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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2012 058833

2012 AUG 29 PM 3:00

MICHELLE N. FAJMAN  
RECORDER

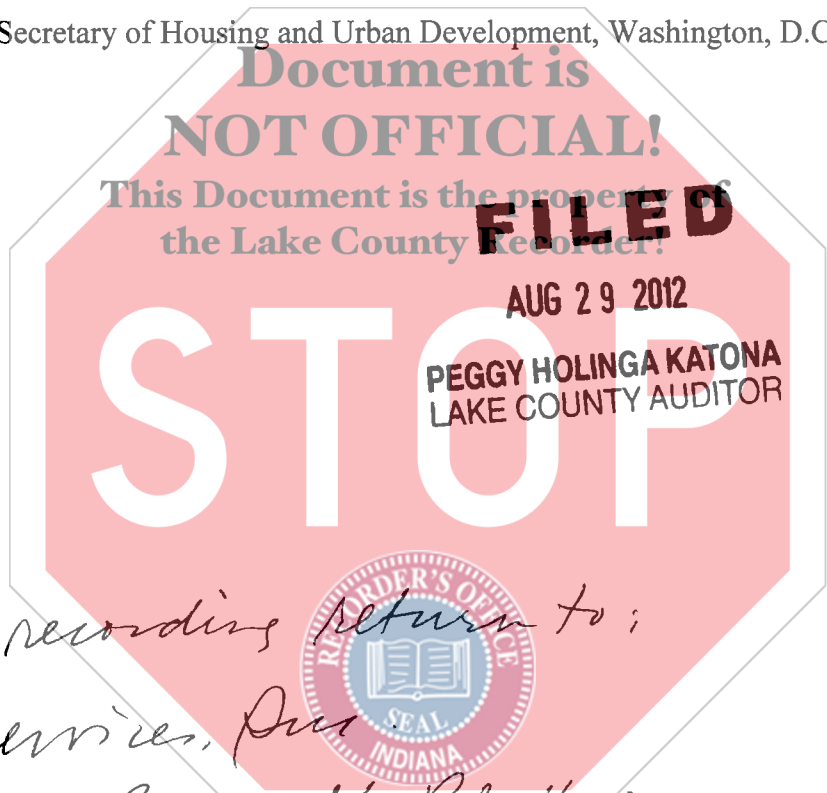
502448

USE AGREEMENT

By and Between Pine Island Apartments, LLC, an Indiana limited liability company

And

Secretary of Housing and Urban Development, Washington, D.C.



↓  
 After recording return to;  
 Title Services, Inc.  
 610 E. Roosevelt Rd. #100  
 Wheaton, IL 60187

29-00  
 37071  
 94

003545

**Section 207 pursuant to Section 223(f) Rental Housing  
Prepayment subject to Section 223(f)(3)  
FHA Project No. 073-11616  
Project Name Hidden Creek Apartments**

**This Use Agreement** (this "Agreement") is made, as of August 24, 2012, by and between Pine Island Apartments, LLC, an Indiana limited liability company, (the "Owner") and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington, D C (the "Secretary" or "HUD").

**RECITALS**

**A.** The Owner is the owner of all of that certain real property located in the City of Crown Point, in the County of Lake, in the State of Indiana, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental apartment project known as Hidden Creek Apartments, known as FHA Project No. 073-11616 (the "Project") and together with the Real Property, (the "Property").

**B.** The Property is encumbered by that certain first lien mortgage loan (the "Loan") made to the Owner, or a predecessor in interest, which loan is evidenced and/or secured by that certain Mortgage Note dated as of June 9, 2009 and that certain Mortgage of even date therewith endorsed for insurance by the Secretary under Section 207 pursuant to Section 223(f) of the National Housing Act, 12 U.S.C. §1713 and §1715n(f), on June 9, 2009.

