

2014 028963

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2014 MAY 21 AM 9:14

MICHAEL B. BROWN
RECORDER

This instrument prepared by
And after recording, return to:
Belinda Senneway
Shell Oil Company
910 Louisiana Street, OSP 44002C
Houston, Texas 77002

ACCESS AGREEMENT

This Access Agreement ("Agreement") is made as of May 9, 2014
("Effective Date") by and between the following entities, referred to herein as the Parties:

Shell Oil Company
One Shell Plaza
910 Louisiana
Houston, TX 77002

02116

("Shell")

Thruport Intermodal, LLC
6939 Kennedy Avenue
Hammond, IN 46323

("Purchaser")

Document is NOT OFFICIAL! FILED
MAY 20 2014
PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

WHEREAS, Purchaser purchased from Shell real property located in the City of Hammond, County of Lake, State of Indiana, more particularly described in Exhibit A ("Premises"), including all improvements located thereon, pursuant to the terms of a certain Purchase and Sale Agreement between the Parties (the "Purchase and Sale Agreement"); capitalized terms used herein and not otherwise defined have the meanings set forth in the Purchase and Sale Agreement, and

WHEREAS, the Premises requires additional remedial activities by Shell, including but not limited to groundwater monitoring; and

WHEREAS, Purchaser was willing to purchase Shell's interest in the Premises with full knowledge of the potential for continued remedial activities by Shell.

NOW, THEREFORE, in exchange for the mutual promises and considerations stated herein the Parties agree as follows:

1. GRANT OF LICENSE. Purchaser hereby grants a nonexclusive irrevocable license from the date of this Agreement to Shell, its employees, authorized

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agents and contractors, and any relevant governmental agency with jurisdiction ("Agency"), its employees, authorized agents and contractors, to enter the Premises to perform all monitoring well installations, tests, inspections, borings, engineering studies, surveys, appraisals, environmental studies, remediation operations or other activities (hereinafter referred to as "Corrective Action") that Shell deems necessary to comply with all applicable federal, state and local statutes, regulations, ordinances directives, orders and standards. If Purchaser fails to provide reasonable access to Shell, or Purchaser unreasonably interferes with Shell's activities on the Premises, such failure shall constitute waiver of any right, claim or cause of action Purchaser may have against Shell to perform or continue Corrective Action on the Premises. Such waiver shall not constitute the sole remedy for breach of this provision which remedies may include without limitation, consequential damages. This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Corrective Action upon the Premises and not a grant of easement or any other interest in the Premises. Purchaser shall, as soon as possible, but not later than thirty (30) days after damage or destruction, replace or repair, at its sole expense, all monitoring wells, monitoring well pads, remediation equipment or piping installed by Shell on the Premises and damaged or destroyed by Purchaser.

2. ENVIRONMENTAL INVESTIGATION AND REMEDIATION. For as long as this Agreement remains in effect, Shell, at its sole expense, agrees to conduct any necessary Corrective Action at the Premises in accordance with all applicable federal, state and local statutes, regulations, ordinances and standards; however, Purchaser agrees Shell is under no obligation to Purchaser to remedy or respond to any environmental liability or condition on the Premises that cannot be attributed to Shell's use or occupation on the Premises and is not required by the applicable Agency.

3. REGULATIONS. Purchaser hereby agrees to comply with all existing and future applicable laws and regulations, including but not limited to those requiring insurance, inventory records, leak detection devices, system inspections, tank and line tests and tank field monitoring well tests. Purchaser further agrees to copy Shell, within fifteen (15) days of the date request is made by Shell, with any records pertaining to the above. Further, upon written request by Shell, Purchaser shall make available all records required by applicable laws for review by Shell at the Premises during normal business hours.

