

12
12

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2011 044970

2011 AUG 19 AM 9:46

MICHELLE S. FAJMAN
RECORDER

Permanent Tax Index Numbers:
45-08-02-100-001.000-004
45-08-02-200-001.000-004

Property Address:
201 Mississippi Street
Gary, Indiana

620067890 CM

**SECOND AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT
OF RENTS AND LEASES AND FIXTURE FILING**

THIS SECOND AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this "Second Amendment") is made and entered into effective as of August 12, 2011, by and between WELSH 201 MISSISSIPPI, LLC, a Delaware limited liability company (the "Mortgagor"), and BANK OF AMERICA, N.A., a national banking association and successor-by-merger to LaSalle Bank National Association (the "Lender").

RECITALS: CHIGAGO TITLE INSURANCE COMPANY

A Lender made a term loan to Mortgagor in the principal amount of \$16,500,000.00 (the "Loan"). The Loan is evidenced by that certain Promissory Note dated as of April 25, 2007, executed by Mortgagor and made payable to Lender, in the original principal amount of \$16,500,000 (the "Original Note"), which was amended by that certain First Amendment to Promissory Note dated April 25, 2008 (the "First Amendment"), that certain Second Amendment to Promissory Note dated as of July 25, 2008 (the "Second Amendment"), and is being further amended concurrently herewith by that certain Third Amendment to Loan Documents, (the "Third Amendment;" hereinafter, the Original Note as amended by the First Amendment, the Second Amendment and the Third Amendment, and as the same may be hereafter amended from time to time, the "Note").

B. The Mortgagor's obligations under the Note are secured by a certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated April 25, 2007, executed and delivered by Mortgagor to the Lender, and recorded on May 9, 2007, as Document Number 2007 038046 in the Office of the Recorder of Lake County, Indiana ("Official

38.00
2 REP CT
LR

Records”), as modified by that certain First Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing, dated July 25, 2008 and recorded on August 20, 2008, in the Official Records as Document No. 2008 059217 (as the same may be hereafter amended, extended, restated or replaced from time to time, the “Mortgage”), encumbering certain real property in Lake County, Indiana legally described on Exhibit A attached hereto (the “Land”);

C. Mortgagor has requested, and Lender has agreed to extend the Maturity Date of the Note pursuant to the Third Amendment and made certain other financial accommodations to Mortgagor; and

D. It is a condition precedent to Lender’s agreement to extend the Maturity Date that the Mortgage be amended to secure the loan and the note evidencing such loan, as extended, upon the terms and conditions set forth herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Mortgage as follows:

1. Definitions. Unless otherwise expressly defined herein, all capitalized terms used herein shall have the meanings given such terms in the Mortgage.

2. Amendment to Maturity Date. The definition of “Maturity Date” in Recital A of the Mortgage is hereby amended to read: “July 25, 2013, as the same may be extended from time to time.” Any and all references to the Maturity Date in the Mortgage are hereby amended to refer to the Maturity Date as amended hereby.

3. Amendment to Debt Service Coverage Ratio. Section 37 of Mortgage is hereby deleted in its entirety and restated as follows:

37. Debt Service Coverage Ratio.

(a) Beginning on September 30, 2011, during any calendar quarter ending on December 31, March 31, June 30 or September 30 (a “Quarter”), the Mortgagor shall not permit the ratio of Operating Cash Flow (as defined below) during such Quarter to Debt Service (as defined below) during such Quarter to be less than 1.25 to 1.00 (the “Debt Service Coverage Ratio”).

(b) As used herein, “Operating Cash Flow” during any Quarter shall mean all rental income (including minimum rent, additional rent, escalation and pass through payments) actually received in such Quarter arising from the ownership and operation of the Premises (excluding tenant security deposits, percentage rents, rent received from any tenant that has filed bankruptcy, rent received from any tenant who is delinquent in the payment of rent under its Lease for a period of

more than forty-five (45) days, and rent paid during such Quarter by any tenant for more than three months of rental obligations) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such Quarter in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Loan, (v) principal and interest payments on the Loan and any other loans, and (vi) property management fees in excess of 4.0% of Operating Revenue (as defined in the Third Modification). In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income, and (b) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums (regardless of whether the same shall have been paid or have become due and payable during such Quarter) multiplied by one-quarter (0.25).

