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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MICHAEL A. FORD  
RECORDER

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JAN 13 2005

STEPHEN R. STIGLICH  
LAKE COUNTY AUDITOR

**AMENDED AND RESTATED GRANT OF SANITARY SEWER EASEMENT**

CM 020310930

THIS AMENDED AND RESTATED GRANT OF EASEMENT for a Sanitary Sewer is entered into as of the 23<sup>rd</sup> day of December, 2004, by and between St. John Marketplace, LLC, an Indiana limited liability company, hereinafter called the **Grantor**, and the TOWN OF ST. JOHN, LAKE COUNTY, INDIANA, a municipal corporation, hereinafter called the **Grantee**.

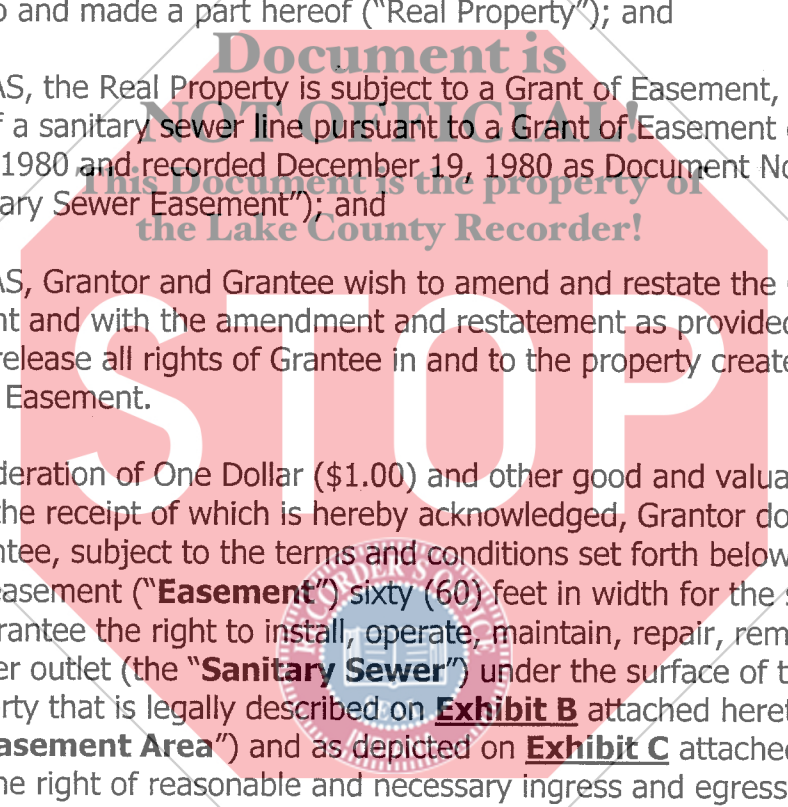
WHEREAS, Grantor is the owner of certain real property described on **Exhibit A** attached hereto and made a part hereof ("Real Property"); and

WHEREAS, the Real Property is subject to a Grant of Easement, installation and maintenance of a sanitary sewer line pursuant to a Grant of Easement dated the 25<sup>th</sup> day of August, 1980 and recorded December 19, 1980 as Document No. 611346 ("Existing Sanitary Sewer Easement"); and

WHEREAS, Grantor and Grantee wish to amend and restate the Grant of Sanitary Sewer Easement and with the amendment and restatement as provided herein, terminate and release all rights of Grantee in and to the property created in the Existing Sanitary Sewer Easement.

In consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby quit claim unto Grantee, subject to the terms and conditions set forth below, a perpetual non-exclusive easement ("**Easement**") sixty (60) feet in width for the specific purpose of permitting Grantee the right to install, operate, maintain, repair, remove and replace a Sanitary Sewer outlet (the "**Sanitary Sewer**") under the surface of that portion of Grantor's Property that is legally described on **Exhibit B** attached hereto and made a part hereof ("**Easement Area**") and as depicted on **Exhibit C** attached hereto, together with the right of reasonable and necessary ingress and egress to and from the Easement Area in connection with the exercise of the rights granted herein across adjacent lands of Grantor. Said Easement shall run with and burden the Real Property as provided herein.