4. CONSTRUCTION ON THE PREMISES. Purchaser shall provide Shell with written notification at least thirty (30) days in advance of the date on which Purchaser plans to begin excavation or disturbance of soils at the Premises for development purposes ("Development"). Shell shall be responsible for costs and expenses associated with the disposal of contaminated soil and disposal or treatment of contaminated groundwater caused by Shell's use and occupation of the Premises and encountered during the Development, in accordance with the following guidelines and requirements:

4.1 Purchaser's written notification to Shell shall state the dates during which the construction work will be performed and shall contain detailed work plans;

4.2 During the thirty (30) day period following the notice from Purchaser, the Parties will coordinate and cooperate with each other in planning the simultaneous performance of the Development and activities at the Premises in such a manner as to minimize cost and time for each Party, including agreeing upon the scope and schedule of the removal activities and the schedule of the transporters and trucks needed for disposal. Purchaser shall not commence excavation activities on the Premises until the expiration of the thirty (30) day notice period;

4.3 Purchaser shall notify Shell no later than forty-eight (48) hours in advance of excavation of any soils at the Premises. For purposes of this sub-section, notification may be made by facsimile or electronic mail. Shell will screen excavated soils using a Photo Ionization Detector ("PID") or other similar method. Shell will collect representative soil samples for analysis of substances. Soil with substances levels below the applicable State cleanup standard for commercial/industrial property use will be considered "clean." Soil determined to be "clean" shall be used by Purchaser for back-filling or other Development purpose at the Premises, in compliance with applicable laws and regulations. Purchaser shall, at its cost and expense, remove and properly dispose of any such clean soil if Purchaser decides not to use such clean soil for back-filling or other Development purpose, in compliance with applicable laws and regulations. Soil with levels of substances above the applicable State cleanup standard for commercial/industrial property use will be considered "contaminated." Purchaser, under the direction of Shell, shall segregate contaminated soil from clean soil. Purchaser shall place, at its sole cost and expense, contaminated soil in trucks provided by Shell. Shell shall, at its sole cost and expense, transport and properly dispose of any such contaminated soil at a permitted treatment, storage and disposal facility, or any other facility legally capable of accepting such soil.

4.4 Purchaser shall notify Shell no later than forty-eight (48) hours in advance of the removal of any liquids at the Premises. For purposes of this sub-section, notification may be made by facsimile or electronic mail. Liquids with substances levels below the applicable State cleanup standard for commercial/industrial property use will be considered "clean." Purchaser shall, at its cost and expense remove and properly dispose of any such clean liquids. Liquids with levels of substances above the applicable State cleanup standard for commercial/industrial property use will be considered "contaminated." Purchaser shall place, at its sole cost and expense, such contaminated liquids in trucks or tanks provided by Shell. Shell shall, at its sole cost and expense, transport and properly dispose of any such contaminated liquids at a permitted treatment, storage and disposal facility, or any other facility legally capable of accepting such liquids.

Failure of Purchaser to give Shell notice of Development activities as required herein shall relieve Shell from any responsibility or liability to Purchaser for any costs, expenses or consequential damages that may result from Purchaser undertaking such Development activities. For purposes of this section, all notifications shall be made to John Robbins, Environmental Program Manager, Soil and Groundwater Focused Delivery Group, Shell Oil Products US, at 20945 S. Wilmington Ave., Carson, CA 90810, (815) 468-8824, John.Robbins@shell.com.

5. TERMINATION. Upon completion of its Corrective Action at the Premises, this Agreement shall terminate and Shell shall have no further obligation or responsibility to perform Corrective Action at the Premises. Purchaser agrees that Shell will have completed its Corrective Action upon the earliest of (a) a determination by the Agency (i) that no further action is required by Shell, or (ii) that the Corrective Action taken by Shell at the Premises has been completed; or (b) one year following the date Shell submitted its written and supporting documentation to the Agency that Shell considers its Corrective Action at the Premises to be complete (except that if the Agency's regulations specify a longer period of time after such submittal that the Agency may review, audit or re-open such Corrective Action, then such longer period shall apply); or (c) one year following the date that the Agency directs Shell to monitor only at the Premises, regardless of whether Shell has provided written notice (as provided in (a) above).

6. MUTUAL COOPERATION. Shell agrees to coordinate its activities with Purchaser to minimize any inconvenience to or interruption of the conduct of Purchaser's business or development of the Premises including, but not limited to, providing reasonable notice prior to all activities which Shell believe may interrupt the conduct of Purchaser's business. Purchaser agrees to cooperate with Shell, and execute any additional documents including, without limitation, permit applications, which may reasonably be required to effectuate the purpose of this Agreement. Purchaser further agrees not to interfere with the activities conducted by Shell on the Premises.