**C.** The Mortgage Note contains a prepayment provision derived from Section 223(f)(3) of the National Housing Act, 12 U.S.C. §1715n(f)(3), as follows

The debt evidenced by this Note may not be prepaid either in whole or in part for a period of five years from the date of final endorsement hereof except in cases where the prior written approval of the Secretary is obtained and such written approval is expressly based upon the existence of one of the following:

1. The Owner has entered into an agreement with the Secretary to utilize the property as a rental property for the remainder of the five year statutory period set out in the Mortgage Note;
2. The Secretary has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

3. The Secretary has determined that continuation of the property as rental housing is clearly unnecessary to assure adequate rental housing opportunity for low and moderate income people in the community; or

4. The Secretary has determined that continuation of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood.

D. The Owner has requested the prior written approval of the Secretary to prepay the Mortgage Note pursuant to the above quoted provision;

E. The Owner has agreed to maintain the Project as rental property until June 9, 2014, which is the requisite period of five years after the date of the Secretary's endorsement of the Mortgage Note for mortgage insurance under Section 207 pursuant to Section 223(f) of the National Housing Act;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which are expressly acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference as if full set forth herein.

2. **Approval of Prepayment.** The execution and recording of this Agreement shall constitute the Secretary's approval of the prepayment of the Mortgage Note described above, provided that such prepayment is made in accordance with the terms of the Mortgage Note for a prepayment penalty, if applicable.

3. **Term.** This Agreement shall remain in effect until June 9, 2014, (such period being hereinafter referred to as the "Term").

4. **Use Requirement.** The Owner hereby agrees that the Project shall be used solely as rental housing with no reduction in the number of residential rental units.

5. **Tenant Selection.** Unless designed primarily for occupancy by elderly persons, Owners shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children in the family.

6. **Civil Rights Requirements.** The Owner shall comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, creed, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. 3601 et. seq.; 24 C.F.R. 100 et. seq.)

Executive Order 11063, and all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107, and 110, and Subparts I and M of Part 200.

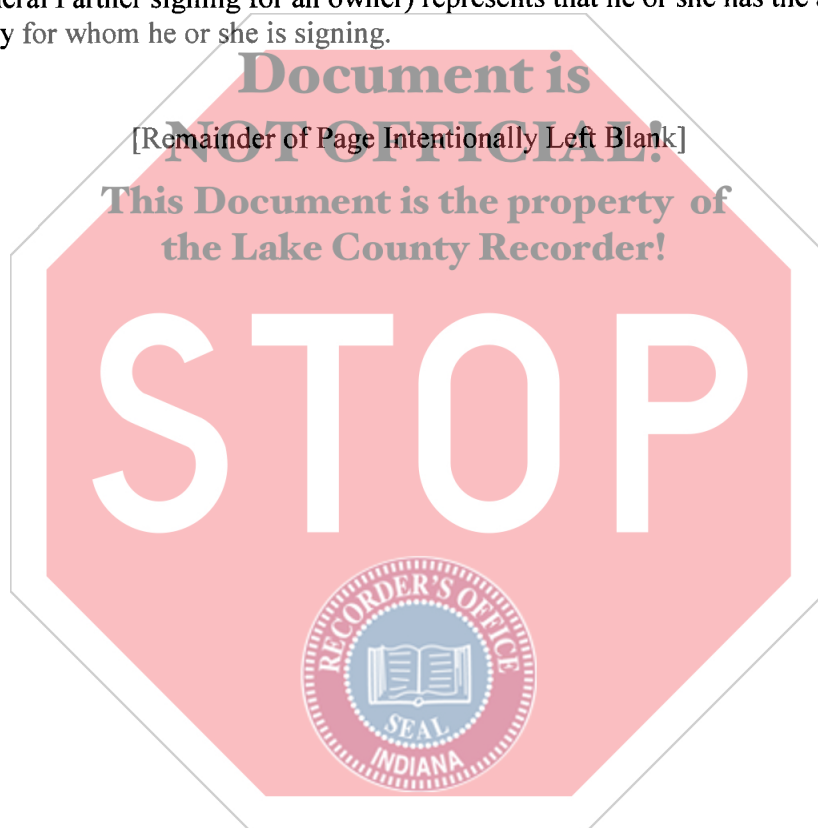
**7. Covenants to Run with Land.** The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property until June 9, 2014. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Secretary hereby agrees that upon the request of the Owner made on or after June 10, 2014 the Secretary shall execute a recordable instrument approved by the Secretary for purposes of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**8. Superiority.** The parties hereto understand and agree that, notwithstanding any provisions contained in this Agreement, or any other instrument or agreement affecting the Property, the restrictions and covenants hereunder are not intended by the parties hereto to either create a lien upon the Property, or grant any right of foreclosure, under the laws of the jurisdiction where the project is located, to any party hereto or third party beneficiary hereof upon a default of any provision herein, rather they are intended by the parties hereto to constitute a restrictive covenant that is filed of record prior in time to any instrument or agreement granting a security interest in the Project, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**9. Violations and Secretary's Remedies.** If the Secretary determines that the Owner has violated any of the terms of this Agreement, the Secretary shall notify the Owner of its determination and the Owner shall have thirty (30) calendar days after receipt of such notification in which to cure the violation. Promptly following the expiration of the foregoing thirty (30) day period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. Failure to cure the violation shall deem the owner in default. The parties further agree that upon any default under this Agreement, the Secretary may apply to any court, state or federal, for specific performance of this Agreement, or for such other equitable relief as may be appropriate, since the injury to the Secretary arising from a violation under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

