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Document prepared by and return to:

2017 058049

STATE OF INDIANA
LAKE COUNTY
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2017 AUG 28 AM 9:51

William T. Niemier
Attorney at Law
6910 N. Shadeland Avenue, Suite 200
Indianapolis, IN 46220

MICHAEL B. BROWN
RECORDER

**ACCESS, PARKING AND DRAINAGE
EASEMENT AGREEMENT**

THIS ACCESS, PARKING AND DRAINAGE EASEMENT AGREEMENT ("Agreement") is made as of August 3rd, 2017, by and between ONRA, L.L.C., an Indiana limited liability company, whose mailing address is 6910 N. Shadeland Avenue, Suite 200, Indianapolis, IN 46220 ("ONRA"), and Hamstra North Ridge Center, LLC, whose mailing address is 12028 North 200 West, Wheatfield, IN 46392 ("Hamstra").

WITNESSETH:
This Document is the property of

WHEREAS, by virtue of a conveyance from Hamstra by a deed of even date herewith, and a previously recorded deed from Carlisle Real Estate, LLC, ONRA is the owner of that certain tract of land as generally depicted by horizontal slanted lines running from southwest to northeast on the Site Plan attached hereto, made a part hereof by reference, and marked as **Exhibit "A"**, said property being hereinafter referred to as the "ONRA Property"; and

WHEREAS, Hamstra is the owner of that certain tract of land, as generally depicted by horizontal slanted lines running from northwest to southeast on the attached **Exhibit "A"**, said property being hereinafter referred to as the "Hamstra Property" (the ONRA Property and the Hamstra Property being referred to collectively as the "Properties," and each a "Property"); and

WHEREAS, Hamstra has agreed to grant an access easement for the benefit of the ONRA Property; and

WHEREAS, Hamstra has agreed to grant a parking easement for the benefit of the ONRA Property; and

WHEREAS, Hamstra has agreed to grant a drainage easement for the benefit of the ONRA Property; and

WHEREAS, the creation, use and maintenance of the easements granted herein will be beneficial to the Properties.

THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

FILED

026625
AUG 25 2017

JOHN E. PETALAS
LAKE COUNTY AUDITOR

AMOUNT \$ 25-
CASH _____ CHARGE _____
CHECK # 056771
OVERAGE _____
COPY REC-10
NON-COM _____
CLERK AM E

When Recorded Return to:
First American Title Insurance Company
National Commercial Services
211 N Pennsylvania Str., Ste 1250
Indianapolis, IN 46204
File No: NCS 831624

ARTICLE I GRANT OF ACCESS, PARKING AND DRAINAGE EASEMENTS

1. **ONRA Access Easement.** Hamstra hereby grants and conveys to ONRA a nonexclusive easement for pedestrian and vehicular ingress and egress to and from the ONRA Property upon, over and across that portion of the Hamstra Property that currently serve as access drive lanes ("Access Drives") as generally depicted by white dashed lines on the attached **Exhibit "A"** (the "ONRA Access Easement").

2. **ONRA Parking Easement.** Hamstra hereby grants and conveys to ONRA a nonexclusive easement for 70 parking spaces on that portion of the Hamstra Property ("Parking Easement Area"), as generally depicted by vertical lines, running from west to east, on the attached **Exhibit "A"**, (the "ONRA Parking Easement").

3. **Storm Drainage and Detention Easement.** Hamstra hereby grants and conveys to ONRA the nonexclusive right and nonexclusive easement to discharge surface storm water drainage and/or runoff from the ONRA Property into the detention pond ("Drainage Easement Area") located on the southeast corner of the Hamstra Property as shown on the attached **Exhibit A** (the "ONRA Drainage and Detention Easement"). ONRA is responsible for installing, maintaining and replacing, at its sole cost and expense, any necessary surface water collection basins, lines and other facilities on the ONRA Property to bring the surface storm water drainage and/or runoff to the Drainage Easement Area.

4. **Relocation of Easements.** Notwithstanding any other provision in this Agreement, if Hamstra develops any area encumbered by an easement hereunder, the easement area may be relocated, but in no event terminated, to the closest adjacent area or to a location agreed upon by the parties.

ARTICLE II MAINTENANCE RESPONSIBILITIES

1. **Access Drives.** The Access Drives shall be kept and maintained by Hamstra (i) in good condition and repair, and (ii) in compliance with all applicable laws, rules, regulations and ordinances. Notwithstanding any other provisions hereof, if ONRA, or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants or licensees, damage the Access Drives, ONRA shall reimburse Hamstra for the costs and expenses for the repair and restoration of such damage.