7. PERMITS. Shell, with the reasonable cooperation of Purchaser, but at no expense to Purchaser, shall obtain any and all permits, which may be required for the Corrective Action it conducts pursuant to this Agreement.

8. REPORTS. Shell agrees to provide Purchaser with copies of reports that are submitted to the Agency outlining the results of Shell's Corrective Action performed pursuant to this Agreement.

9. SITE RESTORATION. Shell agrees, upon completion of the Corrective Action contemplated by this Agreement, to restore the disturbed surface areas of the Premises to as near the approximate grade and pavement as existed prior to said Corrective Action as is reasonably possible, including proper plugging, abandonment or removal of any monitoring well as may be required in accordance with applicable law. Shell shall not be responsible for the repair or replacement of underground utilities (except for public underground utilities damaged by Shell) on the Premises.

10. INDEMNITIES.

10.1 Shell's indemnification. From and after the Effective Date, Shell agrees to indemnify, defend and hold harmless Purchaser from and against all demands, claims, causes of actions, losses, damages, liabilities, penalties, costs and expenses (including attorney's fees) (collectively, "Purchaser's Losses") arising from Shell's acts or failures to act related to the performance of Shell's Corrective Action, whether or not the matters

subject to this indemnity arise or are caused by the sole negligence, concurrent negligence, gross negligence or intentional conduct of any person (excluding Purchaser), or strict operation of law without regard to fault. However, Shell's indemnity shall not cover Purchaser's Losses arising from (a) any matters caused by or arising from migration of contaminants from property other than the Premises, whether said migration occurred prior to the Effective Date or occurs after the Effective Date; (b) contamination of the Premises that is not subject to Shell's Corrective Action; or (c) the condition of the assets, including the Premises as of the date hereof, it being understood that Purchaser has purchased the assets described in the Purchase and Sale Agreement, including the Premises, on an as is basis, and without any express or implied warranties or representations on the part of Shell as to what that condition may be, except as expressly set forth herein or in the Purchase and Sale Agreement, including the exhibits thereto. Notwithstanding the foregoing, any rights or obligations related to any environmental condition caused or created on or about the Premises which originates from substances that migrate from any adjoining property owned by Shell at the time of migration shall not be altered by this article 10.1 or governed hereby. Shell's indemnity shall terminate when Shell's Corrective Action is complete as determined according to this Agreement.

10.2 Purchaser's indemnification. From and after the Effective Date hereof, the Purchaser agrees to indemnify, defend and hold harmless Shell, its members, predecessors, subsidiaries, affiliates, officers, directors, employees, agents, and each of their predecessors, successors, heirs and assigns, from and against any and all demands, claims, causes of action, losses, damages, liabilities (including without limitation all environmental liabilities), penalties, costs and expenses (including attorneys fees) (collectively, "Shell's losses") arising from acts, failures to act or conditions with respect to the assets occurred or were caused on or after the Effective Date hereof, whether or not the matters subject to this indemnity arise or are caused by the sole negligence, concurrent negligence, gross negligence or intentional conduct of any person, or strict operation of law without regard to fault. Without limiting the foregoing, Purchaser's indemnification obligations shall cover Shell's losses arising from (a) any matters caused by or arising from migration of contaminants from property other than the Premises, occurring after the Effective Date hereof; (b) contamination of the Premises that is not subject to Shell's Corrective Action; and (c) the condition of the assets, including the Premises as of the Effective Date hereof, it being understood that Purchaser has purchased the assets described in the Purchase and Sale Agreement, including the Premises, on an as is basis, and without any express or implied warranties or representations on the part of Shell as to what that condition may be, except as expressly set forth herein or in the Purchase and Sale Agreement. Notwithstanding the foregoing, any rights or obligations related to any environmental condition caused or created on or about the Premises which originates from substances that migrate from any adjoining property owned by Shell at the time of migration shall not be altered by this article 10.2 or governed by this Agreement. Purchaser's indemnity shall survive the expiration or termination of this Agreement.