(c) As used herein, "Debt Service" for any Quarter shall equal the sum of all principal and interest payments on the outstanding balance of the Loan and any other indebtedness of the Mortgagor that is due and payable during such Quarter, assuming a 25 year amortization schedule and a per annum interest rate of the greater of (i) the then applicable interest rate under the Note, (ii) the then applicable Treasury Rate on the test date plus 2.5%, or (iii) 7.0%. "Treasury Rate" means as of the date of any calculation or determination, the latest published rate for United States Treasury Notes as published weekly in the Federal Reserve Statistical Release H.15 (519) of Selected Interest Rates having a ten (10) year maturity (or closest thereto) from such date of calculation or determination.

(d) Operating Cash Flow and Debt Service shall be calculated by the Mortgagor and delivered to Lender to review, together with background financial information and calculations, and shall be independently reviewed and verified by the Lender and the calculations so verified or as adjusted by Lender shall be final and binding upon the Mortgagor.

(e) If (i) as of the end of any Quarter, the Debt Service Coverage Ratio is less than 1.25 to 1.00, or (ii) at any time during any Quarter, the Lender reasonably believes that an event has occurred which will cause a decrease in the Operating Cash Flow during such Quarter (including, without limitation, an increase in the real estate taxes due to an increase in the assessed valuation of the Premises, the applicable tax rate or otherwise) and, as a result thereof, the ratio of Operating

Cash Flow to Debt Service during such Quarter (or any Quarter thereafter) shall be less than 1.25 to 1.00, then an Event of Default shall occur as of the last day of such Quarter unless Mortgagor, on or before the last day of such Quarter, has delivered to the Lender evidence satisfactory to Lender that such ratio is at least 1.25 to 1.00. Without limiting the foregoing, in the event that the Debt Service Coverage Ratio is less than 1.25 to 1.00 at the end of any Quarter, within thirty (30) days after the end of such Quarter, the Borrower may, at its sole option, deposit with Lender an amount sufficient to pay down the outstanding amount of the principal balance of the Loan to satisfy the Debt Service Coverage Ratio, and such deposit shall be applied to the outstanding principal balance of the Loan; provided, however, if Mortgagor does not make such principal reduction payment within 30 days of the end of any such applicable Quarter, the Event of Default arising from the failure to satisfy the required Debt Service Coverage Ratio shall remain in full force and effect and Lender shall be entitled to exercise all available rights and remedies in connection therewith.

4. References. Any and all references in any document to the Mortgage, including without limitation the Note and the other Loan Documents, are hereby amended to refer to the Mortgage as amended by this Second Amendment to Mortgage.

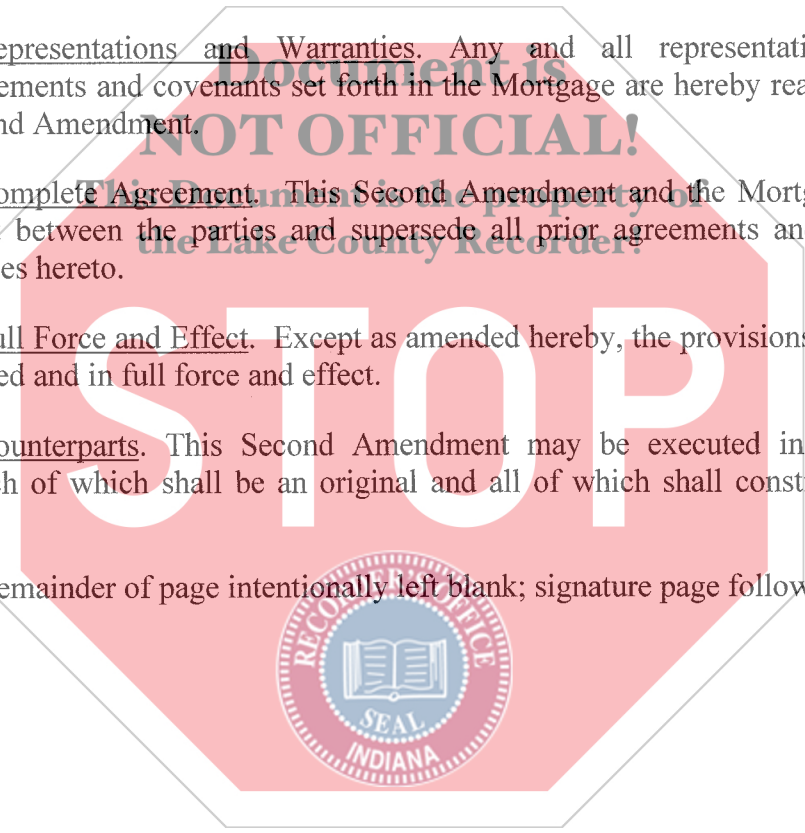
5. Representations and Warranties. Any and all representations, warranties, obligations, agreements and covenants set forth in the Mortgage are hereby reaffirmed as of the date of this Second Amendment.

