

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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33 FOOT ACCESS/UTILITY AND DRAINAGE EASEMENT

RECORDER

Chicago Tide Insurance Company

THIS 33 FOOT ACCESS/UTILITY AND DRAINAGE EASEMENT GRANT (the "Easement Grant") is made between OMEGA SPORTS HOLDINGS, LLC (hereinafter referred to as "Grantor"), CENTIER BANK, Grantor's Mortgagee and Earl's Mortgagee (hereinafter referred to as "Centier"), J & A ENTERPRISES, an Indiana Partnership. (hereinafter referred to as "J & A") and EARL'S HEATING AND AIR CONDITIONING, INC., an Indiana corporation, (hereinafter referred to as "Earl's") and J & A and Earl's are hereinafter collectively referred to as "Grantees"

The following recital of facts are a material part of this instrument:

A. The Grantor is the owner by deed dated June 16, 1999, and recorded on June 29, 1999, as Document 99053963, Lake County Indiana, Recorder's Records, of a tract of land designated as Lot 1 of Omega Plaza. Lot 1 is depicted on Exhibit "A" appended hereto. The plat of Omega Plaza was recorded April 28, 1999, in Book 86, page 57, as Document Number 99036214 in the office of the State of Indiana, County of Lake and the *Certificate of Correction Omega Plaza was* recorded 6-29-99 in Book _____ page _____ Document number 99053982 filed in the State of Indiana, County of Lake. The extreme southwest strip of Lot 1, 33 Foot Access/Utility and Drainage Easement, thirty-three (33) feet wide, described in Exhibit "B" appended hereto, is the subject matter of this easement and hereinafter referred to as the "Easement Premises".

B. J & A is the owner of Lot 2 on said plat and intends to construct a restaurant thereon.

C. Earl's is the owner of Lot 3 on said plat and intends to market said Lot 3 to a commercial establishment.

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PETER BENJAMIN
LAKE COUNTY AUDITOR

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NOW, THEREFORE, in consideration of valuable consideration and the execution of this Easement Grant, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants, and restrictions are made:

1. **Grant of Easement.** The Grantor hereby grants to the Grantees, as an easement appurtenant to Lot 2 and Lot 3, a non exclusive perpetual easement on, over, upon, across and through the Easement Premises, legally described on Exhibit "B" appended hereto, for all of the following purposes:

- (A) for ingress and egress over the Easement Premises;
- (B) for the purpose of the installation, repair, and maintenance of the roadway, curb cut, utilities and a drainage system within the Easement Premises, and
- (C) for the purpose of vehicular and pedestrian ingress, egress, and access to and from Lot 2 and Lot 3 to 61st Avenue over, upon, across, and through the Easement Premises.

2. **Use of Easement Premises.** Grantees' use of the Easement Premises shall be confined to the Grantees, Grantees' licensees, suppliers, customers, employees, guests, tenants, invitees, and to Grantees' respective successors in interest and assigns to Lot 2 and Lot 3 and such successors' and assigns' licensees, suppliers, customers, employees, guests, tenants, and invitees. The installation or maintenance by the Grantees of structures, barricades, fences, obstructions, pipes, conduits, or wires inconsistent with the purpose of the easement, under, upon or over the Easement Premises is forbidden. The right of Grantees, and their respective licensees, suppliers, customers, employees, guests, tenants, invitees and Grantees' respective successors in interest or assigns to Lot 2 or Lot 3 to use the Easement Premises for parking is specifically prohibited.

In addition, the Grantor reserves the right to any surface, subsurface or air right use that does not unreasonably interfere with Grantees' use of the Easement Premises for the purposes hereinabove set forth.

3. **Warranties of Title.** Grantor warrants that it has good and indefeasible fee simple title to the Easement Premises, subject only to easements, covenants and restrictions of record and has the full right and power to grant and convey the easement and rights herein granted and that Grantor will warrant and defend the easement and rights granted herein against all claims of all persons whomsoever.

4. **Running of Benefits and Burdens.** All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the successors of the parties hereto.

5. **Termination of Covenant Liability.** Whenever a transfer of ownership of any parcel or any part thereof takes place, liability of the transferor for breach of covenant occurring after the date of such transfer of ownership automatically terminates, provided such transferor remains liable for all obligations arising hereunder prior to the date of transfer and the transferee thereof automatically becomes liable for breaches with respect to the parcel or portions thereof transferred after the date of transfer of ownership.

