

23

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2016 058311

2016 AUG 26 AM 9:28

MICHAEL B. BROWN
RECORDER

Cross Reference: 2012-043355 and 2005-070437

DECLARATION OF EASEMENT

23

THIS DECLARATION OF EASEMENT is made this 12th day of August, 2016, by KRG/I-65 PARTNERS BEACON HILL, LLC, an Indiana limited liability company ("Declarant").

WHEREAS, Declarant sold the real property located in Lake County, Indiana that is more particularly described and depicted as Parcel A on **Exhibit A** ("Tract A") to I-65 Beacon Hill Partners, LLC, an Indiana limited liability company ("Grantee") pursuant to an Option to Purchase executed by Declarant and Grantee on June 30th, 2015 (the "**Option**"); and

WHEREAS, Declarant is the owner of real property located in Lake County, Indiana that is more particularly described and depicted as Parcel B on **Exhibit B** ("Tract B") and as Parcel C on **Exhibit C** ("Tract C"); and

WHEREAS, the Option grants Grantee the right to purchase Tract B and Tract C upon the terms and conditions contained in the Option; and

WHEREAS, Grantee plans to construct a commercial development on Tract A, which may require the construction of an access roadway and underground storm water and underground utility facilities on portions of Tract B and Tract C (the "**Easements**"); and

WHEREAS, Declarant desires to grant Grantee the Easements upon the terms and conditions contained in this Declaration.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual undertakings hereinafter contained, the Declarant states as follows:

Section 1. Easement Description: Declarant hereby grants, creates, declares, makes and conveys a non-exclusive easement to Grantee, its successors and assigns, described and depicted as the "**Parcel B Easement**" on **Exhibit D** and as the "**Parcel C Easement**" on **Exhibit E**, attached hereto and made a part hereof for (a) an ingress and egress access roadway, (b) underground utility lines, and (c) underground storm water facilities (collectively, the



JMO01175

HOLD FOR GREATER INDIANA TITLE COMPANY

NO SALES DISCLOSURE NEEDED

Approved Assessor's Office

By: [Signature]

IN10777838.4

FILED 25525

AUG 26 2016

JOHN E. PETALAS
LAKE COUNTY AUDITOR

Ch # 016950

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2 REV

"Permitted Uses") for the benefit of and to be appurtenant to Tract A. Declarant also hereby grants, creates, declares, makes and conveys a non-exclusive easement to Grantee, its successors and assigns, described and depicted as the "Parcel C Stormwater Easement" on Exhibit F attached hereto and made a part hereof for stormwater drainage. The Parcel B Easement, the Parcel C Easement and Parcel C Stormwater Easement shall be collectively referred to as the "Easement Area." Grantee shall have the right and privilege to enter upon and construct an access roadway, underground utility lines, and underground storm water utility facilities in the Easement Area, in accordance with plans, specifications, terms and conditions approved in accordance with, and contained in, that certain Beacon Hill North Development Center Declaration of Reciprocal Easements and Operating Covenants ("REA") recorded on August 29, 2012 as Document No. 2012 058697 in the Office of the Recorder of Lake County, Indiana, applicable to the Easement Area. Grantee shall have the right to access the Easement Area across Tract B and Tract C in order to construct any improvements in the Easement Area that have been approved pursuant to the REA. Undefined capitalized terms in this Declaration shall have the same meaning as such terms are defined in the REA.

Section 2. Maintenance and Repair: Maintenance of the access roadway and storm water utility facilities shall be conducted in accordance with the terms and conditions of the REA. Declarant will determine whether these facilities are Common Area or Limited Common Area in Declarant's review of Grantee's plans in Article 3 of the REA.

Section 3. Use by Declarant: Declarant reserves the right to use and enjoy the Easement Area for all purposes not inconsistent with either this grant (including, without limitation, the Permitted Uses) or the terms and conditions of the REA. Declarant shall have the right to grant other non-exclusive easements over, along, and upon the Easement Area. Declarant is hereby granted the right to remove any buildings, improvements or structures located on, in or under the easements constructed by Grantee in violation hereof.

Section 4. Access: Access to the Easement Area shall be from Tract A and/or from public roadways. Any damage to the growing crops, fences, buildings or other improvements now or hereafter located on the Easement Area or any land adjacent thereto owned by Declarant and caused by Grantee or its successors, assigns, employees, contractors, agents, licensees, invitees, or others under its direction or control shall be promptly paid by Grantee to Grantor.

Section 5. Construction; Maintenance and Repair: The Grantee shall not be required to construct all of the improvements in the easement area, however, any construction thereof and the maintenance and repair of any improvements contemplated to be constructed in the Easement Area shall be performed in accordance with the REA and determined by Declarant in Declarant's review of Grantee's plans in Article 3 of the REA.

Section 6. Indemnification: Grantee shall indemnify, defend and hold the Declarant and its successors, assigns, affiliates, employees, members, managers, partners, licensees, invitees, tenants and lenders harmless from and against any and all damages or injuries, arising from or related to the construction, erection, installation, replacement, or removal of any improvements hereunder, its exercise of any rights conveyed hereunder, or its breach hereof.

Section 7. Interference: Grantee shall comply with applicable codes when making use of the

Easement Area, including without limitation, complying with all Indiana underground utility protection statutes (e.g., "call before you dig statutes").