2. **Parking Easement Area.** The Parking Easement Area shall be kept and maintained by Hamstra (i) in good condition and repair, and (ii) in compliance with all applicable laws, rules, regulations and ordinances. Notwithstanding any other provisions hereof, if ONRA, or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants or licensees, damage the Parking Easement Area, ONRA shall reimburse Hamstra for the costs and expenses for the repair and restoration of such damage.

3. **Drainage Easement Area.** The Drainage Easement Area shall be kept and maintained by Hamstra (i) in good condition and repair, and (ii) in compliance with all applicable laws, rules, regulations and ordinances. Notwithstanding any other provisions hereof, if ONRA, or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants or

licensees, damage the Drainage Easement Area, ONRA shall reimburse Hamstra for the costs and expenses for the repair and restoration of such damage.

4. Maintenance Obligations.

(A) Access Drives. On or before August 1 of each calendar year, commencing on August 1, 2018, ONRA shall deliver to Hamstra \$500.00 as ONRA's contribution toward the cost of Hamstra's maintenance of the Access Drives.

(B) Parking Easement Area. On or before August 1 of each calendar year, commencing on August 1, 2018, ONRA shall deliver to Hamstra \$500.00 as ONRA's contribution toward the cost of Hamstra's maintenance of the Parking Easement Area.

(C) Drainage Easement Area. On or before August 1 of each calendar year, commencing on August 1, 2018, ONRA shall deliver to Hamstra \$500.00 as ONRA's contribution toward the cost of Hamstra's maintenance of the Drainage Easement Area.

ARTICLE III. MISCELLANEOUS PROVISIONS

1. **Time of the Essence.** Time is of the essence of this Agreement.
2. **Amendment.** ONRA and Hamstra hereby agree that, except to the extent otherwise set forth herein, only upon the written consent of the parties hereto may this Agreement be amended, modified or terminated.
3. **Waiver.** Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.
4. **Severability.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.
5. **Binding Effect; Appurtenance.** This Agreement shall be binding upon and inure to the benefit of ONRA and Hamstra and their respective successors and assigns, including successors in title. Notwithstanding the foregoing, each ONRA and Hamstra (each, an "Owner") shall be responsible only for the obligations, indemnities, duties, liabilities and responsibilities set forth in this Agreement that accrue during the period of time during which such Owner holds fee

simple title to the Properties or a portion thereof. Upon conveyance of the Properties or a portion thereof, the Owner making such conveyance shall be relieved from the obligations, duties, indemnities and responsibilities hereunder arising from and after the date of such conveyance as to such Property, or portion thereof conveyed, and the successor Owner shall become obligated hereunder for all matters arising from and after the date of conveyance. The rights, privileges and easements granted and conveyed hereunder shall exist for the benefit of, and be a burden upon, the Hamstra Property and the ONRA Property and shall run with title to, and be appurtenant to, such Properties.

6. Notices. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

Document is
NOT OFFICIAL.
This Document is the Property of
the Lake County Recorder.

If to ONRA: ONRA, L.L.C.
6910 N. Shadeland Avenue, Suite 200
Indianapolis, IN 46220
Attention: Dorothy Thompson
Telephone Number: 317-890-1714

With a copy to: William T. Niemier
Attorney at Law
21 East Main Street, Box 441
New Palestine, IN 46163
Telephone Number: 317-459-3878

If to Hamstra: The Hamstra Group, Inc.
12028 N. 200 W.
Wheatfield, IN 46392
Attn: John Fulkerson
Telephone Number: 219-863-8023

or to such other address as any party may from time to time designate by notice in writing to the other parties. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

7. Remedies. In the event an Owner fails to perform in accordance with the requirements of this Agreement, or otherwise breaches the terms of this Agreement, the nondefaulting Owner may notify the defaulting Owner and shall specify the deficiencies in the work or the breach. If such deficiencies are not corrected, or the breach not cured, within thirty (30) days after receipt of such notice, then such nondefaulting Owner shall have the right to correct such deficiencies or perform the work (even if such work must be undertaken on the defaulting Owner's Property) or cure the breach, and recover all actual costs and expenses related thereto from the defaulting Owner. Notwithstanding the foregoing, in the event that the failure to perform the work, or failure to perform the work in the manner required in this Agreement, or the breach of this

Agreement, creates an imminent danger of damage to persons or properties, or jeopardizes the continuance of business operations on any Property, no notice shall be required prior to the nondefaulting Owner commencing such work or commencing a cure. Any monetary amounts due and payable to the nondefaulting Owner pursuant to this Agreement shall be paid within ten (10) days from the date the defaulting Owner is notified of the amounts due. The failure to pay any amounts due pursuant to this Agreement shall not entitle such nondefaulting Owner to file a lien or claim of lien against the Property owned by the defaulting Owner.