**10. Notice to Tenants upon Expiration of Use Agreement.** The Owner shall notify each Tenant at least 90 days prior to the expiration of the Term of the Use Agreement that after the expiration of the Term of the Use Agreement, the Owner will be free to alter unit rents without the Secretary's approval (to the extent that the unit rents are not otherwise regulated by the Secretary under a Housing Assistance Payments Contract), and that the Tenant will be required to bear the entire cost of the rent, subject to any applicable requirements or restrictions under the lease or under State or local law. The notice to each Tenant shall also state: (a) The actual (if known) or the estimated unit rent that each Tenant will be charged for the unit that Tenant occupies following the expiration of the Term of the Use Agreement; (b) the difference between the actual (if known) or estimated unit rent that each Tenant will be charged for the unit that Tenant occupies, and the current unit rent paid by each Tenant the Terms of the Use Agreement. The Owner shall provide the Secretary a certification that each Tenant has been notified in accordance with this provision with an example of the text of the notice attached.

**11. Signatory Authority.** Any person signing this Agreement on behalf of a party (e.g., the General Partner signing for an owner) represents that he or she has the authority to bind the party for whom he or she is signing.



IN WITNESS WHEREOF, the parties hereto have caused this Use Agreement to be executed and made effective as of the date first above written.

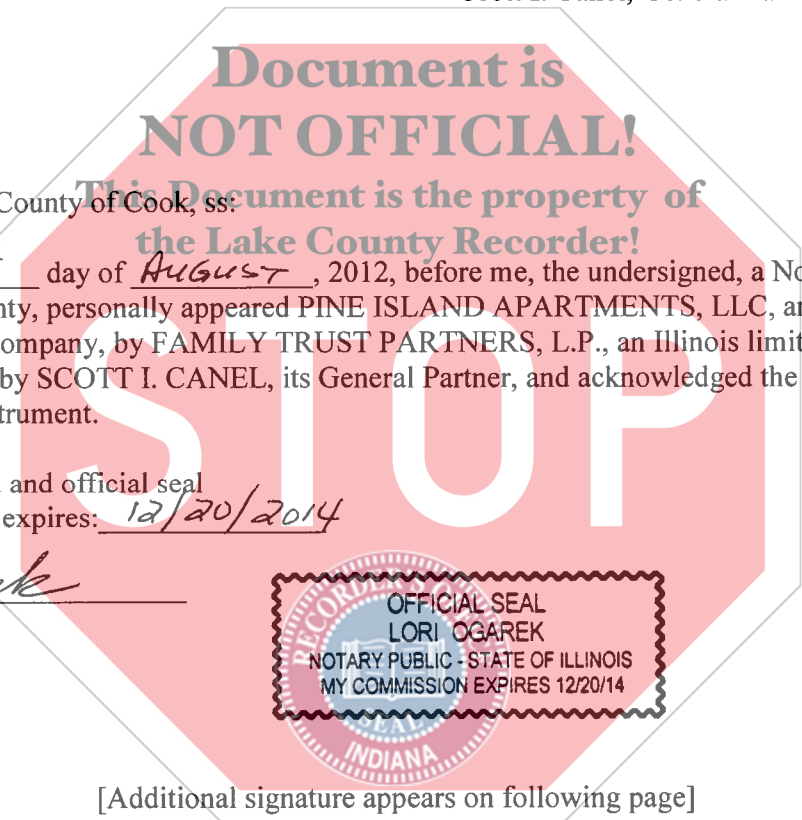
WITNESS/ATTEST:

OWNER:

Pine Island Apartments, LLC,  
an Indiana limited liability company

By: Family Trust Partners, L.P.  
an Illinois limited partnership  
Member

By:   
Scott I. Canel, General Partner

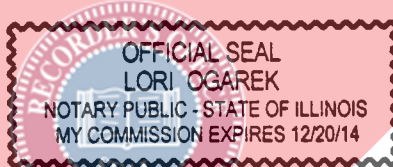


State of Illinois, County of Cook, ss:

On this 24<sup>th</sup> day of AUGUST, 2012, before me, the undersigned, a Notary Public in and for said County, personally appeared PINE ISLAND APARTMENTS, LLC, an Indiana limited liability company, by FAMILY TRUST PARTNERS, L.P., an Illinois limited partnership, its sole member, by SCOTT I. CANEL, its General Partner, and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal  
My Commission expires: 12/20/2014

Notary Public



[Additional signature appears on following page]

WITNESS/ATTEST:

\_\_\_\_\_

SECRETARY OF HOUSING  
AND URBAN DEVELOPMENT,  
WASHINGTON, D.C.

*Edward J. Paul, Acting for*

*[Signature]*

By: \_\_\_\_\_  
Authorized Agent

*Eileen R. Mitcheltree, Director*  
Indianapolis Multifamily  
Program Center

STATE OF Indiana  
COUNTY OF Marion

Before me the undersigned authority, a notary public, of the state and county aforesaid, personally appeared Edward Paul, to me personally known and known to be the duly appointed authorized agent of the Secretary of the United States Department of Housing and Urban Development, who executed the foregoing instrument by virtue of the authority vested in him and acknowledged to me that he executed it voluntarily for the purposes stated therein on behalf of the Secretary of Housing and Urban Development this the 27<sup>th</sup> day of August, 2012.

Witness my hand and official seal or stamp.

*Heather Aislynn Johns*

Notary Public  
Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[Affix Notarial Seal]



Prepared by and after recording return to:  
Thomas Kelly Derryberry, Attorney at Law  
Peaseley & Derryberry PLC  
504 Autumn Springs Ct, Suite 26  
Franklin, TN 37067

EXHIBIT A  
Legal Description

\*\*\*PARCEL 1

THAT PART OF THE SOUTHEAST QUARTER AND THAT PART OF THE NORTHEAST QUARTER LYING SOUTH OF THE SOUTH RIGHT OF WAY LINE OF U S HIGHWAY NO 30, ALL IN SECTION 24, TOWNSHIP 35 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER, THENCE NORTH 89 DEGREES 24 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, 596 59 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 11 DEGREES 00 MINUTES 00 SECONDS WEST 34 22 FEET, THENCE SOUTH 32 DEGREES 00 MINUTES 00 SECONDS EAST, 60 00 FEET, THENCE NORTH 50 DEGREES 15 MINUTES 00 SECONDS EAST, 115 00 FEET, THENCE SOUTH 61 DEGREES 00 MINUTES 00 SECONDS EAST, 137 02 FEET, THENCE SOUTH 25 DEGREES 35 MINUTES 00 SECONDS WEST, 338 37 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF PINE ISLAND DRIVE, THENCE NORTH 64 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID NORTHERLY LINE, 796 75 FEET, THENCE CONTINUING ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE NORTHEAST WHOSE RADIUS EQUALS 70 00 FEET, TANGENT EQUALS 25 64 FEET, DEFLECTION ANGLE EQUALS 40 DEGREES 14 MINUTES 03 SECONDS, A DISTANCE OF 49 16 FEET ALONG SAID CURVE TO THE NORTH LINE OF SAID SOUTHEAST QUARTER, THENCE CONTINUING ALONG THE EASTERLY LINE OF SAID PINE ISLAND DRIVE, NORTHWESTERLY, ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE NORTHEAST WHOSE RADIUS EQUALS 70 00 FEET, TANGENT EQUALS 5 38 FEET, DEFLECTION ANGLE EQUALS 08 DEGREES 47 MINUTES 11 SECONDS, A DISTANCE OF 10 73 FEET ALONG SAID CURVE, THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 06 DEGREES 20 MINUTES 08 SECONDS EAST, 190 83 FEET, THENCE CONTINUING ALONG SAID EASTERLY LINE ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE WEST WHOSE RADIUS EQUALS 3123 73 FEET, TANGENT EQUALS 191 74 FEET, DEFLECTION ANGLE EQUALS 07 DEGREES 01 MINUTES 30 SECONDS A DISTANCE OF 383 00 FEET ALONG SAID CURVE, THENCE SOUTH 76 DEGREES 25 MINUTES 48 SECONDS EAST, PARALLEL WITH THE SOUTH LINE OF U S HIGHWAY NO 30, A DISTANCE OF 439 98 FEET, THENCE NORTH 22 DEGREES 13 MINUTES 32 SECONDS EAST, 65 00 FEET, THENCE SOUTH 76 DEGREES 25 MINUTES 48 SECONDS EAST, 80 00 FEET, THENCE SOUTH 30 DEGREES 45 MINUTES 00 SECONDS EAST, 125 00 FEET, THENCE SOUTH 13 DEGREES 50 MINUTES 00 SECONDS WEST, 105 00 FEET, THENCE SOUTH 66 DEGREES 00 MINUTES 00 SECONDS EAST, 60 00 FEET, THENCE SOUTH 11 DEGREES 00 MINUTES 00 SECONDS WEST, 290 78 FEET TO THE POINT OF BEGINNING