6. **Attorney's Fees.** Either party may enforce this instrument by appropriate action and should it prevail in such litigation, it shall recover as part of its costs a reasonable attorney's fee.

7. **Construction.** The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer the rights granted herein as described and limited herein is carried out.

8. **Notice.** Grantor's address is Omega Sports Holdings, LLC, 4590 West 61st Avenue, Hobart, Indiana 46342, and Grantees' addresses are J & A Enterprises, 617 Merrillville Road, Crown Point, Indiana, 46307, Attention: Mr. John Barney, and Earl's Heating and Air Conditioning, Inc., 4440 West 61st Avenue, Hobart, Indiana 46342-6472. Any party may lodge written notice of change of address with the other parties. All notices shall be sent by U.S. Mail to the addresses provided for in this paragraph and shall be deemed given three (3) days after the date placed in the mail. The affidavit of the person depositing the notice in the U.S. Post Office receptacle shall be evidence of such mailing.

9. **Consent of Centier Bank.** Centier, by executing this agreement, consents to this Easement Grant and agrees to be bound by its terms.

IN WITNESS WHEREOF the Grantor and the Grantees have hereunto set their hands and seals this 5th day of October, 1999.

GRANTOR:

OMEGA SPORTS HOLDINGS, LLC

By: Kenneth H. Cloutman

And _____

GRANTEES:

J & A ENTERPRISES

By: John R. Barney

And _____

Document is NOT OFFICIAL!

EARL'S HEATING AND AIR CONDITIONING, INC.
This Document is the property of the Lake County Recorder!

By: Kenneth K. Christensen

And Ronald K. Christensen

CENTIER BANK

By: Jack Esala



ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public, duly commissioned and acting in the above county and state, personally appeared OMEGA SPORTS HOLDINGS, LLC by and through Kenneth L. Christensen, its _____ and _____, its _____, and acknowledged execution of the above and foregoing 33 FOOT ACCESS/UTILITY, AND DRAINAGE EASEMENT.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 5th day of October, 1999.

NOT OFFICIAL!

This Document is the property of the Lake County Notary Public

Lyndie Jane Barker
Notary Public
a resident of Lake County

My commission expires: 11-2-2000

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public, duly commissioned and acting in the above county and state, personally appeared J & A ENTERPRISES, by and through John P. Barney, its member, and _____, its _____, and each acknowledged execution of the above and foregoing 33 FOOT ACCESS/UTILITY, AND DRAINAGE EASEMENT.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 5th day of October, 1999.

Cynthia E. Colvin
Notary Public
a resident of Lake County

My commission expires: 11-20-01

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public, duly commissioned and acting in the above county and state, personally appeared EARL'S HEATING AND AIR CONDITIONING, INC., by and through KEVIN J. CHRISTENSEN, its President, and LEAH M. CHRISTENSEN, its Secretary, and each acknowledged execution of the above and foregoing 33 FOOT ACCESS/UTILITY, AND DRAINAGE EASEMENT.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 5th day of October, 1999.

My commission expires: 11-2-2000

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public, duly commissioned and acting in the above county and state, Ily appeared CENTIER BANK,, by and through JACK ESALA, its Vice President, and acknowledged execution of the above and foregoing 33 FOOT ACCESS/UTILITY, AND DRAINAGE EASEMENT.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 5th day of October, 1999.

My commission expires: 11/20/01

Prepared by: Donald J. Dreyfus, Esquire
Burke Costanza & Cuppy LLP
8585 Broadway, Suite 600
Merrillville, IN, 46410

