

12

**ASSIGNMENT OF LEASES AND RENTS**

Prepared by and after recording mail to:  
Todd M. Van Baren  
Hoogendoorn, Talbot, Davids, Godfrey & Milligan  
122 South Michigan Avenue, Suite 1220  
Chicago, IL 60603

2000 011579

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2000 FEB 16 AM 9:02

MORRIS W. CARTER  
RECORDER

**Common Address of Property:**

+/- 9.06 acres of vacant land on 82<sup>nd</sup> Avenue East of Johnson Street, Merrillville, Indiana 46411

Document is NOT OFFICIAL

\*To be effective as of 2-16-00

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of this \*16<sup>th</sup> day of February, 2000, with respect to the real estate ("Real Estate") commonly known as +/- 9.06 acres of vacant land on 82<sup>nd</sup> Avenue East of Johnson Street, Merrillville, Indiana 46411, as more particularly described on Exhibit A attached hereto and made a part hereof, by **LAKE COUNTY TRUST COMPANY**, not personally but solely as Trustee under Trust Agreement Dated January 18, 1994, known as Trust No. 4506 ("Trust") and **TRAM DEVELOPMENT GROUP, INC.**, an Indiana corporation ("Beneficiary") (Trust and Beneficiary together referred to herein as "Assignor"), whose mailing address is set forth herein, in favor of **SOUTH HOLLAND TRUST & SAVINGS BANK**, an Illinois banking corporation ("Assignee"), whose mailing address is set forth herein.

WHEREAS, Assignee has agreed to make a loan of Six Hundred Thousand and No/100 Dollars (\$600,000.00) (together with all amendments, restatements, replacements, consolidations, renewals, extensions and refinancings thereof, collectively referred to herein as the "Loan") to Sierra Pointe Development, LLC, an Indiana limited liability company ("Borrower"), as evidenced by a Promissory Note dated of even date herewith ("Note");

WHEREAS, Beneficiary is the Manager and one of the Members of Borrower and will benefit directly and indirectly from the Loan being made to Borrower; and

WHEREAS, Assignee, as a condition to making the Loan, has required, among other things, a Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated of even date herewith ("Mortgage") on the Real Estate and this Assignment as security for repayment of the Loan and for the performance by Assignor of each and every Obligation set forth in the Loan Documents.

NOW THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Handwritten initials: J.D.O., E.P., T.

TICOR TITLE INSURANCE  
Crown Point, Indiana

99208468

## ARTICLE 1

### TERMS OF ASSIGNMENT

1.1 Capitalized Terms. Any capitalized term not otherwise defined herein shall have the meaning set forth in the Mortgage, if any.

1.2 Assignment. Assignor does hereby grant, transfer, assign and set over to Assignee all of the right, title and interest of Assignor in and to all of the rents, issues, royalties, avails, payments, income, profits and other such benefits of and from the Real Estate, and without limiting the foregoing, in and to (i) all the existing leases, if any, specifically identified on Exhibit B attached hereto; and (ii) any leases whether written or oral, or any letting of or any agreement for the use or occupancy of any part of the Real Estate which may have been heretofore or may be hereafter made or agreed to between Assignor or any other present, prior or subsequent owner of the Real Estate or any interest therein, or which may be made or agreed to by the Assignee, its successors or assigns under the powers herein granted, and any tenant or occupant of all or any part of the Real Estate (collectively, the "Leases"), together with the rights to enforce all covenants and agreements in such Leases and guarantees, to give notices thereunder, to sue for, collect and receive all rents, additional rents and other sums, and to receive, hold, and apply all bonds and security in all of said Leases provided to be paid or furnished to Assignor as lessor thereunder.

1.3 Security. This grant is made for the purposes of securing the full and timely payment of the Indebtedness (as defined in the Mortgage) and full and timely performance and discharge of the Obligations (as defined in the Mortgage) of Assignor.