Continued





Legal Description - continued

PARCEL 2

THAT PART OF THE SOUTHEAST QUARTER AND THAT PART OF THE NORTHEAST QUARTER LYING SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF U S HIGHWAY NO 30, ALL IN SECTION 24, TOWNSHIP 35 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER, THENCE NORTH 89 DEGREES 24 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, 329 06 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 48 DEGREES 17 MINUTES 40 SECONDS WEST 86 54 FEET, THENCE NORTH 61 DEGREES WEST 102 02 FEET, THENCE SOUTH 50 DEGREES 15 MINUTES 00 SECONDS WEST, 115 00 FEET, THENCE NORTH 32 DEGREES WEST, 60 00 FEET, THENCE NORTH 11 DEGREES EAST, 34 22 FEET TO SAID NORTH LINE, THENCE CONTINUING NORTH 11 DEGREES EAST 290 78 FEET, THENCE NORTH 66 DEGREES WEST 60 00 FEET, THENCE NORTH 13 DEGREES 50 MINUTES 00 SECONDS EAST, 105 00 FEET, THENCE NORTH 30 DEGREES 45 MINUTES 00 SECONDS WEST 125 00 FEET, THENCE NORTH 76 DEGREES 25 MINUTES 48 SECONDS WEST 80 00 FEET, THENCE NORTH 22 DEGREES 13 MINUTES 32 SECONDS EAST, A MEASURED DISTANCE OF 191 54 FEET (SHOWN AS 197 76 FEET IN DEED) TO SAID SOUTH RIGHT-OF-WAY LINE, THENCE SOUTH 76 DEGREES 25 MINUTES 48 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, 658 50 FEET TO THE EAST LINE OF SAID NORTHEAST QUARTER, THENCE SOUTH 00 DEGREES 14 MINUTES 46 SECONDS WEST, ALONG SAID EAST LINE 275 00 FEET, THENCE SOUTH 48 DEGREES, 17 MINUTES 40 SECONDS WEST, 442 45 FEET TO THE POINT OF BEGINNING,