6. Complete Agreement. This Second Amendment and the Mortgage embody the entire agreement between the parties and supersede all prior agreements and understandings between the parties hereto.

7. Full Force and Effect. Except as amended hereby, the provisions of the Mortgage remain unmodified and in full force and effect.

8. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[remainder of page intentionally left blank; signature page follows]



IN WITNESS WHEREOF, the undersigned has caused this Second Amendment to Mortgage, Assignment of Rents and Security Agreement to be executed as of the date and year first above written.

MORTGAGOR:

WELSH 201 MISSISSIPPI, LLC, a Delaware limited liability company

By: [Signature]
Print Name: Dennis J. Doyle
Title: Chief Manager

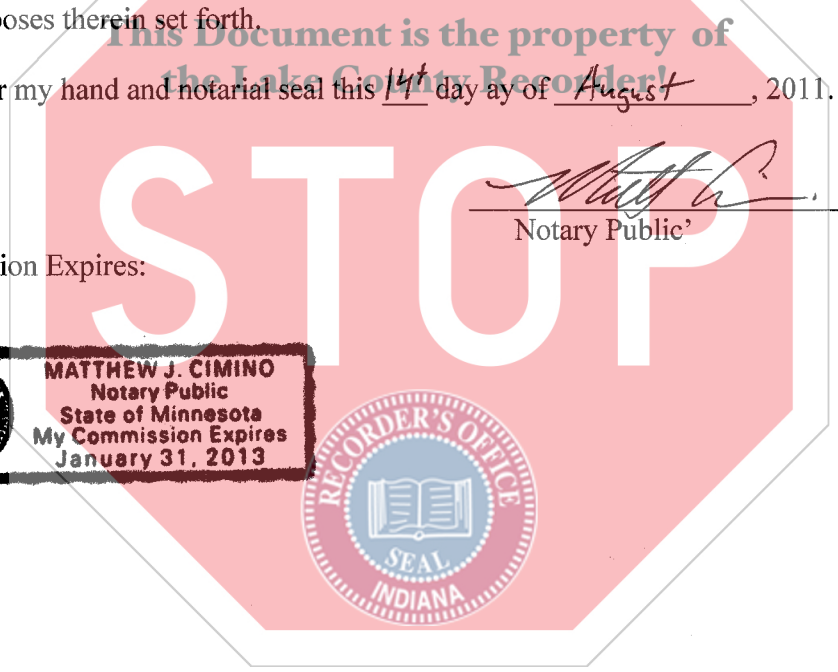
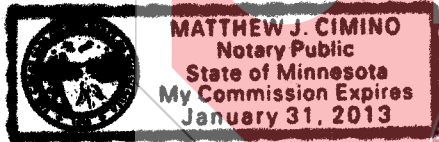
STATE OF MINNESOTA)
) S:
COUNTY OF HENNEPIN)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Dennis J. Doyle of WELSH 201 MISSISSIPPI, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day ay of August, 2011.