1.4 Absolute Nature of Assignment. It is understood that the assignment of said Leases and of the rents, issues and profits therefrom is an absolute assignment which is effective as of the date hereof. Upon demand by Assignee to the lessee under any of said Leases or to any person liable for any of the rents, issues, profits and other payments of and from the Real Estate or any part thereof, such lessee or person shall, and is hereby authorized and directed by Assignor, to pay to or upon the order of Assignee all rents then owing or thereafter accruing, or other payments required to be made, under said Leases or any other instrument or agreement, oral or written, giving rise to an obligation to pay rents, issues, profits or other payments in connection with the Real Estate. So long as there shall exist no default by Assignor in the payment of any Indebtedness, or in the performance of any obligation, covenant or agreement hereunder or under the other Loan Documents, in each case taking into account any applicable cure periods, Assignee shall not demand from lessees under said Leases or other persons liable therefor, any of the rents, issues, payments and profits from said Leases but shall permit the Assignor to collect (but not prior to accrual), all such rents, issues, payments and profits from the Real Estate and the said Leases and to retain and enjoy the same; provided that, notwithstanding the foregoing, all lessees under said Leases and all other persons liable for rents, issues, payments and profits of and from the Real Estate shall comply with any demand for rents made by Assignee pursuant to the provisions of this Assignment without inquiring or investigating whether or not the same is made in compliance herewith.

1.5 Demand for Rent. The sole signature of, and demand by, the Assignee shall be sufficient direction to any tenant or occupant of the Real Estate to make future rental payments to Assignee without the necessity for further consent by, or notice to, Assignor. Checks for all or any part of the rentals or other payments collected under this Assignment shall be drawn to the exclusive order of the Assignee.

1.6 Receipt of Rent. The Assignee shall be accountable only for such monies as it actually receives under the terms hereof.

1.7 Release. Upon payment in full of all Indebtedness and the full and timely performance and discharge of the Obligations of Assignor, this Assignment shall terminate and be of no further force or effect.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

2.1 Representations of Assignor. Assignor represents and warrants that: (i) it has good right to sell, assign, transfer, set over, grant to and confer upon the Assignee the rights, interest, powers and authorities herein granted and conferred with respect to the Real Estate; (ii) it will punctually observe and perform all of the obligations imposed upon the landlord under any Leases and not do or permit to be done anything which would impair the security thereof; (iii) the Leases are not in default; (iv) it has not previously sold, assigned, transferred, mortgaged, or pledged the Leases; (v) it will not assign any Leases or rents thereunder to anyone other than the Assignee; (vi) it has not accepted and will not accept rent in advance or any discounting thereof under any Leases, excepting rents for current months, which may be paid one month in advance; and (vii) it will not enter into any Leases, alter, modify, change, supplement or amend the terms of any Leases or surrender or accept surrender, or terminate or cancel any Leases without the prior written consent of the Assignee, which may be granted or withheld in Assignee's sole discretion.

2.2 Further Assurances. Assignor will, from time to time, execute upon request of the Assignee, any and all instruments requested by the Assignee to carry this instrument into effect or to accomplish any other purposes deemed by the Assignee to be necessary or appropriate in connection with this Assignment or the Real Estate, including, without limitation, specific assignments of any and all Leases or agreements relating to the use or occupancy of the Real Estate or any part thereof now or hereafter in effect and not specifically defined herein as a Lease, as may be necessary or desirable, in the opinion of Assignee, and the delivery to Assignee of any and all guaranties of the Leases.

## ARTICLE 3

### DEFAULT AND REMEDIES

3.1 Remedies of Assignee. Upon or at any time after default in the payment of any Indebtedness or in the performance of any term, provision, condition, obligation, covenant or agreement herein or contained in the other Loan Documents, and after the expiration of any cure periods, if any, expressly applicable to any such default, Assignee shall have, at its option and without further notice, the complete right, power, and authority to exercise and enforce any or all of the following rights and remedies at any time:

- (a) terminate the right granted to Assignor herein to collect the rents, issues, and profits from the Leases with or without taking possession, and to demand, collect, receive, sue for, attack and levy against the rents, issues, and profits in Assignee's own name or in the name of Assignor, and to give proper receipts, releases, and acquittances therefor;
- (b) declare all the Indebtedness immediately due and payable and, at Assignee's option, exercise all or any of the rights and remedies contained in the Mortgage and the other Loan Documents, it being intended that any default in the performance or fulfillment of any obligation, term, covenant, representation, or warranty herein shall be an "Event of Default" under the Note, the Mortgage and the other Loan Documents;