Section 8. Termination. Should the Easement Area be platted by Declarant (or any successor in title), this instrument shall automatically lapse and terminate without any action required by either party hereto and shall be null and void and of no further force or effect; provided that, in such event, upon the request of the other party, each party hereto agrees to execute an instrument or affidavit in recordable form formally evidencing the termination hereof.

Section 9. Miscellaneous.

(a) The parties hereto covenant and agree that they will from time to time, upon the request of the other party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other action as such other party may reasonably require, in order to effectively carry out the intent of this instrument.

(b) The conditions, terms and provisions of this instrument shall be governed by and construed in accordance with the laws of the State of Indiana.

(c) This instrument may be modified, terminated or amended at any time by written agreement signed by the Declarant (or its successor in title) and Grantee personally (so long as it owns any portion of Tract A), it being agreed that Grantee in its personal capacity shall have the authority (without the consent of any owner of any other part of Tract A) or their respective tenants, customers, employees, agents, licensees, or invitees to amend, modify, or terminate this instrument.

(d) Grantee (and any successors in title) and Declarant hereby (i) agree to (A) execute any and all applications, permits, consents, approvals and any related documents necessary for; and (B) otherwise use reasonable efforts to assist Grantee in connection with: (1) any change of zoning, any variance of use or development standards, and any other governmental, private and/or public utility approvals and permits necessary for use, construction and development of the Easement Area; (2) the construction, dedication and acceptance of the access roadway, drainage structures and/or utility lines constructed hereunder; (3) platting of any portion of the Easement Area; (4) dedication of roadways, drainage structures and/or utility lines in the Easement Area; and (5) any similar or related approvals which Declarant reasonably deems necessary in connection with Declarant's intended development of the Easement Area. Grantee acknowledges this provision does not create and shall not be construed as obligating Declarant to expend any funds or pay any sums with respect to the obligations in this provision.

(e) This Declaration shall automatically terminate in the event Grantee does not purchase Tract B or Tract C pursuant to the terms of the Option Agreement. Declarant shall have the right to file a notice of termination in the real property records of Lake County, Indiana, memorializing the termination of this Declaration in the event Grantee does not exercise its option to purchase Tract B or Tract C.

(f) This Declaration shall not be construed as Declarant's consent to recording or including any of the Easements included in this Declaration in any plat or subdivision of Parcel A. The parties further acknowledge that the depiction of the Parcel C Stormwater Easement on

Exhibit F is a draft plat that the parties agree will be revised to remove all references to the Easements before Grantee files the plat.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK



IN WITNESS WHEREOF, the undersigned has executed this Declaration of Easement as of the day, month and year first written above.

KRG/I-65 PARTNERS BEACON HILL, LLC

By: KRG Beacon Hill, LLC, Manager

By: Kite Realty Group, L.P., Member

By: Kite Realty Group Trust General Partner

By: *Daniel R. Sink*

Printed: Daniel R. Sink

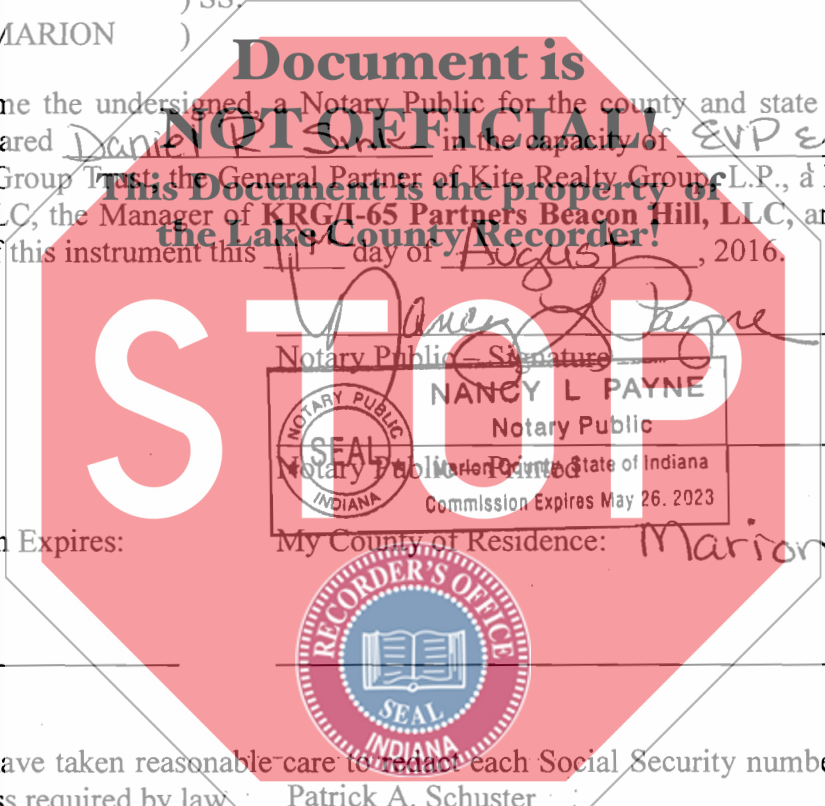
Title: EUP + CFO

STATE OF INDIANA)

) SS:

COUNTY OF MARION)

Before me the undersigned, a Notary Public for the county and state indicated above, personally appeared Daniel R. Sink in the capacity of EVP & CFO of Kite Realty Group Trust; the General Partner of Kite Realty Group, L.P., a Member of KRG Beacon Hill, LLC, the Manager of KRG/I-65 Partners Beacon Hill, LLC, and acknowledged the execution of this instrument this 11 day of August, 2016.



