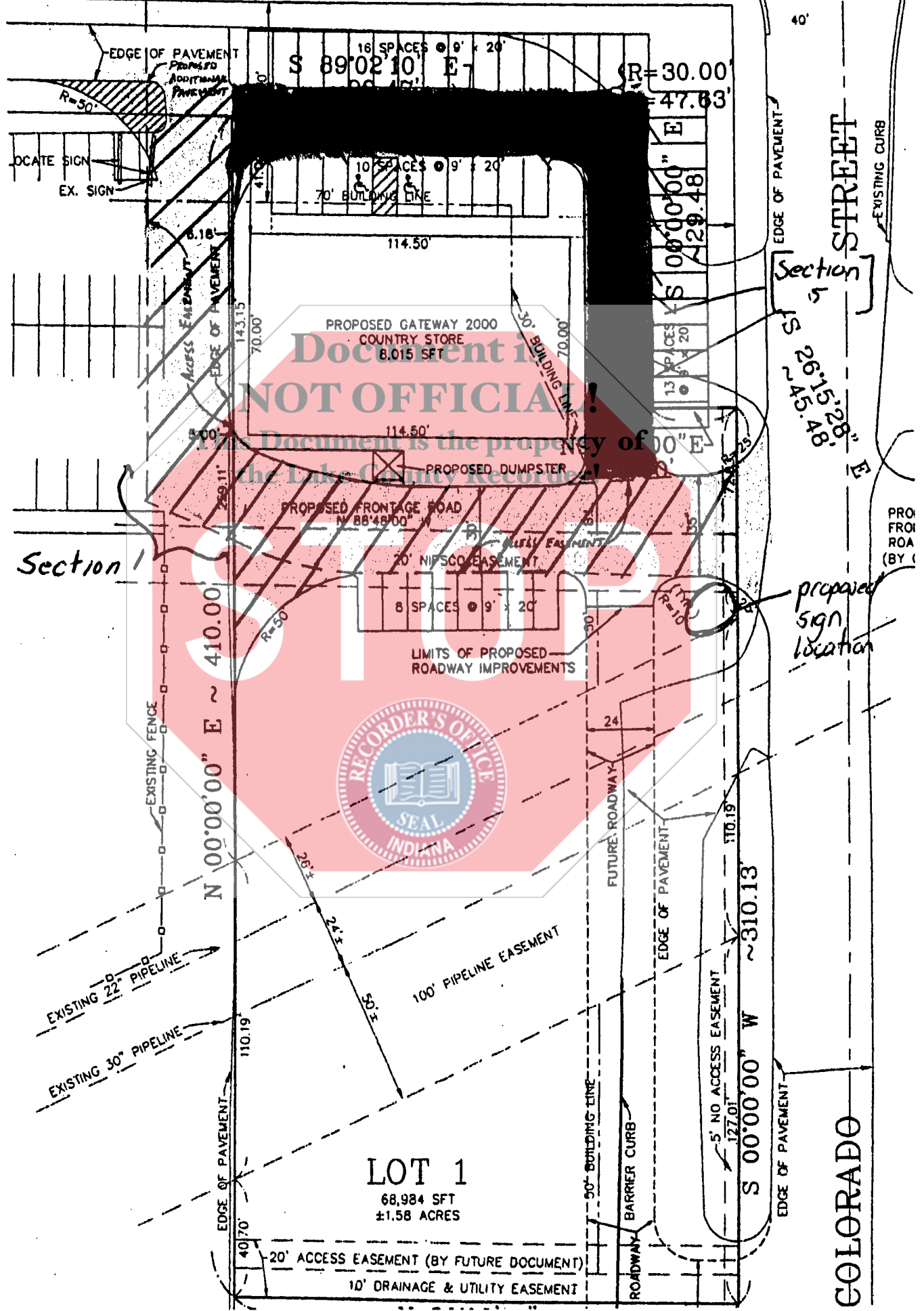


12



Exhibit C

GHWAY NO. 30



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Section 1

Section 9

proposed sign location

13

25x10

**Exhibit D**

**Legal Description of Permanent Drive Aisles**



EXHIBIT D

# Torrenge Engineering, Inc.

REGISTERED PROFESSIONAL ENGINEERS & LAND SURVEYORS

907 RIDGE ROAD

MUNSTER, INDIANA 46321

Office (219) 636-8918

Fax (219) 836-1138

**LEGAL DESCRIPTION OF A  
30 FOOT CROSS-ACCESS  
EASEMENT AFFECTING  
LOT 2 AND THE FRONTAGE ROAD  
TO THE NORTH IN EASTLAKE INDUSTRIAL PARK**

Document is  
**NOT OFFICIAL!**

DESCRIPTION: Part of Lot 2 and also part of the Frontage Road directly North of Lot 2 in Eastlake Industrial Park as shown in Plat Book 53, page 47 in the Office of the Recorder of Lake County, Indiana, being more particularly described as follows: Beginning at the Northeast corner of said Lot 2; thence South 00° 00' 00" West, along the East line of said Lot 2, a distance of 146.25 feet; thence North 71° 07' 18" West, a distance of 31.71 feet; thence North 00° 00' 00" East, along a line 30 feet West of and parallel to said East line, a distance of 176.51 feet, to a point on the South Right-of-Way line of U.S. Highway #30, thence South 89° 02' 10" East, along said South Right-of-Way line, a distance of 30.00 feet, thence South 00° 00' 00" West, along the Northerly extension of said East line, a distance of 40.01 feet, to the point of beginning, all in the City of Hobart, Lake County, Indiana.

PREPARED FOR: InSite Real Estate Development, L.L.C.  
PREPARED BY: Torrenge Engineering, Inc.  
DATE: June 18, 1998  
JOB ORDER: 5064-98



Exhibit D

# Torrenge Engineering, Inc.

REGISTERED PROFESSIONAL ENGINEERS & LAND SURVEYORS

907 RIDGE ROAD

MUNSTER, INDIANA 46321

Office (219) 836-8918

Fax (219) 836-1138

## LEGAL DESCRIPTION OF A 30 FOOT CROSS-ACCESS EASEMENT AFFECTING LOT 1 IN EASTLAKE INDUSTRIAL PARK

DESCRIPTION: Part of Lot 1 in Eastlake Industrial Park, as shown in Plat Book 53, page 47, in the Office of the Recorder of Lake County, Indiana, being more particularly described as follows: Commencing at the Northeast corner of said Lot 1, thence South  $00^{\circ} 00' 00''$  West, along the East line of said Lot 1, a distance of 26.06 feet, to the point of beginning; thence continuing South  $00^{\circ} 00' 00''$  West, along said East line, a distance of 30.00 feet; thence South  $89^{\circ} 48' 45''$  West, a distance of 108.22 feet, to a point of curve; thence Westerly, along said curve, concave to the North, having a radius of 200.00 feet, an arc distance of 73.33 feet, to a point on the West line of said Lot 1; thence North  $00^{\circ} 00' 00''$  East, along said West line, a distance of 32.52 feet; thence Easterly, along a curve, concave to the North, having a radius of 170.00 feet, an arc distance of 73.90 feet; thence North  $89^{\circ} 48' 45''$  East, a distance of 108.32 feet, to the point of beginning, all in the City of Hobart, Lake County, Indiana.

PREPARED FOR: InSite Real Estate Development, L.L.C.  
PREPARED BY: Torrenge Engineering, Inc.  
DATE: June 18, 1998  
JOB ORDER: 5064-98



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25X