(c) either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Real Estate and each and every part and parcel thereof, and in connection therewith, in its own name or the name of Assignor, the Assignee may make, cancel, enforce or modify Leases, fix or modify rents, repair, maintain and improve the Real Estate, employ contractors, subcontractors and workmen in and about the Real Estate, obtain and evict tenants, sue for or otherwise collect or reserve any and all rents, issues, payments and profits, including those past due and unpaid, employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of Assignee's rights hereunder and pay the reasonable fees and expenses thereof, and otherwise do and perform any and all acts and things which Assignee may deem necessary or appropriate in and about the Real Estate for the protection thereof or the enforcement of Assignee's rights hereunder or under the Mortgage or the other Loan Documents, and any and all amounts expended by Assignee in connection with the foregoing shall constitute so much additional Indebtedness.

3.2 Application of Payments. Assignee shall apply any monies collected by Assignee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any Indebtedness in such order and manner as Assignee may determine.

3.3 No Waiver. The entering upon and taking possession of the Real Estate, the collection of rents, issues, payments and profits, and exercise of any of the rights specified above and the application of collections, as aforesaid, shall not cure, waive, modify or affect any default hereunder or under the Loan Documents. Failure of the Assignee to do any of the things or exercise any of the rights, interests, powers and authorities hereunder shall not be construed to be a waiver of any of the rights, interests, powers or authorities hereby assigned and granted to the Assignee.

#### ARTICLE 4

#### RIGHTS AND COVENANTS

4.1 No Obligations on Assignee. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under the said Leases. This Assignment shall not: (a) operate to place upon Assignee responsibility for the control, care, management or repair of the Real Estate or the carrying out of any of the terms and conditions of the said Leases; or (b) operate to make the Assignee responsible or liable for any waste committed on the Real Estate by a lessee or any other party, or for any dangerous or defective condition of the Real Estate, or for any negligence in the management, upkeep, repair or control of the Real Estate resulting in loss or injury or death of any tenant, licensee, invitee, employee or stranger. The Assignee shall not in any way be responsible for failure to do any or all of the things for which rights, interests, power and authority Assignee has been granted hereunder. The Assignee shall not be responsible for performance under, or otherwise liable upon, any of the agreements, undertakings or obligations imposed upon the lessor under said Leases or any other agreement with respect to the Real Estate.

4.2 Actions to Cure. Assignee shall have the right and option in its sole discretion (but under no circumstances shall it be required or obligated), if any set of circumstances exist which Assignee determines would materially impair the value of any of the Leases as collateral, to take in its name or in the name of Assignor such action as Assignee may determine to be necessary to cure any default of Assignor under any of the Leases, whether or not any applicable cure or grace period thereunder has expired. Assignor hereby constitutes and appoints Assignee its true and lawful attorney-in-fact, coupled with an interest of Assignor, so that in the name, place, and stead of Assignor, Assignee may exercise Assignee's rights and privileges under any Leases affecting the Real Estate. This appointment is to be

irrevocable and continuing, and these rights, powers, and privileges shall be exclusive in Assignee, its successors, and assigns as long as any part of the Indebtedness shall remain unpaid.

4.3 Security Deposits. The Assignee has not received nor has there been transferred to Assignee the security deposits of any tenant and the Assignee assumes no responsibility or liability for any such security deposits.

4.4 Indemnity. The Assignor shall and does hereby agree to indemnify, defend and hold Assignee and its officers, directors, agents and employees harmless of and from any and all liability, loss or damage which it may or might incur under said Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should the Assignee incur any such liability, loss or damage under said Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Assignee therefor immediately upon demand. Upon Assignor's failure to reimburse Assignee, Assignee may declare that all Indebtedness shall become immediately due and payable.

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the Lake County Recorder!