Nancy L. Payne
Notary Public - Signature
NANCY L. PAYNE
Notary Public
Notary Public, Marion County, State of Indiana
Commission Expires May 26, 2023

My Commission Expires:

My County of Residence: Marion

I affirm that I have taken reasonable care to read each Social Security number in the attached document, unless required by law. Patrick A. Schuster

This instrument prepared by: Patrick A. Schuster, Attorney at Law, 1201 N. Main St., Crown Point, IN 46307

EXHIBIT

A



PARCEL 'A' - DESCRIPTION

LEGAL DESCRIPTION:

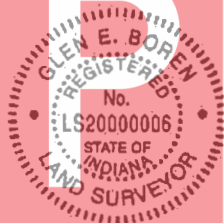
PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 16 IN BEACON HILL - PHASE TWO, AS SHOWN IN PLAT BOOK 105, PAGE 77 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AS DOCUMENT NUMBER 2012-043864, THENCE THE FOLLOWING FIVE COURSES AND DISTANCES ALONG THE WEST LINES OF SAID LOT 16 AND LOT 17 IN SAID BEACON HILL - PHASE TWO:

- 1.) NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 99.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EAST AND HAVING A RADIUS OF 300.00 FEET;
- 2.) THENCE NORTH 54.69 FEET ALONG SAID CURVE;
- 3.) NORTH 10 DEGREES 26 MINUTES 40 SECONDS EAST, 221.80 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WEST AND HAVING A RADIUS OF 300.00 FEET;
- 4.) THENCE NORTH 56.66 FEET ALONG LAST SAID CURVE;
- 5.) NORTH 00 DEGREES 22 MINUTES 35 SECONDS WEST, 11.57 FEET TO THE NORTHWEST CORNER OF SAID LOT 17; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 193.20 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 311.43 FEET TO THE EAST LINE OF BROADWAY (STATE ROAD 53); THENCE SOUTH 00 DEGREES 47 MINUTES 14 SECONDS EAST, 598.18 FEET ALONG SAID EAST LINE OF BROADWAY TO NORTHWEST CORNER OF BEACON HILL - PHASE ONE, AS SHOWN IN PLAT BOOK 97, PAGE 46 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AS DOCUMENT NUMBER 2005-047434; THENCE SOUTH 44 DEGREES 45 MINUTES 11 SECONDS EAST, 51.19 FEET ALONG THE NORTHERLY LINE OF SAID BEACON HILL - PHASE ONE; THENCE NORTH 89 DEGREES 32 MINUTES 03 SECONDS EAST, 217.11 FEET ALONG SAID NORTH LINE OF BEACON HILL - PHASE ONE, ALSO BEING THE NORTH LINE OF 107TH AVENUE (BEACON HILL PARKWAY) TO THE POINT OF BEGINNING, CONTAINING 4.15 ACRES MORE OR LESS.

**Document is
NOT OFFICIAL!**

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

STOP



Glen E. Boren

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**Plumb
Tuckett
& Associates**

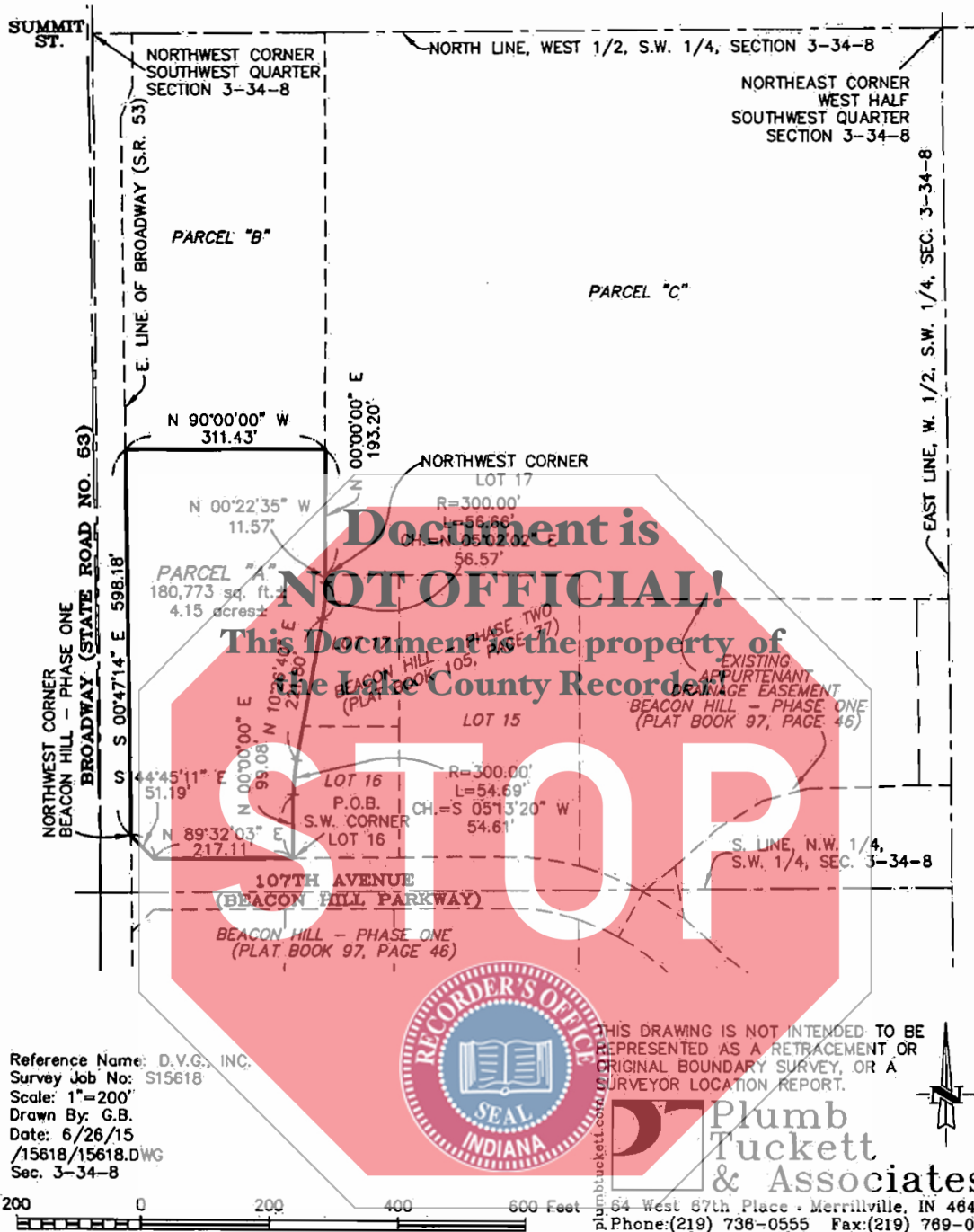
64 West 67th Place • Merrillville, IN 46410
Phone: (219) 736-0555 Fax: (219) 769-0178