11. **RELEASE.** In exchange for Shell's commitments as set forth in this Agreement, Purchaser hereby releases, acquits, holds harmless and forever discharges Shell, and its parents, predecessors, subsidiaries, affiliates, officers, directors, employees,

agents, and each of their predecessors, successors, heirs and assigns of and from any and all claims, rights, causes of action, demands the Purchaser, its heirs, predecessors, successors and assigns may have whether directly or indirectly, whether accrued in the past, present, or future, whether known or unknown, whether for damages or equitable relief of any sort including, without limitation, claims for personal injury, attorneys' fees, consulting and expert fees, Corrective Action costs, diminution in the value of the Premises, loss of use or damage to the Premises, loss of profits, rentals and other business opportunity, increased development costs, and any and all other property damages and damages to natural resources on the Premises or other property owned by Purchaser and located adjacent to the Premises, which could be shown to arise from the contamination at the Premises, provided that such release will not apply to Purchaser's rights under this Agreement. **PURCHASER REPRESENTS AND WARRANTS THAT IT HAS READ THIS RELEASE AND HAS CONSULTED ITS ATTORNEY(S) OR HAS HAD THE OPPORTUNITY TO CONSULT AN ATTORNEY AND FREELY CHOSE NOT TO DO SO.**

12. DISPUTE RESOLUTION. The Parties agree that should any dispute arise under this Agreement which cannot be amicably resolved, the dispute shall be submitted to mediation prior to being submitted to Arbitration under the rules and procedures of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any mediator or arbitrator selected by the Parties shall be knowledgeable in environmental law and/or remediation technologies.

13. EXECUTION OF AGREEMENT. Each of the undersigned hereby represents and warrants that it is authorized to execute this Agreement on behalf of the respective Party to the Agreement and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. Purchaser represents and warrants that, subject to the Closing under the Purchase and Sale Agreement, it is the owner of the Premises or that it has full lawful authority to grant access to the Premises for the purposes described herein.

14. ASSIGNMENT, SUCCESSOR AND ASSIGNS. In the event Purchaser's interests in the Premises are conveyed, transferred or in any way assigned in whole or in part to any other person or entity, whether by contract, operation of law or otherwise, Purchaser shall take any and all reasonable actions to render any such conveyance, transfer or assignment subject to the terms of this Agreement and shall provide notice thereof to Shell. This Agreement shall be assignable by Purchaser or by operation of law only with the prior written consent of Shell, which consent may be withheld by Shell for any reason whatsoever. To the extent Shell has incurred any costs or expenses in connection with Corrective Action required to be performed by Shell pursuant to Article 10.1 hereof, Purchaser hereby assigns to Shell any and all claims, causes of action and suits it may have against any third party who may have financial responsibility for any environmental response costs or other damages at the Premises including but not limited to any rights to recover any insurance policy that may name Purchaser as a beneficiary or against which Purchaser may have a right of recovery. Purchaser agrees to cooperate with Shell in determining whether such claims exist.

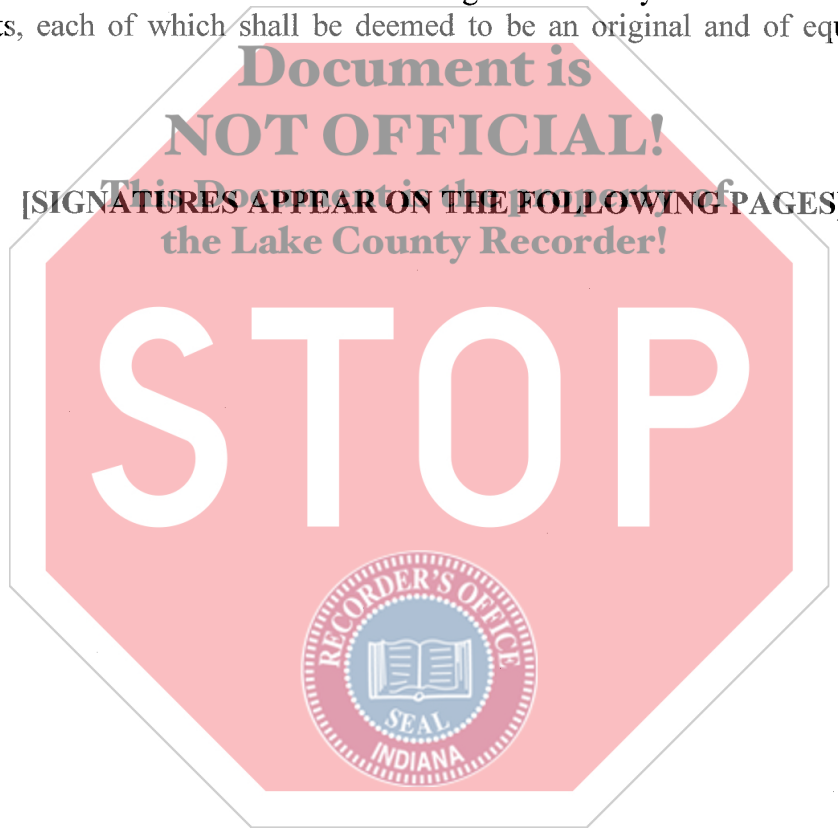
15. NOTICE. Any notice, consent, request, report, demand, or other document required to be given to one Party by the other shall be in writing and be delivered to or mailed to the receiving Party at its address, referenced on page 1 above. Facsimile copies shall be sufficient.