ARTICLE 5

MISCELLANEOUS

5.1 Recording. Upon demand of Assignee, Assignor shall cause this Assignment to be served upon each lessee under said Leases or Assignee may serve the same and, at Assignor's sole cost and expense, cause this Assignment to be recorded and filed in each and every public office in which such filing and recording may be necessary to constitute record notice of this Assignment and the terms and provisions hereof as applicable to the Real Estate.

5.2 Successors and Assigns. This Assignment applies to, inures to the benefit of and binds all parties hereto, their successors and assigns. Wherever the term "Assignor" is used herein, such reference shall be deemed to mean each Assignor whose name appears below and its successors and assigns; except that Assignor shall not have the right to assign its rights or obligations hereunder. Wherever the term "Assignee" is used herein, such term shall include all successors and assigns of the Assignee named herein who shall have, hold and enjoy all of the rights, powers and benefits hereby afforded and conferred upon Assignee as fully and with the same effect as if such successors and assigns of Assignee were herein by name designated as Assignee.

5.3 Governing Law. The internal laws of the State of Indiana without regard to its conflict of law rules shall govern the performance and enforcement of this Assignment.

5.4 Notices. Any notice required or permitted to be given under this Assignment shall be in writing and sent by messenger, reputable overnight delivery service or certified mail, postage prepaid, return receipt requested. Notice shall be deemed received when delivered, if by messenger or overnight delivery, or if mailed, three (3) days after being deposited in the United States mail, and addressed as follows:

To Assignee:

South Holland Trust & Savings Bank  
16178 South Park Avenue  
South Holland, Illinois 60473  
Attention: Mr. Christopher B. Brokmond

with a copy to:

Todd M. Van Baren  
Hoogendoorn, Talbot, Davids  
Godfrey & Milligan  
122 South Michigan Avenue  
Suite 1220  
Chicago, Illinois 60603

To Assignor:

TRAM Development Group, Inc.  
P. O. Box 10144  
Merrillville, Indiana 46411  
Attention: Mr. Richard C. Wolf

5.5 No Partnership. Nothing contained in this Assignment is intended or shall be construed to establish Assignor and Assignee as joint venturers or partners, and Assignor hereby indemnifies and agrees to hold harmless Assignee from any and all damages resulting from such a construction of the relationship of the parties hereto.

5.6 Headings. Section headings in this Assignment are for the convenience of reference only and shall not govern the interpretation of any provisions of this Assignment.

5.7 Severability. The invalidity, illegality or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, all of which shall remain in full force and effect.

5.8 Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

ASSIGNOR:

Lake County Trust Company, not personally but solely as Trustee under Trust Agreement Dated January 18, 1994, known as Trust No. 4506

By: SEE SIGNATURE PAGE ATTACHED  
Its: \_\_\_\_\_



TRAM Development Group, Inc., an Indiana corporation

By: [Signature]  
Its: President

ATTEST:

By: [Signature]  
Its: Secretary

Witness \_\_\_\_\_

Witness \_\_\_\_\_

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 while 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, 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 purpose 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 or personal responsibility is assumed by nor shall at any time be asserted or enforceable against LAKE COUNTY TRUST COMPANY on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