Reference Name: D.V.G., INC.
Survey Job No: S15618
Scale: 1"=200'
Drawn By: G.B.
Date: 6/26/15
/15618/15618.DWG
Sec. 3-34-8

200 0 200 400 600 Feet

110777838.4

PARCEL 'A' - DEPICTION



I10777838.4

EXHIBIT

B

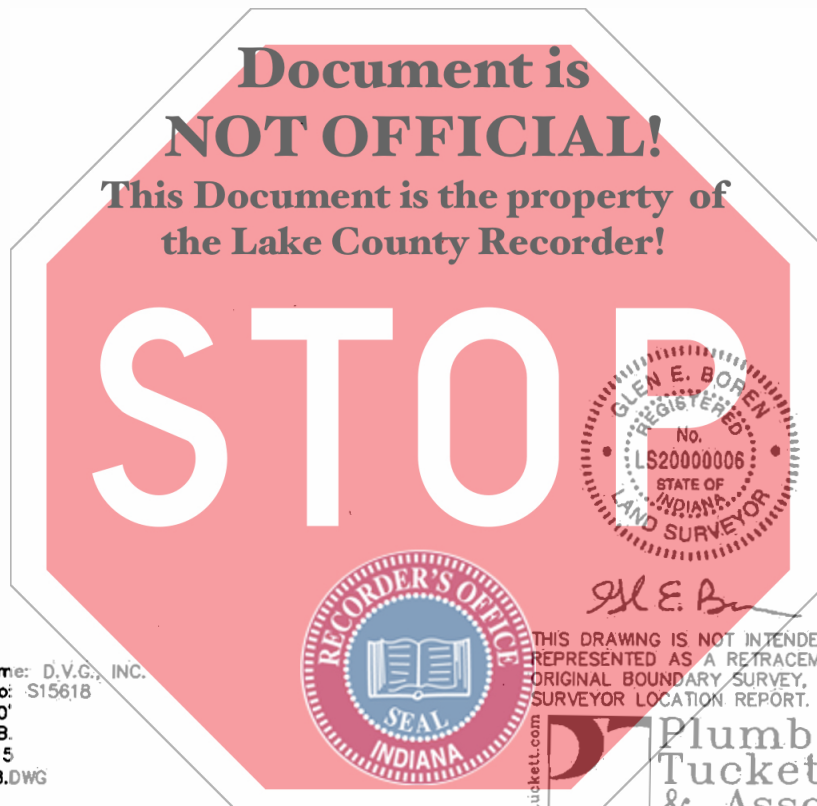


PARCEL 'B' - DESCRIPTION

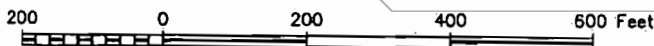
LEGAL DESCRIPTION:

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- 1.) SOUTH 00 DEGREES 44 MINUTES 10 SECONDS EAST, 81.71 FEET;
- 2.) SOUTH 21 DEGREES 03 MINUTES 52 SECONDS WEST, 53.36 FEET;
- 3.) SOUTH 00 DEGREES 50 MINUTES 22 SECONDS EAST, 449.01 FEET;
- 4.) SOUTH 00 DEGREES 47 MINUTES 14 SECONDS EAST, 62.68 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 311.43 FEET TO THE POINT OF BEGINNING, CONTAINING 4.62 ACRES MORE OR LESS.