16. MODIFICATIONS. This Agreement contains the entire understanding of the Parties. Any change, amendment, or alteration must be in writing and signed by both Parties to this Agreement to be effective. This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof.

17. NO ADMISSIONS. Nothing contained in this Agreement shall be construed as an admission of any fact or liability of any Party to this Agreement.

18. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE IN WHICH THE CORRECTIVE ACTION IS PERFORMED WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

19. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect.



IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below, but effective as of the Effective Date first above written.

SHELL:

SHELL OIL COMPANY,
a Delaware corporation

By: J.M. Elton
Name: JONATHAN ELTON
Title: GENERAL MANAGER

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on May 8, 2014, by Jonathan Elton, Gen. Mgr of Shell Oil Company, a Delaware corporation, on behalf of said corporation.

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

Dianne E. Hart
NOTARY PUBLIC

Printed Name: Dianne E. Hart

My commission expires: 8-14-2014



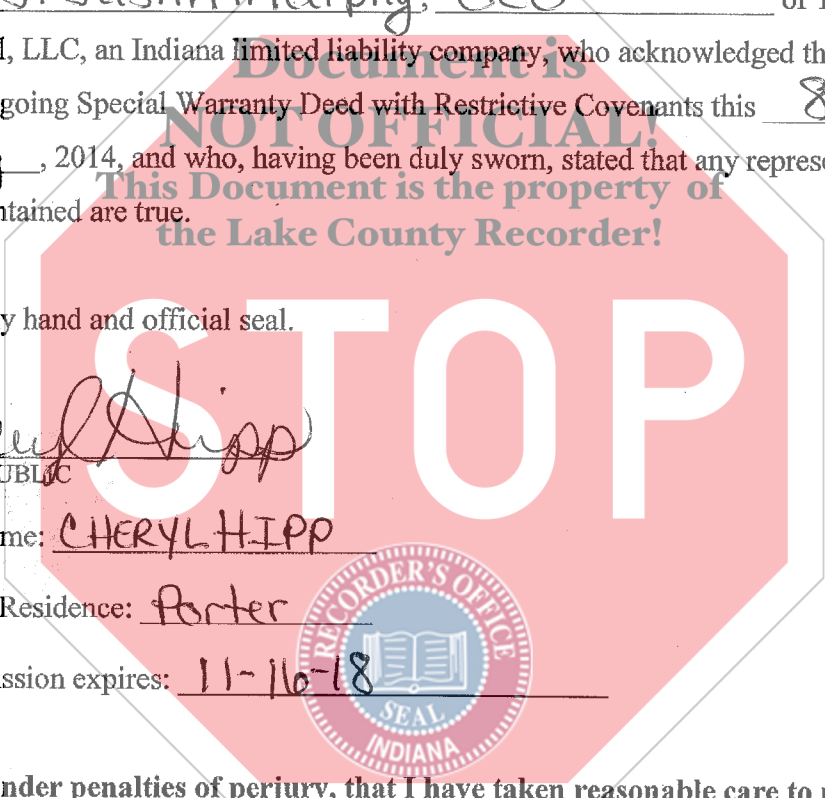
PURCHASER:

THRUPORT INTERMODAL, LLC
An Indiana limited liability company

By: [Signature]
Name: J. Justin Murphy
Title: CEO

STATE OF INDIANA §
 §
COUNTY OF LAKE §

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared J. Justin Murphy, CEO of Thruport Intermodal, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Special Warranty Deed with Restrictive Covenants this 8 day of May, 2014, and who, having been duly sworn, stated that any representations therein contained are true.