[Signature]
Notary Public'

My Commission Expires:



LENDER:

BANK OF AMERICA, N.A., a national banking association and successor-by-merger to LaSalle Bank National Association

By: [Signature]

Print Name: CRAIG PRZYGODA

Title: SVP

STATE OF ILLINOIS)

) S:

COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Craig Przygoda of BANK OF AMERICA, N.A., a national banking association and successor-by-merger to LaSalle Bank National Association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11th day ay of August, 2011.

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

Audrey M. Jackson
Notary Public

My Commission Expires



This document Prepared By
And after Recording Return to:

Tia L. Cottey
Bryan Cave LLP
2 North Central Avenue, Suite 2200
Phoenix, Arizona 85004



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Name of Declarant: Tia L. Cottey

ACKNOWLEDGEMENT AND JOINDER

HJ Investment Company, LLP, a Minnesota limited liability partnership (the "TIC Owner") owns an undivided 85.14% fee interest in the real property described on Exhibit A hereto (the "Property"). The TIC Owner hereby acknowledges and joins this Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of April 25, 2007 and recorded on May 9, 2007, as Document No. 2007 038046 in the Office of the Recorder of Lake County, Indiana ("Official Records"), as modified by that certain First Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of July 25, 2008 and recorded on August 20, 2008 as Document No. 2008 059217 of the Official Records, as further modified by this Second Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of August 12, 2011 (the "Mortgage") for the sole purpose of subjecting the TIC Owner's interest in the Property to the lien of the Mortgage. Nothing in this acknowledgement and joinder shall give rise to, or be construed as giving rise to, (i) any liability on the part of the TIC Owner with respect to the indebtedness secured thereby or (ii) the assumption of any liability on the part of the TIC Owner with respect to the indebtedness secured thereby.

TIC OWNER:

HJ INVESTMENT COMPANY, LLP, a Minnesota limited liability partnership

By: 
Print Name: Ronald G. Cornwell
Title: PARTNER



STATE OF MINNESOTA)
) S:
COUNTY OF HENNEPIN)

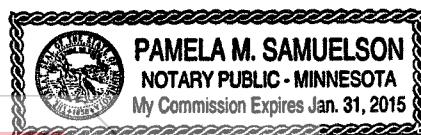
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Ronald G. Cornwell of HJ INVESTMENT COMPANY, LLP, a Minnesota limited liability partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PARTNER, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15th day ay of August, 2011.

Pamela M. Samuelson

Notary Public'

My Commission Expires JAN 31, 2015



HJ INVESTMENT COMPANY, LLP, a Minnesota limited liability partnership

By: Richard F. Craven
Print Name: Richard F. Craven
Title: PARTNER

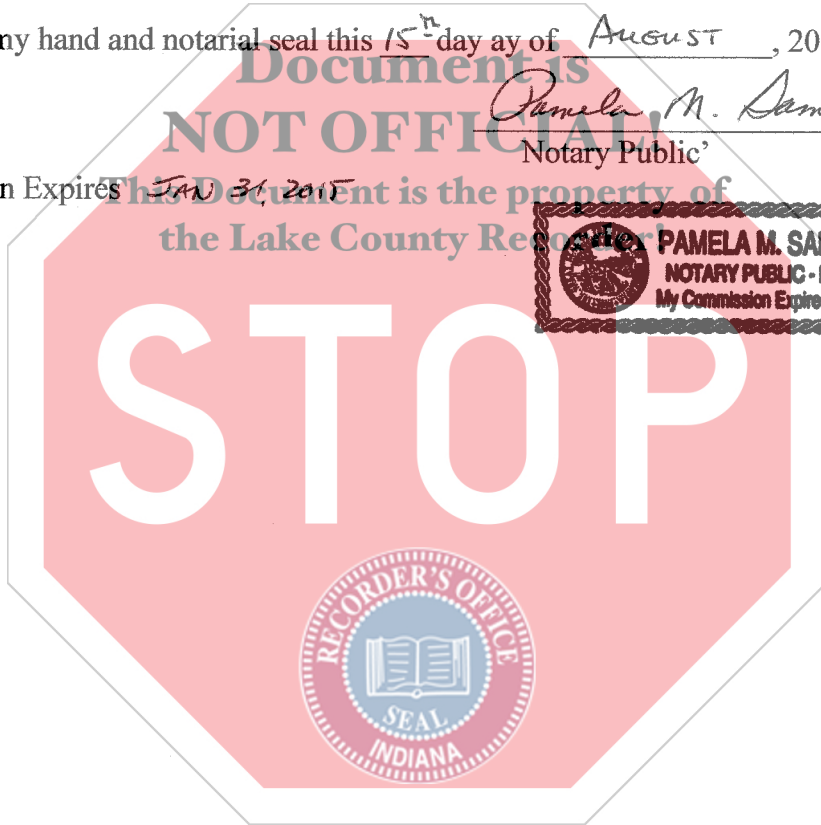
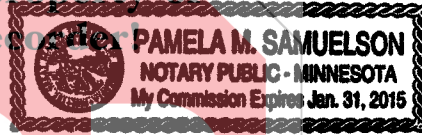
STATE OF MINNESOTA)
) S:
COUNTY OF HENNEPIN)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Richard F. Craven of HJ INVESTMENT COMPANY, LLP, a Minnesota limited liability partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PARTNER, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15th day ay of AUGUST, 2011.