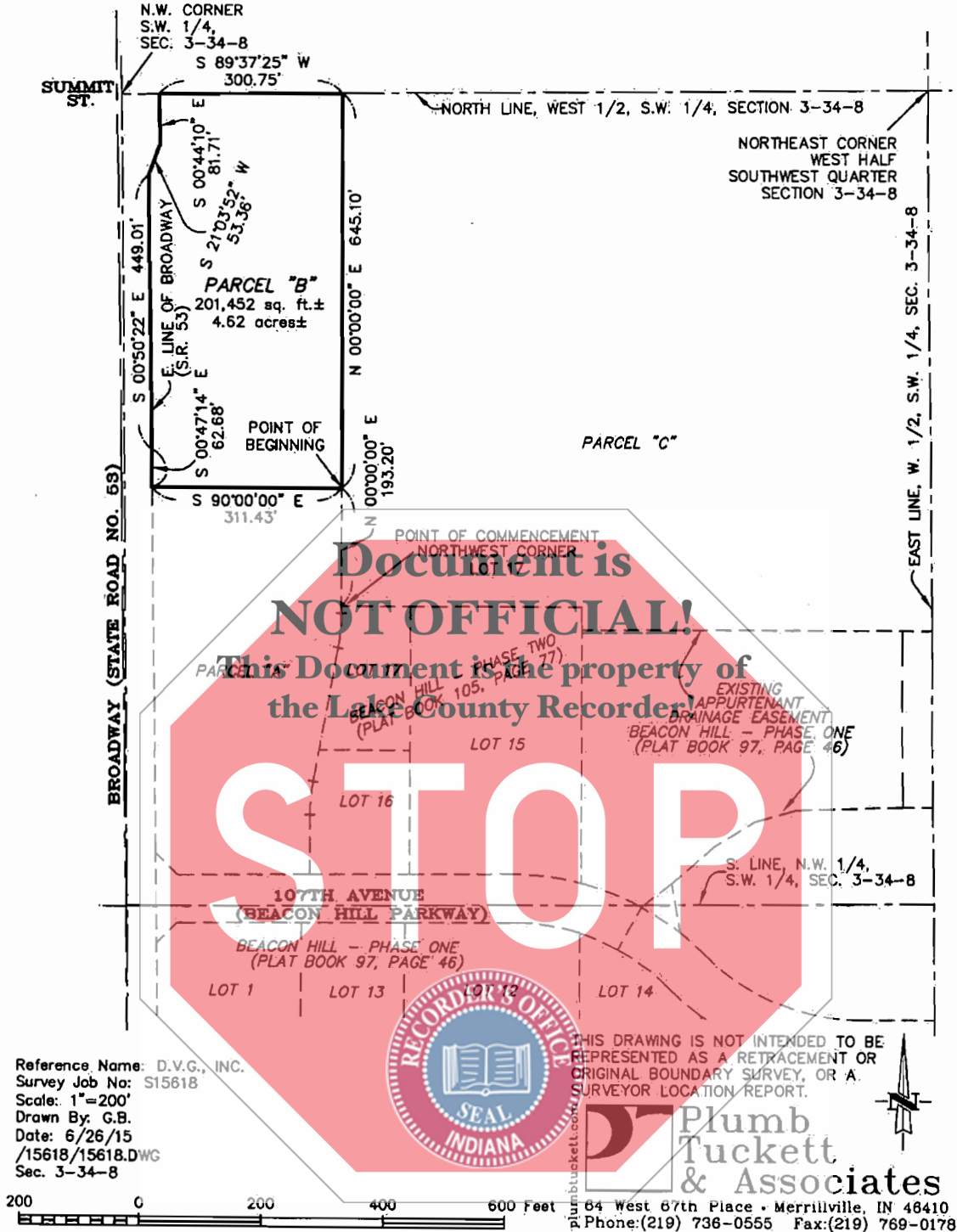
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/15618/15618.DWG
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Phone:(219) 736-0555 Fax:(219) 769-0178