Witness my hand and official seal.

[Signature]
NOTARY PUBLIC

Printed Name: CHERYL HIPP

County of Residence: Porter

My commission expires: 11-16-18

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

Lisa L Ingram (Name)

**EXHIBIT A
TO ACCESS AGREEMENT
DESCRIPTION OF PREMISES**

The easterly 45 acres of all that part of the Northeast quarter of Section 4, Township 36 North, Range 9 West of the 2nd Principal Meridian lying East of the East line of Kennedy Avenue and North and East of the Northerly line of land heretofore conveyed by Franklin Newhall to Sidney C. Murray by deed dated October 10, 1913 and recorded in Book 195, page 346 in office of Recorder of Lake County, Indiana (Indiana Harbor Belt Railroad right of way), and southerly and southeasterly of a line extending from a point on the East line of said Northeast quarter which is 585 feet southerly at right angles from the North line of said Northeast quarter, westerly parallel with and 585 feet distant Southerly at right angles from the North line of said Northeast quarter, to a point in the Southeasterly line of land conveyed by Shell Oil Company to Chicago, South Shore and South Bend Railroad by deed dated March 25, 1954 and recorded in the Recorder's Office of Lake County, Indiana, thence southwesterly along said Southeasterly line of land of Chicago, South Shore and South Bend Railroad to a point on the East line of Kennedy Avenue which is 765.9 feet South of the North line of said Northeast quarter, and also lying West of Grantor's Westerly fence line located approximately on the East line of said Northeast quarter; and also a small triangular strip of land lying Westerly of Grantor's said Westerly fence line extending approximately 550 feet North and South and approximately 40 feet on its Southerly side out of the Southwest corner of the following described land; That part of the South half of the Northwest quarter of Section 3, Township 36 North, Range 9 West lying Northeasterly of the Northerly line of the fourth parcel of land conveyed in deed to Edward T. Glennon dated October 6, 1913 and recorded in Book 197, page 45 in said Deed Records.

EXCEPT therefrom that part conveyed to the State of Indiana by a deed recorded January 28, 2002 as Document No. 2002-009687 in the Office of the Recorder of Lake County, Indiana, to wit:

A part of the Northwest Quarter of Section 3 and a part of the Northeast Quarter of Section 4, all in Township 36 North, Range 9 West, Lake County, Indiana, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 3; thence South 0 degrees 16 minutes 03 seconds West 21.877 meters (71.77 feet) along the West line of said section to a point, which point is on the Southwestern boundary of U.S.R. 20 (Michigan Street) and the point of beginning of this description; thence along said boundary Southeasterly 67.679 meters (222.04 feet) along an arc to the right and having a radius of 303.572 meters (995.97 feet) and subtended by a long chord having a bearing of South 69 degrees 18 minutes 09 seconds East and a length of 67.539 meters (221.58 feet); thence South 62 degrees 54 minutes 56 seconds East 21.853 meters (71.70 feet) along the boundary of said U.S.R. 20 (Michigan Street) to a point; thence North 75 degrees 19 minutes 26 seconds West 22.376 meters (73.41 feet) to a point; thence Northwesterly 81.219 meters (266.47 feet) along an arc to the left and having a radius of 298.764 meters (980.20 feet) and subtended by a long chord having a bearing of North 70 degrees 42 minutes 13 seconds West and a length of 80.969 meters (265.65 feet) to a point, which point is on the West line of the Grantor's land; thence North 0 degrees 16 minutes 03 seconds East 4.901 meters (16.08 feet) along said West line to a point; which point is on the boundary of said U.S.R. 20 (Michigan Street); thence along said boundary Southeasterly 15.802 meters (51.84 feet) along an arc to the right and having a radius of 303.572 meters (995.97 feet) and subtended by a long chord having a bearing of South 77 degrees 10 minutes 50 seconds East and a length of 15.801 meters (51.84 feet) to the point of beginning and containing 0.0076

hectares (0.019 acres), more or less, in said Section 3 and containing 0.0372 hectares (0.092 acres), more or less, in said Section 4, and containing 0.0448 hectares (0.111 acres), more or less.



08001 1/12/2018
SOL 12/12/18
08001 1/12/2018