Chicago Title Insurance Company



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By acceptance of the Easement created hereby, Grantee covenants and agrees with Grantor as follows:

1. Grantor's Reservation of Rights. Grantor hereby reserves and retains all other property rights in and to the Easement Area, including without limitation, the right to use the Easement Area for any purpose whatsoever so long as such use does not unreasonably interfere with Grantee's rights hereunder, it being expressly understood that the use of the surface of the Easement Area for vehicular traffic, pedestrian traffic, landscaping, parking and/or signage (including directional, stop or handicapped parking signs or markers but excluding pylon and monument signage) shall be deemed not to substantially interfere with Grantee's rights hereunder and that Grantor may locate electric, gas and water lines and other utilities in the Easement Area, so long as such improvements do not unreasonably interfere with Grantee's permitted use of the Easement Area. Grantor further reserves and retains the right from time to time, in Grantor's reasonable discretion, to cause Grantee to relocate the Sanitary Sewer at Grantor's expense, it being understood that if such relocation of the Sanitary Sewer is to a place outside of the Easement Area, Grantee shall execute and deliver to Grantor, promptly upon request, an amendment to this instrument setting forth the revised Easement Area; provided however, that such relocation will not materially impair the use, maintenance, function or efficiency of the Sanitary Sewer.

2. Maintenance; Compliance with Laws. Grantee shall maintain the Sanitary Sewer in a good and safe condition, and Grantee shall install, maintain, operate, repair, replace and remove the Sanitary Sewer in compliance with all applicable governmental rules, regulations and requirements. Grantee agrees to obtain at its sole cost and expense, before using the Easement Area for the purpose permitted hereunder, such permits, licenses or other authority as may be required from Federal, State, County, City or other governmental agencies or units exercising jurisdiction over the installation and operation of the Sanitary Sewer, and Grantee further agrees to comply with and strictly observe any and all laws, ordinances, rules, regulations, codes and orders of any such governmental agency or unit.

3. Conduct of Work and Notification. Any installation, maintenance and/or repair of the Sanitary Sewer performed by Grantee, its agents and employees shall be performed (i) at Grantee's sole cost and expense, (ii) during months other than November, December or January (except in the event of an emergency as determined in Grantee's good faith judgment), (iii) after thirty (30) days' notice to the Grantor (except in an emergency the work may be initiated after reasonable notice), (iv) in such a manner as to use reasonable efforts to minimize interference with the use and enjoyment thereof by Grantor and others lawfully present thereon, (v) with adequate provision for the safety and convenience of all persons using the surface of such areas and (vi) diligently so as to complete such work as quickly as reasonably possible.

4. Restoration by Grantee. If the surface of Grantor's Property or any portion thereof, or any landscaping, curbing, pavement or other improvements thereon, shall be disturbed by installation, operation, maintenance, replacement or removal activities or other activities performed by or on behalf of Grantee in connection with the use of the Easement, said surface and improvements shall be promptly restored by Grantee to their condition just prior to such disturbance. Immediately following the performance of work by or on behalf of Grantee, Grantee shall remove from the Easement Area and surrounding land all equipment, materials and debris resulting from or used in connection with such work.

5. Grantor's Right to Maintain and Restore. In the event that Grantee shall fail to comply with its maintenance and/or restoration obligations, as set forth herein, for a period of thirty (30) days after receipt of notice from Grantor (except in the case of emergency, in which case no notice shall be required for Grantor to act), Grantor may, but shall not be obligated to, carry out Grantee's maintenance and/or restoration obligations, and Grantee shall reimburse Grantor for the costs expended by Grantor in connection therewith, plus a ten per cent (10%) administration fee, within ten (10) business days after receipt of an invoice from Grantor therefore.