PARCEL 'B' - DEPICTION



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EXHIBIT

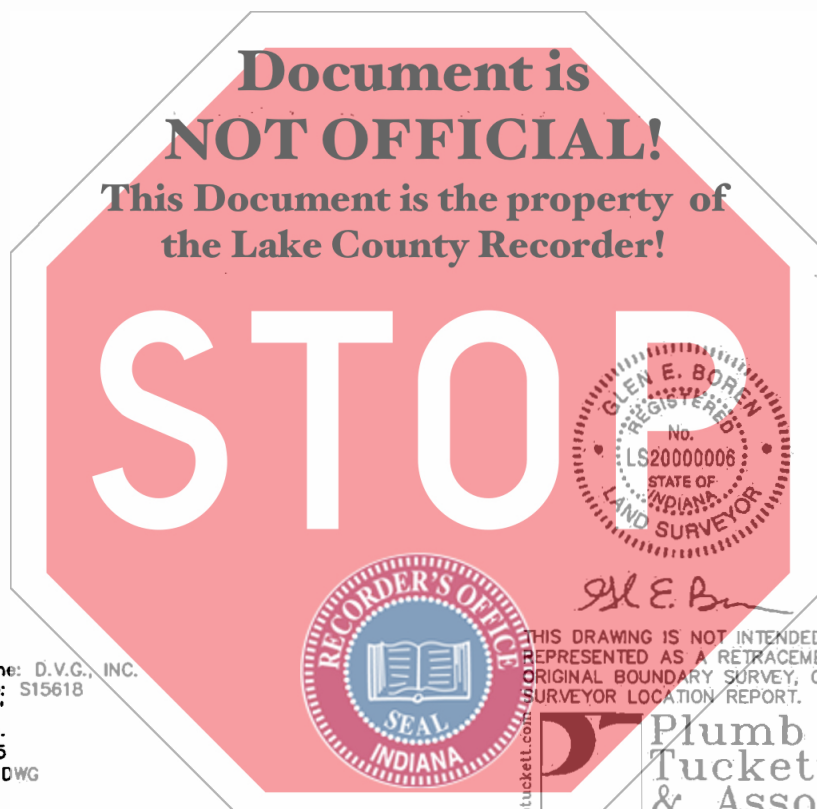
C



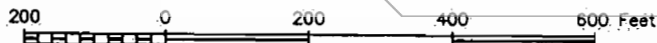
PARCEL 'C' - DESCRIPTION

LEGAL DESCRIPTION:

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 17 IN BEACON HILL - PHASE TWO, AS SHOWN IN PLAT BOOK 105, PAGE 77 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AS DOCUMENT NUMBER 2012-043864, THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (BASIS OF BEARINGS IS PER SAID BEACON HILL - PHASE TWO PLAT), 838.30 FEET TO THE NORTH LINE OF SAID WEST HALF; THENCE NORTH 89 DEGREES 37 MINUTES 25 SECONDS EAST, 961.40 FEET TO THE NORTHEAST CORNER OF SAID WEST HALF; THENCE SOUTH 00 DEGREES 35 MINUTES 08 SECONDS EAST, 881.64 FEET ALONG THE EAST LINE OF SAID WEST HALF TO THE EAST EXTENSION OF THE NORTH LINE OF AN APPURTENANT DRAINAGE EASEMENT AS SHOWN IN BEACON HILL - PHASE ONE, AS SHOWN IN PLAT BOOK 97, PAGE 46 IN SAID RECORDER'S OFFICE AS DOCUMENT NUMBER 2005-047434; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 572.94 FEET ALONG SAID EAST EXTENSION AND SAID NORTH LINE OF SAID APPURTENANT DRAINAGE EASEMENT TO THE EAST LINE OF LOT 15 IN SAID BEACON HILL - PHASE TWO; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 36.98 FEET ALONG LAST SAID EAST LINE TO THE NORTH LINE OF SAID LOT 15; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 397.44 FEET ALONG THE NORTH LINES OF SAID LOTS 15 AND 17 TO THE POINT OF BEGINNING, CONTAINING 19.14 ACRES MORE OR LESS.



Reference Name: D.V.G., INC.
Survey Job No: S15618
Scale: 1"=200'
Drawn By: G.B.
Date: 6/26/15
/15618/15618.DWG
Sec. 3-34-8



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EXHIBIT D



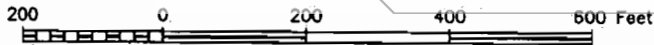
PARCEL 'B' EASEMENT - DESCRIPTION

LEGAL DESCRIPTION:

A 25 FOOT WIDE AND A 40 FOOT WIDE STRIP OF LAND LYING IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 17 IN BEACON HILL - PHASE TWO, AS SHOWN IN PLAT BOOK 105, PAGE 77 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AS DOCUMENT NUMBER 2012-043864, THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 114.44 FEET ALONG THE NORTH LINE OF SAID LOT 17 TO THE NORTHWEST CORNER OF SAID LOT 17; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 193.20 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 311.43 FEET TO THE EAST LINE OF BROADWAY (STATE ROAD 53); THENCE NORTH 00 DEGREES 47 MINUTES 14 SECONDS WEST, 25.00 FEET ALONG SAID EAST LINE OF BROADWAY; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 286.77 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 579.93 FEET TO A LINE 40 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3; THENCE SOUTH 89 DEGREES 37 MINUTES 25 SECONDS WEST, 275.24 FEET ALONG SAID 40 FOOT PARALLEL LINE TO THE EAST LINE OF BROADWAY (STATE ROAD 53); THENCE NORTH 00 DEGREES 44 MINUTES 10 SECONDS WEST, 40.00 FEET ALONG SAID EAST LINE OF BROADWAY TO SAID NORTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3; THENCE NORTH 89 DEGREES 37 MINUTES 25 SECONDS EAST, 300.75 FEET ALONG LAST SAID NORTH LINE; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 645.10 FEET TO THE POINT OF BEGINNING, SAID STRIPS CONTAINING 0.79 ACRES MORE OR LESS.