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE TRACT FALLING WITHIN THE FOLLOWING A PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 8 WEST, AND A PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 35 NORTH, RANGE 9 WEST, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS BEGINNING AT A POINT ON THE EAST LINE OF SAID SECTION 24 NORTH 0 DEGREES 30 MINUTES 42 SECONDS WEST 566 29 FEET FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 24, WHICH POINT OF BEGINNING IS ON THE SOUTHERN BOUNDARY OF U S R 30, THENCE SOUTH 76 DEGREES 54 MINUTES 00 SECONDS EAST 63 42 FEET ALONG THE BOUNDARY OF SAID U S R 30 TO THE NORTHEASTERN LINE OF THE OWNER'S LAND, THENCE SOUTH 29 DEGREES 14 MINUTES 05 SECONDS EAST 13 53 FEET ALONG SAID NORTHEASTERN LINE, THENCE NORTH 76 DEGREES 54 MINUTES 00 SECONDS WEST 414 77 FEET, THENCE NORTH 79 DEGREES 06 MINUTES 09 SECONDS WEST 130 10 FEET, THENCE NORTH 76 DEGREES 54 MINUTES 00 SECONDS WEST 250 00 FEET, THENCE NORTH 68 DEGREES 22 MINUTES 09 SECONDS WEST 101 12 FEET TO THE SOUTHERN BOUNDARY OF SAID U S R 30, THENCE SOUTH 76 DEGREES 54 MINUTES 00 SECONDS EAST 822 23 FEET ALONG THE BOUNDARY OF SAID U S R 30 TO THE POINT OF BEGINNING AND CONTAINING 0 220 ACRES, MORE OR LESS, IN SAID SECTION 24, AND CONTAINING 0 015 ACRES, MORE OR LESS, IN SAID SECTION 19, AND CONTAINING IN ALL 0 235 ACRES, MORE OR LESS (NOW PART OF US 30)

Continued

Legal Description - continued

PARCEL 3

THAT PART OF THE SOUTHEAST QUARTER AND THAT PART OF THE NORTHEAST QUARTER LYING SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF U S HIGHWAY NO 30, ALL IN SECTION 24, TOWNSHIP 35 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER, THENCE SOUTH 00 DEGREES 14 MINUTES 46 SECONDS WEST ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, 1205 38 FEET, THENCE NORTH 84 DEGREES 05 MINUTES 29 SECONDS WEST 178 65 FEET, THENCE NORTHERLY ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE EAST (ALSO BEING THE EASTERLY LINE OF PINE ISLAND DRIVE) WHOSE RADIUS EQUALS 337 13 FEET, TANGENT EQUALS 160 21 FEET, DEFLECTION ANGLE EQUALS 50 DEGREES 50 MINUTES 05 5 SECONDS, A CALCULATED DISTANCE OF 299 11 FEET (SHOWN AS 249 11 IN DEED) ALONG SAID CURVE, THENCE NORTH 19 DEGREES 50 MINUTES 05 SECONDS WEST ALONG SAID EASTERLY LINE, 291 26 FEET, THENCE NORTHWESTERLY ALONG A CIRCULAR CURVE BEING CONVEX TO THE NORTHEAST (ALSO BEING THE EASTERLY LINE OF PINE ISLAND DRIVE) WHOSE RADIUS EQUALS 395 60 FEET, TANGENT EQUALS 162 30 FEET, DEFLECTION ANGLE EQUALS 44 DEGREES 34 MINUTES 54 5 SECONDS, A DISTANCE OF 308 05 FEET ALONG SAID CURVE, THENCE NORTH 64 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID EASTERLY LINE 60 00 FEET, THENCE NORTH 25 DEGREES 35 MINUTES 00 SECONDS EAST, 338 37 FEET, THENCE NORTH 61 DEGREES WEST, 35 00 FEET, THENCE NORTH 48 DEGREES 17 MINUTES 40 SECONDS EAST, 86 54 FEET TO THE NORTH LINE OF SAID SOUTHEAST QUARTER, THENCE CONTINUING NORTH 48 DEGREES 17 MINUTES 40 SECONDS EAST, 442 45 FEET TO THE EAST LINE OF SAID NORTHEAST QUARTER, THENCE SOUTH 00 DEGREES 14 MINUTES 46 SECONDS WEST ALONG SAID EAST LINE, 297 81 FEET TO THE POINT OF BEGINNING \*\*\*

KEY NUMBER (PROPERTY NUMBER) 45-11-24-279-001 000-036

OLD PARCEL ID 20-13-0118-0071

Affects Part of Parcel 1

KEY NUMBER (PROPERTY NUMBER) 45-11-24-428-001 000-036

OLD PARCEL ID 20-13-0118-0072

Affects Part of Parcel 1

KEY NUMBER (PROPERTY NUMBER) 45-11-24-428-002 000-036

OLD PARCEL ID 20-13-0118-0008

Affects Part of Parcel 1

KEY NUMBER (PROPERTY NUMBER) 45-11-24-279-002 000-036

OLD PARCEL ID 20-13-0118-0112

Affects Parcel 2 and Part Parcel 3

ADDRESS 8118 International Drive, Crown Point, Indiana 46307-1114