6. Normal and Reasonable Use by Grantor. There shall be no liability of Grantor, its successors and assigns and persons occupying or lawfully present on the Easement Area for damage, if any, which may be caused by normal and reasonable use of, or vehicular or pedestrian traffic over, the Easement Area. Such normal and reasonable use may include the landscaping or parking of vehicles on the Easement Area and installation, operation and maintenance of standard parking lot improvements including paving, bumper curbs, light standards, striping and landscaping.

7. Prohibition Against Liens. Grantee shall not permit any mechanics', materialmen's or other liens to stand against Grantor's Property or any part thereof for work or materials furnished Grantee in connection with the Easement, and Grantee agrees to indemnify, defend and hold Grantor harmless from and against the same.

8. Insurance. Grantee agrees to maintain its general insurance policy at all times. Grantee shall furnish Grantor with evidence of such coverage upon Grantor's request.

9. No Warranty. Grantee takes the Easement without warranty of title and subject to all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting Grantor's Property and/or affecting access or ingress and egress thereto.

10. Condemnation. Grantee shall not claim or declare any fee interest in and to the Easement Area, and in the event of eminent domain proceedings or settlement pursuant thereto, Grantee shall make no claim against the award or compensation

accruing out of or resulting from such event, save and except any payment made to Grantee for damage to its Facilities or with respect to removing or relocating the same.

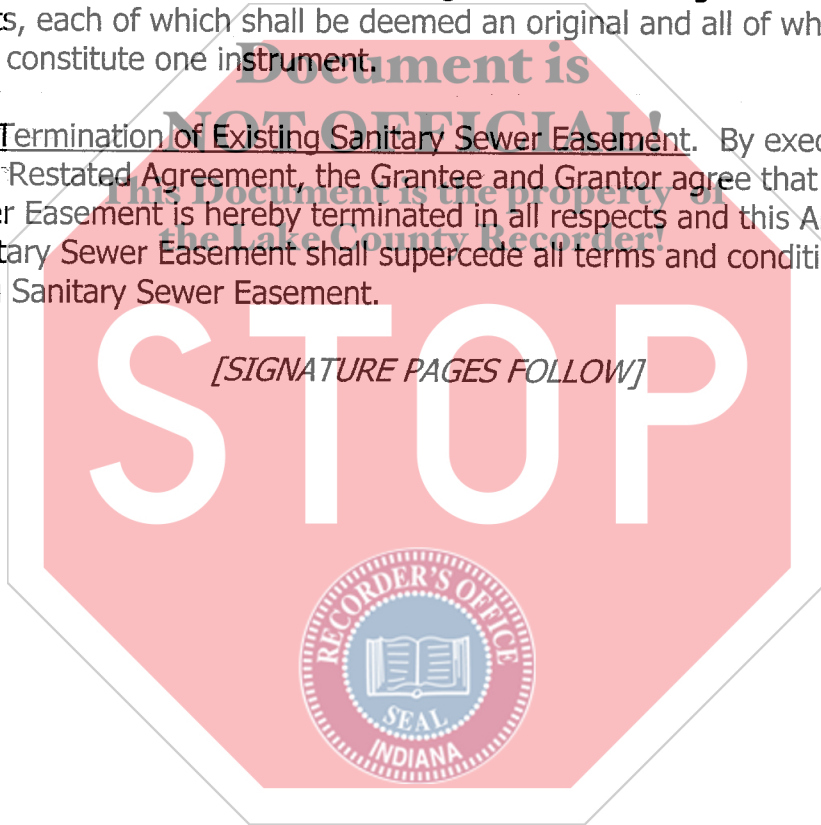
11. Taxes. Grantee agrees to assume and pay all taxes, assessments and other charges, if any, which may be levied, assessed or asserted against the Sanitary Sewer within the Easement Area and, if the same are not separately billed, agrees to promptly reimburse Grantor for any such taxes, assessments or other charges which may have been paid in whole or in part by Grantor.

12. Successors and Assigns. The terms "Grantor" and "Grantee", wherever used in this instrument are intended in each instance to include the successors and assigns of Grantor as the owner of the Easement Area, and Grantee as the owner of the Sanitary Sewer.

13. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. This Agreement shall not be construed strictly for or against either Grantor or Grantee. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of the Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

14. Termination of Existing Sanitary Sewer Easement. By execution of this Amended and Restated Agreement, the Grantee and Grantor agree that the Existing Sanitary Sewer Easement is hereby terminated in all respects and this Amended and Restated Sanitary Sewer Easement shall supercede all terms and conditions contained in the Existing Sanitary Sewer Easement.

*[SIGNATURE PAGES FOLLOW]*







TOWN OF ST. JOHN, LAKE COUNTY, INDIANA, a municipal corporation, GRANTEE

By: Stephen Z. Kil  
Stephen Z. Kil  
Its: Town Manager

State of Indiana )  
) SS  
County of Lake )

The execution of:

The foregoing instrument was acknowledged before me this 23rd day of December, 2004, by Stephen Z. Kil, known to me to be the Town Manager of the Town of St. John, Lake County, Indiana, a municipal corporation, and who executed the foregoing instrument on behalf of said subdivision for the uses and purposes mentioned in the instrument.

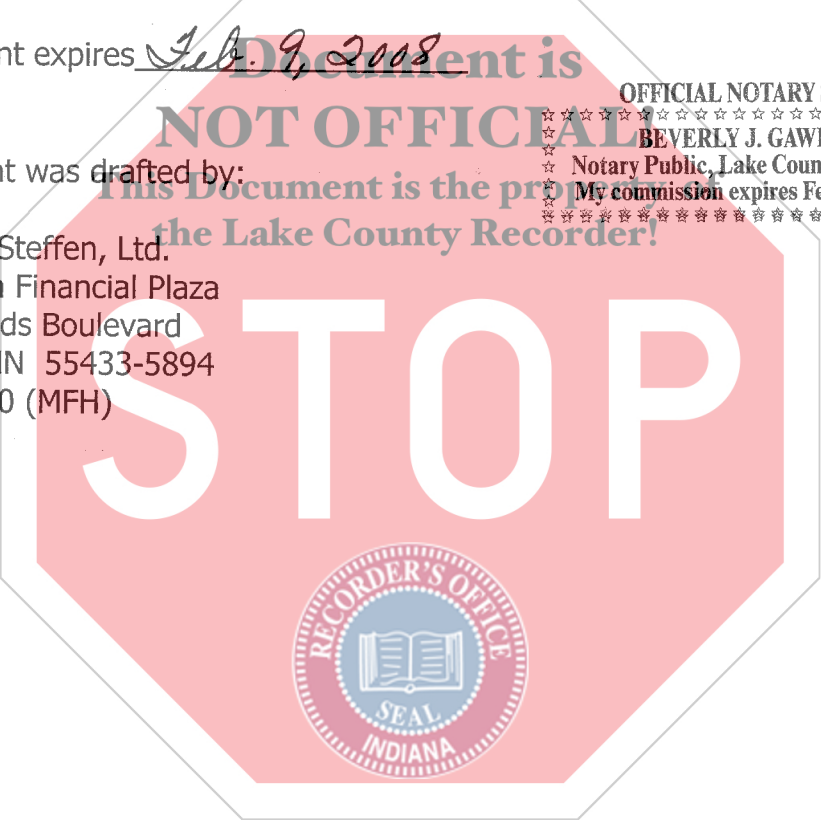
(Seal or Stamp) Beverly J. Gawrys  
Notary Public in and for the State of Indiana

My appointment expires Feb. 9, 2008

This instrument was drafted by:

Barna Guzy & Steffen, Ltd.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Minneapolis, MN 55433-5894  
(763) 780-8500 (MFH)

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OFFICIAL NOTARY SEAL  
BEVERLY J. GAWRYS  
Notary Public, Lake County, Indiana  
My commission expires Feb. 9, 2008

**EXHIBIT A**

**Legal Description of Grantor's Property**

Lots 7 and 8 in Pon & Company Highway Farms, in the Town of St. John, as per plat thereof, recorded in Plat Book 26, page 82, in the Office of the Recorder of Lake County, Indiana.