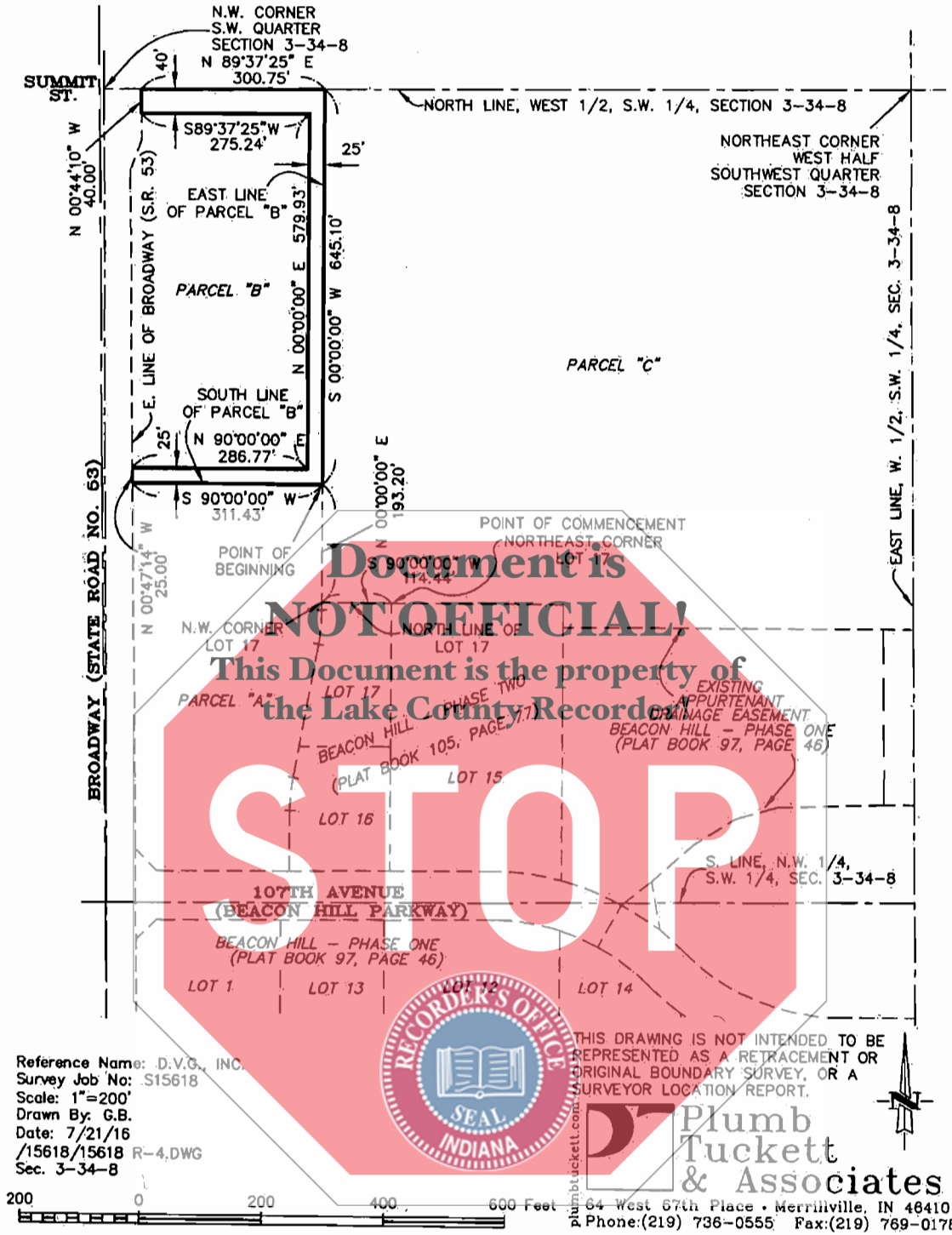


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PARCEL 'B' EASEMENT - DEPICTION



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 /15618/15618 R-4.DWG
 Sec. 3-34-8

200 0 200 400 600 Feet

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 64 West 67th Place • Merrillville, IN 46410
 Phone:(219) 736-0555 Fax:(219) 769-0178

EXHIBIT

E



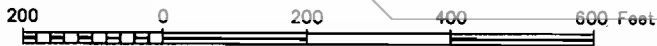
PARCEL "C" EASEMENT - DESCRIPTION

LEGAL DESCRIPTION:

A 25 FOOT WIDE STRIP OF LAND LYING IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 17 IN BEACON HILL - PHASE TWO, AS SHOWN IN PLAT BOOK 105, PAGE 77 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AS DOCUMENT NUMBER 2012-043864; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 89.44 FEET ALONG THE NORTH LINE OF SAID LOT 17 TO THE POINT OF BEGINNING; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 25.00 FEET ALONG SAID NORTH LINE OF LOT 17 TO THE NORTHWEST CORNER OF SAID LOT 17; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 838.30 FEET TO THE NORTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3; THENCE NORTH 89 DEGREES 37 MINUTES 25 SECONDS EAST, 25.00 FEET ALONG LAST SAID NORTH LINE; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 838.46 FEET TO THE POINT OF BEGINNING, SAID STRIP CONTAINING 0.48 ACRES MORE OR LESS.