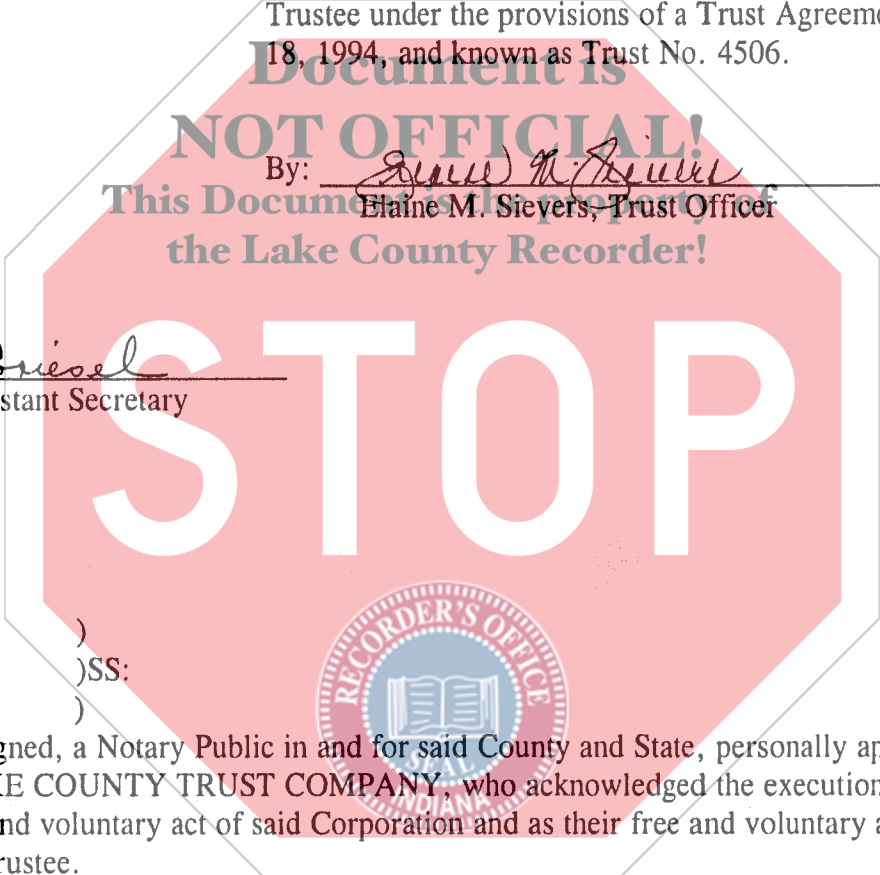
Nothing contained herein shall be construed as creating any liability on LAKE COUNTY TRUST COMPANY, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. LAKE COUNTY TRUST COMPANY, personally is not a "Transferor or Transferee" under the Act and makes no representations concerning any possible environmental defects. In making any 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 warranty in this instrument.

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



IN WITNESS WHEREOF, LAKE COUNTY TRUST COMPANY, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Trust Officer and attested by its Assistant Secretary this 8<sup>th</sup> day of February, 2000.

LAKE COUNTY TRUST COMPANY, not personally but as Trustee under the provisions of a Trust Agreement dated January 18, 1994, and known as Trust No. 4506.



By: Blaine M. Sievers  
Blaine M. Sievers, Trust Officer

ATTEST:

By: Judy Griesel  
Judy Griesel, Assistant Secretary

STATE OF INDIANA )

)SS:

COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Officers of LAKE COUNTY TRUST COMPANY, who acknowledged the execution of the foregoing instrument as the free and voluntary act of said Corporation and as their free and voluntary act, acting for such Corporation, as Trustee.

Witness my hand and seal this 8<sup>th</sup> day of February, 2000.