Pamela M. Samuelson
Notary Public'

My Commission Expires JAN 31, 2015



HJ INVESTMENT COMPANY, LLP, a Minnesota limited liability partnership

By: Byron G. Shaffer
Print Name: Byron G. Shaffer
Title: PARTNER

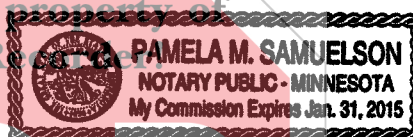
STATE OF MINNESOTA)
) S:
COUNTY OF HENNEPIN)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Byron G. Shaffer of HJ INVESTMENT COMPANY, LLP, a Minnesota limited liability partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PARTNER, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15th day ay of AUGUST, 2011.

Pamela M. Samuelson
Notary Public'

My Commission Expires JAN 31, 2015



This document Prepared By
And after Recording Return to:

Tia L. Cottey
Bryan Cave LLP
2 North Central Avenue, Suite 2200
Phoenix, Arizona 85004

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Name of Declarant: Tia L. Cottey

EXHIBIT A

Parcel 1: A parcel of land lying in the North half of Section 2 and the Northeast Quarter of Section 3, Township 36 North Range 8 West of the 2nd P.M., bounded and described as follows:

Commencing at the point of intersection of the West line of said Section 2 with the North line of the property now owned by the New York Central Railroad Company, said point being 842.4 feet more or less South of the Northwest corner of said Section 2, and said North line of property of New York Central Railroad Company being 130 feet by rectangular measurement North of the base line of location of the New York Central Railroad as described in Deed from Gary Land Company to New York Central Railroad Company, dated February 20, 1917 and recorded in the Recorder's office of Lake County, Indiana in Book 270, Page 82; thence Easterly along said North property line of New York Central Railroad Company 1,750 feet more or less to a point of curve (which point is the Westerly corner of a parcel of land conveyed by Gary Land Company to New York Central Railroad Company by deed dated June 24, 1927 and recorded in the Recorder's Office of Lake County, Indiana, on August 12, 1927 in Book 404, Page 45); thence Northeasterly along a curve convex to the Southeast having a radius of 1,499 feet, a distance of 969.4 feet to a point of reverse curve; thence continuing Northeasterly on a curve convex to the Northwest having a radius of 3,408.29 feet, a distance of 1,079.05 feet, more or less (said 969.4 foot course and said 1,079.05 foot course being the Northwesterly line of said land conveyed by Gary Land Company to New York Central Railroad Company by deed aforesaid, dated June 24, 1927) to a point in the North line of said Section 2, which point is the Northwesterly corner of said land so conveyed; thence West along the North line of said Section 2, a distance of 951 feet more or less to a point of curve, thence Westerly and Southwesterly along a curve convex to the Northwest and having a radius of 11,409.2 feet, a distance of 1,679.4 feet more or less to a point of tangent to said curve, (said curve being the Southerly line or Southerly line extended of lands conveyed by Gary Land Company, to Chicago, Lake Shore and Eastern Railway Company by deed dated June 20, 1928 and recorded in the Recorder's Office of Lake County, Indiana, on September 19, 1928 in Book 432, Page 553); thence continuing Southwesterly along the tangent to said curve (said tangent being also a part of the Southerly line of aforesaid lands conveyed to Chicago, Lake Shore and Eastern Railway Company) a distance of 1,619 feet more or less to the Northeast corner of a parcel of land containing 4.566 acres, conveyed by Gary Land Company to Gary Tube Company by deed dated August 4, 1922 and recorded in the Recorder's Office of Lake County, Indiana, on August 31, 1922 in Book 302 Page 544, thence South along the East line of said 4.566 acre tract and said East line extended, a distance of 345.5 feet more or less, to the Northerly line of the property of the New York Central Railroad Company described as Parcel No. 6 in the deed from Gary Land Company to New York Central Railroad Company dated February 20, 1917, thence Southeasterly along said Northerly property line of New York Central Railroad Company 636.15 feet more or less to the place of beginning in the City of Gary, Lake County, Indiana.