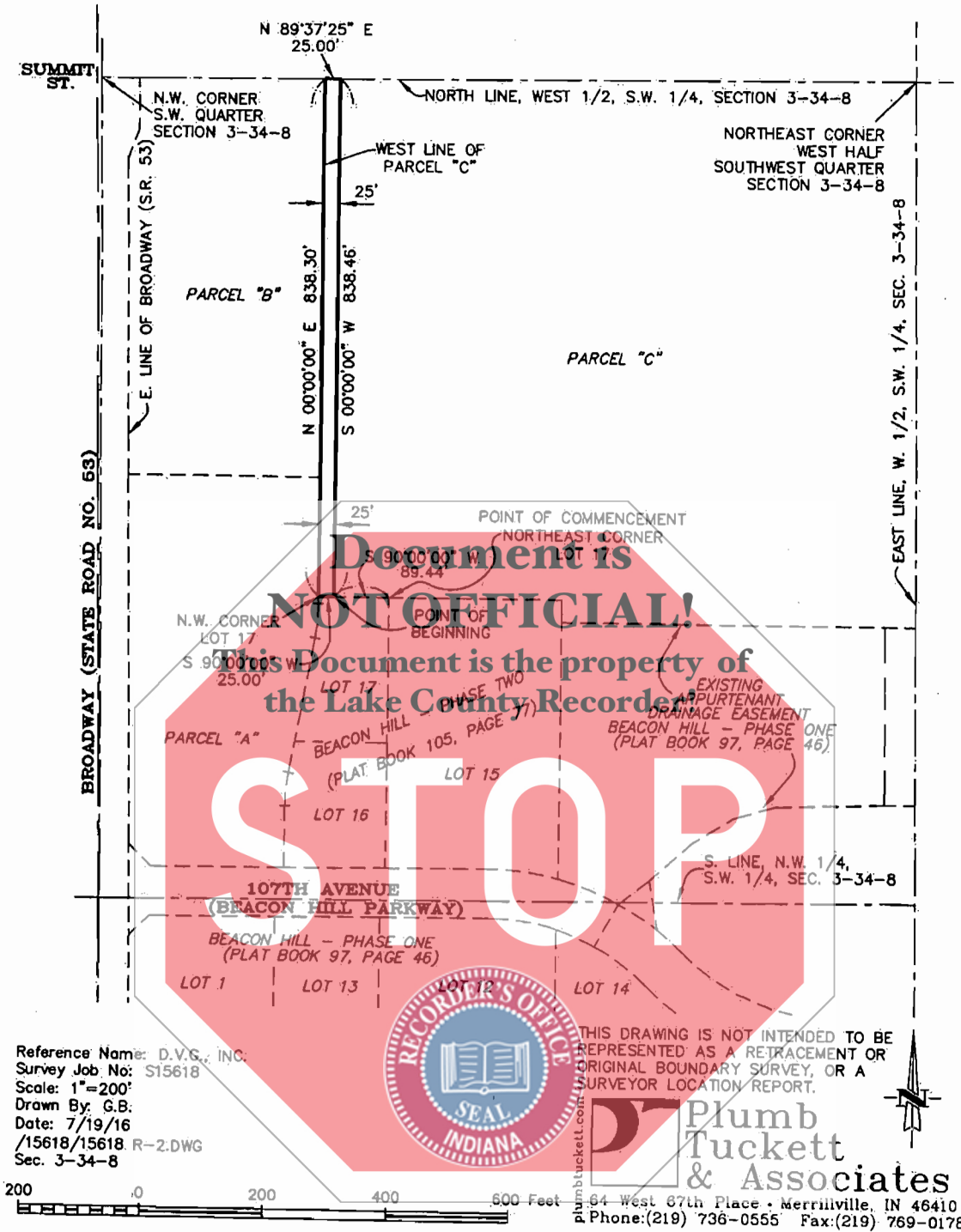
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/15618/15618 R-2.DWG
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PARCEL 'C' EASEMENT - DEPICTION



I10777838.4

EXHIBIT

F



PARCEL C DRAINAGE EASEMENT DESCRIPTION

The South Twenty-Five Feet (25') of the following described parcel:

PARCEL "C" - DESCRIPTION

LEGAL DESCRIPTION:

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 17 IN BEACON HILL - PHASE TWO, AS SHOWN IN PLAT BOOK 105, PAGE 77 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AS DOCUMENT NUMBER 2012-043864, THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (BASIS OF BEARINGS IS PER SAID BEACON HILL - PHASE TWO PLAT), 838.30 FEET TO THE NORTH LINE OF SAID WEST HALF; THENCE NORTH 89 DEGREES 37 MINUTES 25 SECONDS EAST, 981.40 FEET TO THE NORTHEAST CORNER OF SAID WEST HALF; THENCE SOUTH 00 DEGREES 35 MINUTES 08 SECONDS EAST, 881.64 FEET ALONG THE EAST LINE OF SAID WEST HALF TO THE EAST EXTENSION OF THE NORTH LINE OF AN APPURTENANT DRAINAGE EASEMENT AS SHOWN IN BEACON HILL - PHASE ONE, AS SHOWN IN PLAT BOOK 97, PAGE 48 IN SAID RECORDER'S OFFICE AS DOCUMENT NUMBER 2005-047434; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 572.94 FEET ALONG SAID EAST EXTENSION AND SAID NORTH LINE OF SAID APPURTENANT DRAINAGE EASEMENT TO THE EAST LINE OF LOT 15 IN SAID BEACON HILL - PHASE TWO; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 36.98 FEET ALONG LAST SAID EAST LINE TO THE NORTH LINE OF SAID LOT 15; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 397.44 FEET ALONG THE NORTH LINES OF SAID LOTS 15 AND 17 TO THE POINT OF BEGINNING, CONTAINING 19.14 ACRES MORE OR LESS.



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Sec. 3-34-8

200 0 200 400 600 Feet

THIS DRAWING IS NOT INTENDED TO BE REPRESENTED AS A RETRACEMENT OR ORIGINAL BOUNDARY SURVEY, OR A SURVEYOR LOCATION REPORT.

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