Tammy J. Forbes  
Tammy J. Forbes - Notary Public

My Commission Expires: 12-28-2006

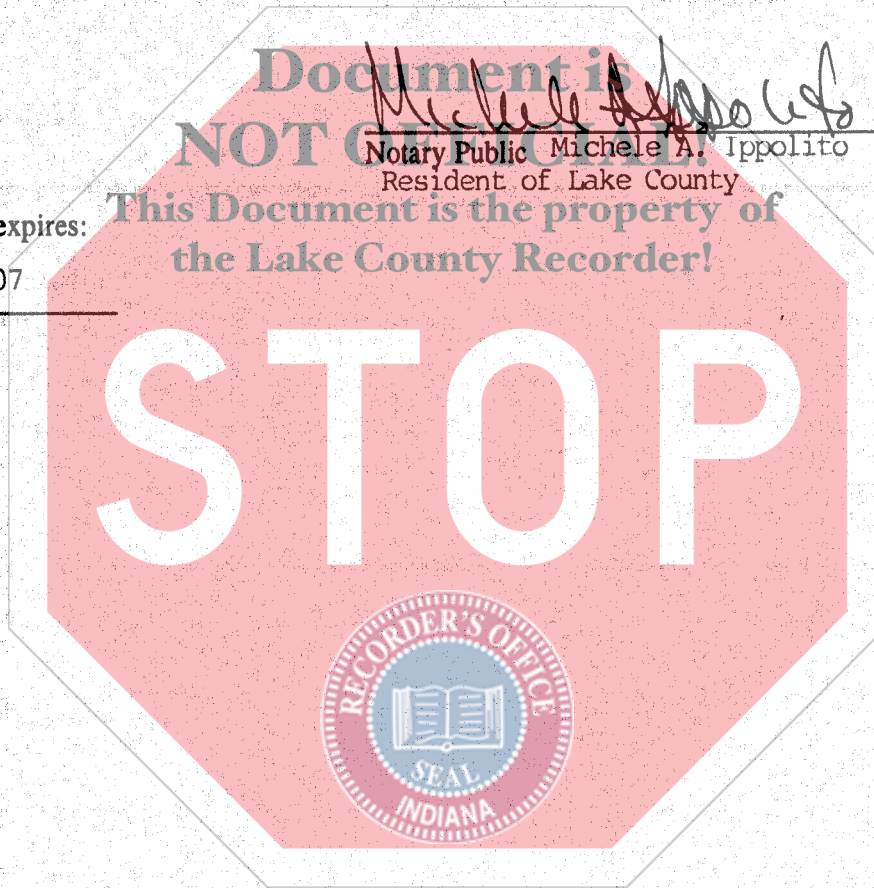
Resident Lake County, Indiana

STATE OF Indiana )  
 ) SS:  
COUNTY OF Lake )

I, Michele A. Ippolito, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Richard C. Wolf the President of TRAM Development Group, Inc., an Indiana corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 16th day of February, 2000.

My commission expires:  
August 8, 2007



STATE OF Indiana )  
 ) SS:  
COUNTY OF Lake )

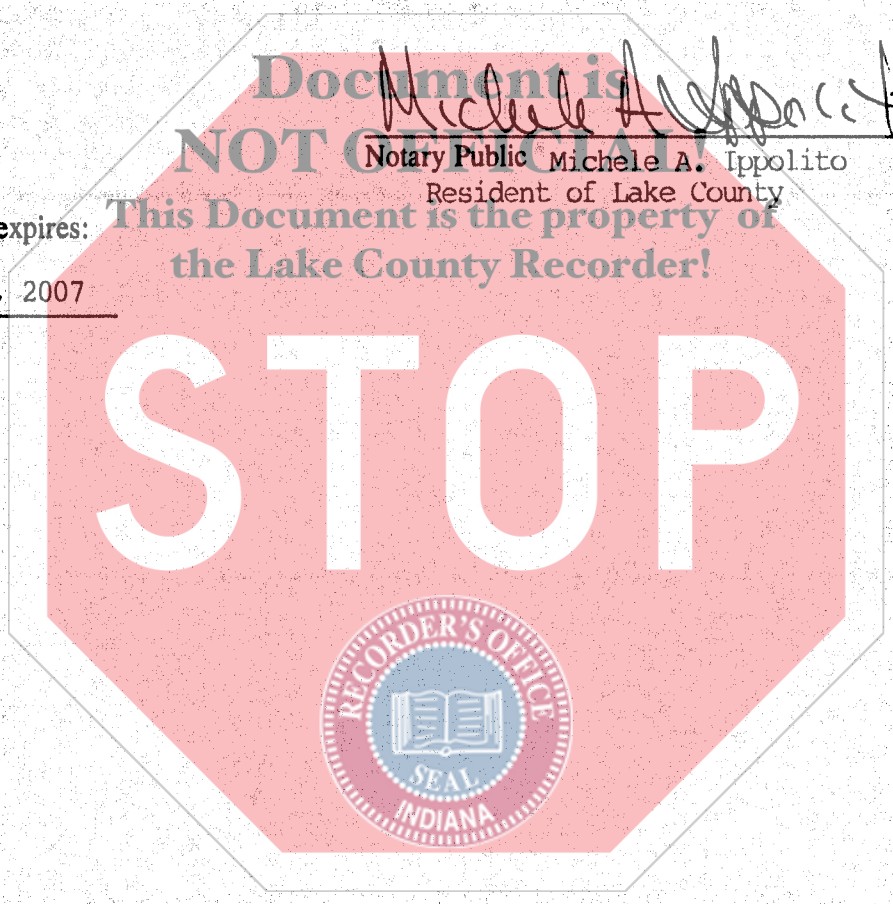
I, Michele A. Ippolito, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Terry R. Ippolito the Secretary of TRAM Development Group, Inc., an Indiana corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 18th day of February, 2000.