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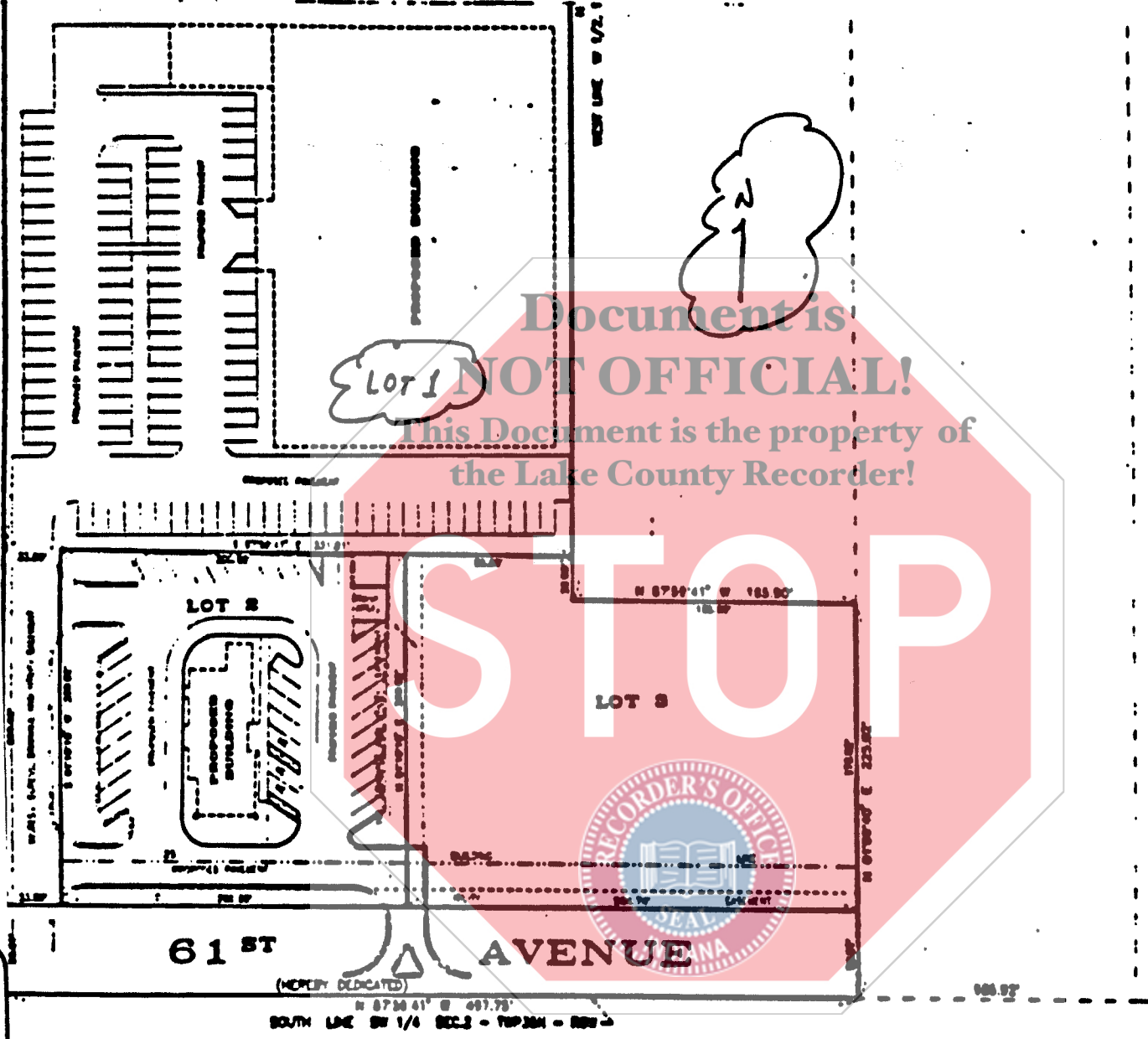
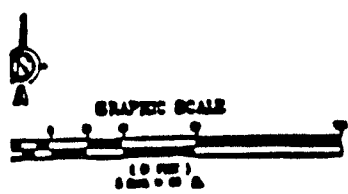
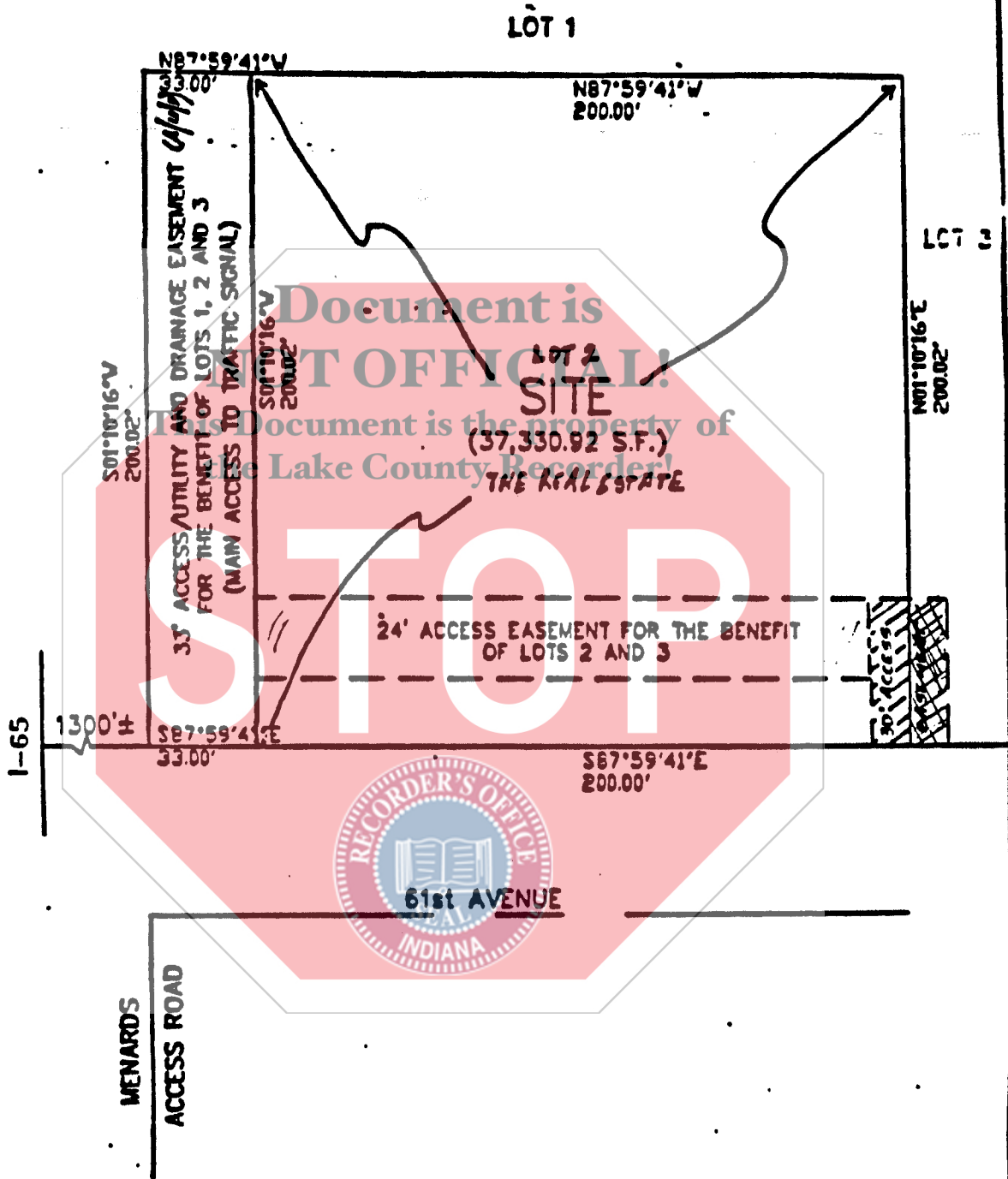


EXHIBIT "A"

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PARCEL 2: THE SOUTH 225 FEET OF THE WEST 1/2, EAST 1/2, EAST 1/2, SW 1/4, SW 1/4 SECTION 2, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P.M., CONTAINING 0.857 ACRES, MORE OR LESS, LAKE COUNTY, INDIANA.



IOBART, IN
 67th of 61st Avenue
 601 of 148

EXHIBIT "A"
 September 18, 1993

COMPASS
 SURVEYING

RESERVED BASINMENT AREA

**LEGAL DESCRIPTION OF THE
33 FOOT ACCESS/UTILITY AND DRAINAGE EASEMENT**

Beginning at the Southwest corner of Lot 2, Omega Plaza, a Planned Unit Development recorded in Plat Book 86 page 57 in the Recorder's Office of Lake County, Indiana; thence North $01^{\circ}10'16''$ East, 200.02 feet to the Northwest corner of said Lot 2; thence North $87^{\circ}59'41''$ West, 33.00 feet; thence South $01^{\circ}10'16''$ West, 200.02 feet; thence South $87^{\circ}59'41''$ East, 33.00 feet to the point of beginning.



EXHIBIT "B"