8. Covenants Run With the Land. All the covenants, conditions, restrictions, easements, terms and provisions hereof are and shall be deemed to be covenants running with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, each Owner, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any purchaser at a foreclosure sale, any other person or entity acquiring any right, title or interest in such property and their respective heirs, executors, administrators, representatives, successors and assigns. Each Owner shall be released from its obligations hereunder following the conveyance of its interest in its respective Property.

9. Continuation Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party hereto to cancel, rescind or otherwise terminate this Agreement. Such limitation, however, shall not affect in any manner any other rights or remedies that such party may have hereunder by reason of such breach.

10. Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and exhibits hereto.

11. Construction. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party hereto.

12. Governing Law. This Agreement shall be construed in accordance with the laws of the State in which the Properties are located, without regard to conflicts laws or choice of law rules thereof.

13. Estoppel Certificates. Upon the request of any party hereto, the other parties shall issue to any party designated by the requesting party an appropriate certificate certifying whether the party to whom the request is made knows of any default under this Agreement or of any assignment, modification or amendment to this Agreement (and the nature and extent of any such default or other known matter) and whether, to that party's knowledge, this Agreement is in full force and effect. The certificate may be relied upon by a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary and shall constitute a waiver of any claim by the certifying party based upon facts contrary to the certificate of which that party had knowledge at the time of making the certificate. The certificate shall not subject the party furnishing the certificate to any liability for any inaccurate statement which such party in good faith believed was correct when made or any obligation to correct or disclose any change in the information certified.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

15. Term. This Agreement and the easements, rights, obligations and liabilities created hereby shall be perpetual to the extent permitted by applicable law, and if not permitted by applicable law to exist in perpetuity, shall exist for the longest duration permitted thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

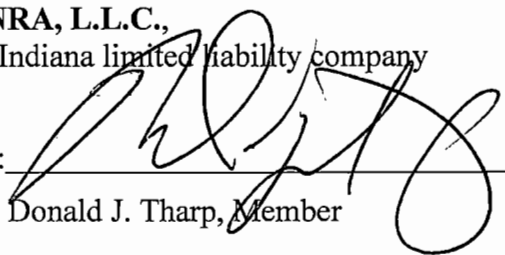
SEPARATE SIGNATURE PAGES FOLLOW

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ONRA SIGNATURE PAGE

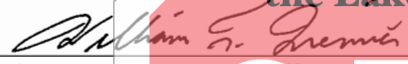
ONRA, L.L.C.,
an Indiana limited liability company

By: 
Donald J. Tharp, Member

STATE OF INDIANA

COUNTY OF MARION

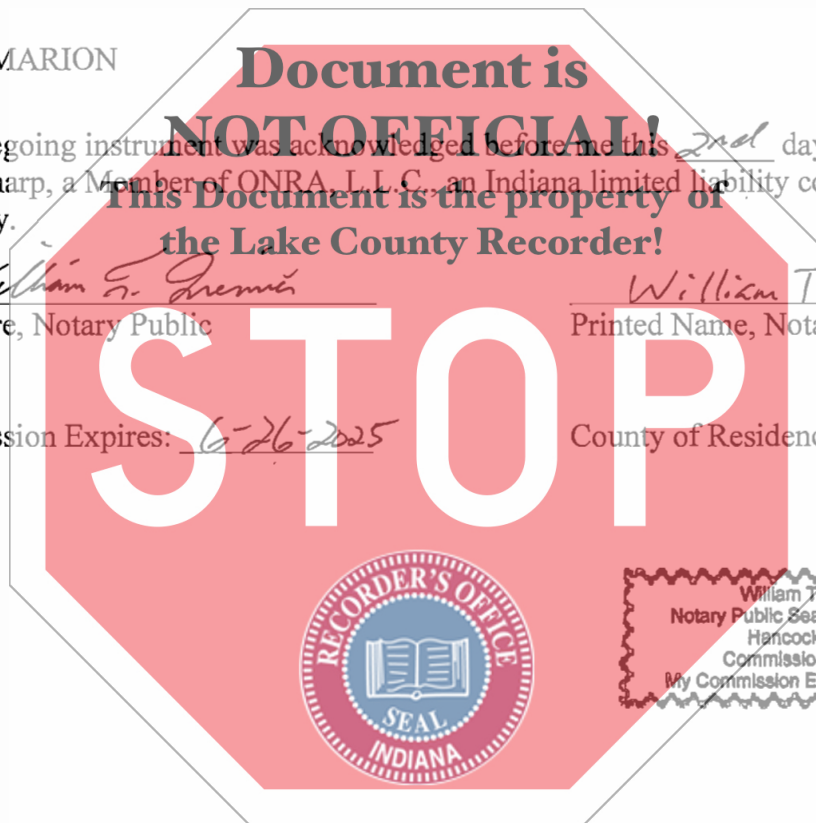
The foregoing instrument was acknowledged before me this 2nd day of August, 2017,
by Donald J. Tharp, a Member of ONRA, L.L.C., an Indiana limited liability company, on behalf
of said company.