*Michele A. Ippolito*  
\_\_\_\_\_  
Notary Public Michele A. Ippolito  
Resident of Lake County

My commission expires:  
August 8, 2007

**This Document is the property of  
the Lake County Recorder!**



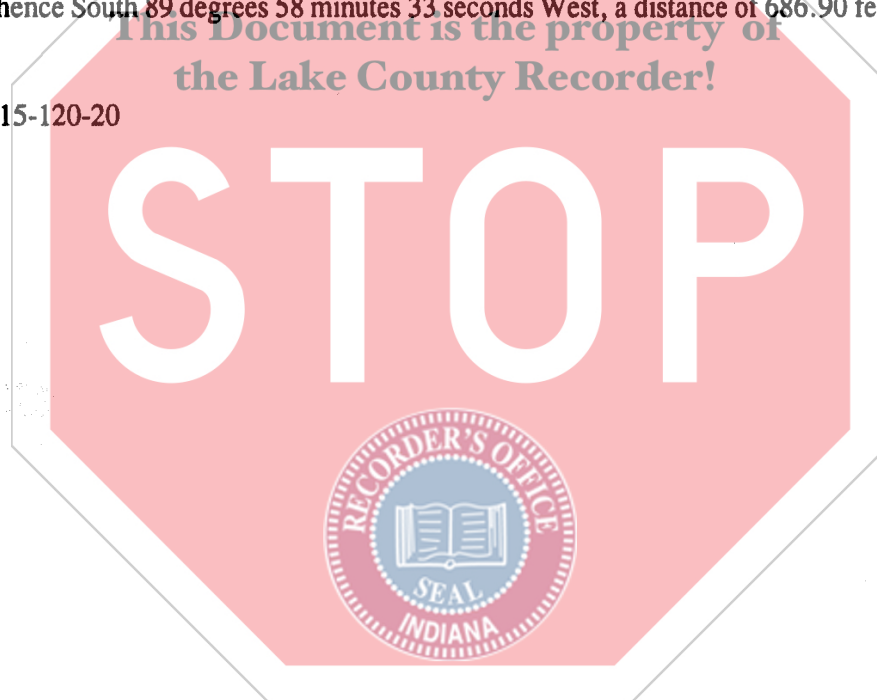
**EXHIBIT A**

**Legal Description:**

Part of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 21, Township 35 North, Range 8 West of the 2<sup>nd</sup> Principal Meridian, in the Town of Merrillville, Lake County, Indiana, described as follows:

Commencing at the Southwest corner of said Section 21; thence North 00 degrees 01 minutes 27 seconds West, along the West line of said Section 21, a distance of 261.29 feet, to the point of beginning; thence North 00 degrees 01 minutes 27 seconds West, along the West Line of Section 21, a distance of 52.43 feet; thence South 89 degrees 58 minutes 33 seconds East, a distance of 640.36 feet; thence North 00 degrees 01 minutes 27 seconds West, a distance of 125.00 feet; thence South 89 degrees 58 minutes 33 seconds West, a distance of 295.00 feet; thence North 00 degrees 01 minutes 27 seconds West, a distance of 550.79 feet; thence South 89 degrees 58 minutes 33 seconds East, a distance of 646.59 feet; thence South 00 degrees 09 minutes 16 seconds West, a distance of 542.14 feet; thence South 89 degrees 58 minutes 33 seconds West, a distance of 302.78 feet; thence South 00 degrees 09 minutes 16 seconds West, a distance of 185.00 feet; thence South 89 degrees 58 minutes 33 seconds West, a distance of 686.90 feet to the point of beginning.

Key No. 15-120-20



**EXHIBIT B**

None.