## EXHIBIT B

## LEGAL DESCRIPTION OF EASEMENT AREA

DESCRIPTION OF A 50 FOOT WIDE FRONTAGE ROAD &  
UTILITIES EASEMENT IN ST. JOHN  
MARKETPLACE

DESCRIPTION: Being a Frontage Road and Utilities easement 50 feet in width and lying in Lots 7 and 8 in Pon & Company Highway Farms, as shown in Plat Book 26, page 82 in the Office of the Recorder of Lake County, Indiana, excepting therefrom that part taken for U.S. Highway 41 per Right-of-Way Grant Recorded May 11, 1962 in Deed Record 1171, page 245 in the Office of the Recorder of Lake County, Indiana, said easement more particularly described as follows: Commencing at the Southeast corner of said Lot 8; thence North  $89^{\circ} 31' 53''$  West along the South line of said Lot 8, a distance of 755.99 feet to the Point of Beginning; thence continuing North  $89^{\circ} 31' 53''$  West along the South line of said Lot 8, a distance of 50.01 feet; thence North  $00^{\circ} 55' 02''$  West, a distance of 1.25 feet to a point of curve; thence Northwest along a curve concave to the West having a radius of 175.00 feet, an arc distance of 45.28 feet (the chord of which bears North  $08^{\circ} 19' 49''$  West, a chord distance of 45.16 feet); thence Southwesterly along a curve concave to the South and having a radius of 350.00 feet, an arc distance of 101.31 feet (the chord of which bears South  $80^{\circ} 15' 52''$  West, a chord distance of 100.96 feet) to a point of reverse curve; thence Westerly along a reverse curve concave to the North and having a radius of 400.00 feet, an arc distance of 123.51 feet (the chord of which bears South  $80^{\circ} 49' 04''$  West, a chord distance of 123.02 feet) to a point on the West Right-of-Way line of said U.S. Highway 41; thence Northerly, on said West Right-of-Way line along a curve concave to the West and having a radius of 57295.78 feet, an arc distance of 50.00 feet (the chord of which bears North  $00^{\circ} 14' 47''$  West, a chord distance of 50.00 feet); thence Northeasterly along a curve concave to the North and having a radius of 350.00 feet, an arc distance of 108.00 feet (the chord of which bears North  $80^{\circ} 48' 41''$  East, a chord distance of 107.57 feet) to a point of reverse curve; thence Easterly along a reverse curve concave to the South and having a radius of 400.00 feet, an arc distance of 99.47 feet (the chord of which bears North  $79^{\circ} 05' 45''$  East, a chord distance of 99.22 feet); thence North  $20^{\circ} 12' 14''$  West a distance of 13.43 feet to a point of curve; thence Northerly along a curve concave to the East and having a radius of 224.00 feet, an arc distance of 78.23 feet (the chord of which bears North  $10^{\circ} 11' 58''$  West, a chord distance of 77.83 feet); thence North  $00^{\circ} 11' 42''$  West, a distance of 622.44 feet to a point of curve; thence Northwesterly along a curve concave to the Southwest and having a radius of 30.00 feet, an arc distance of 41.67 feet (the chord of which bears North  $39^{\circ} 59' 23''$  West a chord distance of 38.40 feet); thence North  $89^{\circ} 44' 26''$  East, a distance of 74.58 feet; thence South  $00^{\circ} 11' 42''$  East, a distance of 652.03 feet to a point of curve; thence Southeasterly along a curve concave to the East and having a radius of 174.00 feet, an arc distance of 60.76 feet (the chord of which bears South  $10^{\circ} 11' 58''$  East, a chord distance of 60.46 feet); thence South  $20^{\circ} 12' 14''$  East, a distance of 52.09 feet to a point of curve; thence Southerly along a curve concave to the West and having a radius of 225.00 feet, an arc distance of 75.74 feet (the chord of which bears South  $10^{\circ} 33' 38''$  East, a chord distance of 75.38 feet); thence South  $00^{\circ} 55' 02''$  East, a distance of 2.46 feet to the point of beginning, all in the Town of St. John, Lake County, Indiana.