Signature, Notary Public

William T. Niemier
Printed Name, Notary Public

Commission Expires: 6-26-2025

County of Residence: Hancock



HAMSTRA SIGNATURE PAGE

HAMSTRA NORTH RIDGE CENTER, LLC,
an Indiana limited liability company

By: 
Greg Hamstra, Managing Member

STATE OF INDIANA

COUNTY OF Jasper

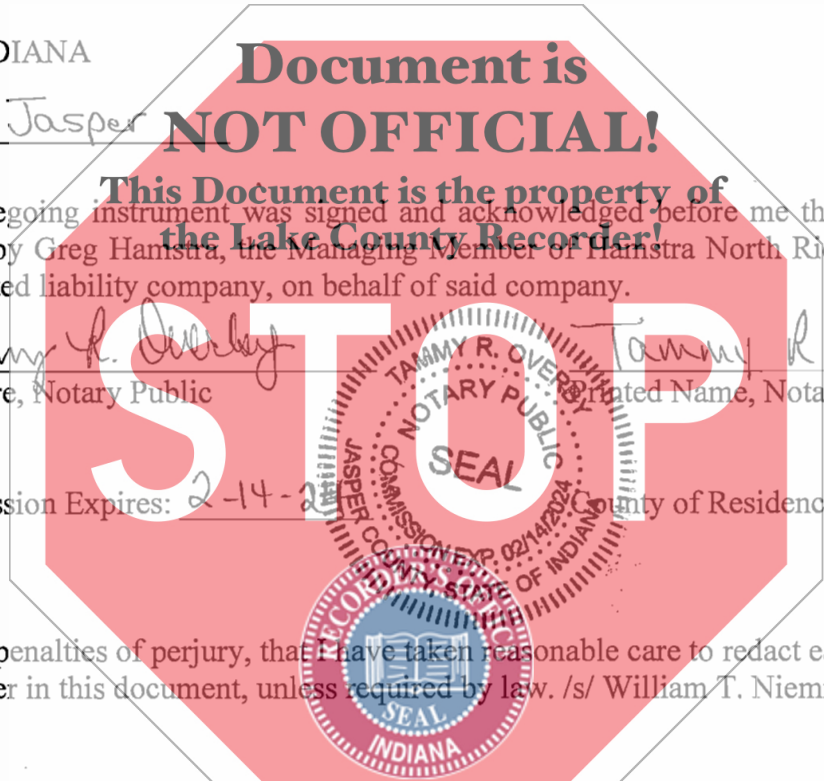
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The foregoing instrument was signed and acknowledged before me this 3rd day of August, 2017, by Greg Hamstra, the Managing Member of Hamstra North Ridge Center, LLC, an Indiana limited liability company, on behalf of said company.


Signature, Notary Public

Tammy R. Overby
Printed Name, Notary Public

Commission Expires: 2-14-2024 County of Residence: Jasper



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. /s/ William T. Niemier

Return to: William T. Niemier, Attorney at Law, 6910 N. Shadeland Avenue, Suite 200 Indianapolis, IN 46220

This instrument prepared by: William T. Niemier, Attorney at Law, 6910 N. Shadeland Avenue, Suite 200, Indianapolis, IN 46220 (317) 459-3878.

EXHIBIT "A"