Parcel 2: Part of the Northeast Quarter of the Northeast Quarter of Section 3, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows:

Beginning at a point on the East line of said Section 3 which is 842.4 feet South of the Northeast corner of said Section 3 and is marked by an iron pipe in concrete; thence West on a line that is 130 feet North of and parallel to the base line described in Deed Record 270, Page 82, from Gary Land Company to New York Central Railroad recorded January 23, 1920, a distance of 1113.25 feet to an iron pipe in the East varying width right of way dedicated Tennessee Street as opened March 29, 1960 by Resolution 9586 City of Gary; thence Northwesterly on said East line of dedicated Tennessee Street 170.80 feet to the South line of dedicated 60 foot wide Mason Avenue as opened April 23, 1948; thence East on the South line of said 60 foot wide Mason Avenue 257.6 feet to a point of straight deflection in the South line of Mason Avenue; thence continuing on the South line of Mason Avenue deflected which is also the Northerly line of Parcel 6 in the aforesaid Deed Record 270, Page 82, for a distance of 884.53 feet more or less to the point of beginning.

Parcel 3: Part of the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 2, Township 36 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana, and being particularly described as follows:

Beginning at a point in the Northwesterly line of the land of the Gary & Western Railway Company, where the same is intersected by the North line of the land of the New York Central Railroad Company; thence Northeasterly along said Northwesterly line, the same being parallel to and distant 65 feet by rectangular measurement Northwesterly from the location center line of the Gary & Western Railway, a distance of 93.74 feet to a point of curve; thence Northeasterly along said Northwesterly line, the same being parallel to and distant 65 feet by radial measurement Northwesterly from said location center line, and being along a line which is a curve convex to the Northwest, having a radius 3308.29 feet in length, a distance of 1630.94 feet to a point in the South line of land of the predecessor of said the New York Central Railroad Company, The Chicago, Indiana & Southern Railroad Company, distant 11.5 feet West, measured along said South line from its intersection with the East line of said Northwest Quarter of the Northeast Quarter of Section 2; thence West along said South line, the same being also the North line of said Section 2, a distance of 348.98 feet, more or less, to a point distant 165 feet by radial measurement Northwesterly from said location center line of the Gary & Western Railway; thence Southwesterly along a line drawn parallel to and distant 100 feet by radial measurement Northwesterly from above described Northwesterly line of land of the Gary & Western Railway Company, a distance of 1079.05 feet to a point of reverse curve; thence Southwesterly and Westerly along a line which is a curve, convex to the Southeast, having a radius 1499 feet in length, a distance of 969.4 feet to a point in the North line of land of the New York Central Railroad Company; thence East along said North line, the same being parallel to and distant 130 feet by rectangular measurement North of the base line of location of the New York Central Railroad, as described in deed from the Gary Land Company to said the New York Central Railroad Company, bearing date of February 20, 1917, and recorded in Book 270, Page 82, records of deeds of said Lake County, a distance of 696.46 feet to the place of beginning.