



2017R-00457

INTERIM LAPORTE COUNTY RECORDER
ANGIE ROSE

01/12/2017 12:46:10PM

RECORDING FEE \$26.00

PAGES 8

100
78

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 19 day of October, 2016, by Mulder Michigan City Investment Group, LLC at 3502 E. Michigan Boulevard (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of LaPorte, Indiana, which is located at 3502 E. Michigan Boulevard and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on March 16, 2015 and recorded on October 2, 2015, as Deed Record 2015R-11736, in the Office of the Recorder of LaPorte County, Indiana. The Real Estate consists of approximately 5.36 acres and has also been identified by the county as parcel identification number 460135152001000022. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit "B".

WHEREAS: Closure was conducted in accordance with applicable Indiana law as a result of a release of petroleum substances relating to the Hoosier Management Company (State Cleanup Site #0000416).

WHEREAS: Certain contaminants of concern (COCs) will remain in the soil and groundwater of the Real Estate. The Department has determined that the COCs will not pose an unacceptable risk to human health or the environment at the remaining concentrations, provided that the land use restrictions contained herein are implemented. These COCs are benzene, naphthalene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1-trimethylnaphthalene, and 2-trimethylnaphthalene.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently www.in.gov/idem/).

NOW THEREFORE, Mulder Michigan City Investment Group, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner:

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).

- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Risk Integrated System of Closure ("RISC") Technical Resource Guidance Document. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated or disposed must be managed in accordance with all applicable federal and state laws.

II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- 3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
- 4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records.
- 5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED 10-19 2016, RECORDED IN THE OFFICE OF THE RECORDER OF LaPorte COUNTY ON 1-12, 2017, INSTRUMENT NUMBER (or other identifying reference) 20172-00457 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION, AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of LaPorte County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

→ David A. Mulder, Managing Member
Mulder Michigan City Investment Group, LLC
31 Kendall Point Dr.
Oswego, IL 60543

To Department:

IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Section Chief, Hazardous Waste Permit Program

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

15. Severability. If any portion of this Covenant, or other term set forth herein, is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect, as if such portion found invalid had not been included herein.

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT "A"

Part of the Northwest Quarter of Section 35, Township 38 North, Range 4 West of the Second Principal Meridian, LaPorte County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Section 35; thence North 89 degrees 23 minutes East, a distance of 658.85 feet to the center of a highway called Warnke Road; thence South 01 degrees 22 minutes East along the center of said road, a distance of 1,272.23 feet to the Southerly right of way of the Nickel Plate Railroad to the PLACE OF BEGINNING; thence South 59 degrees 33 minutes East along said right of way line, a distance of 790.00 feet; thence South 01 degrees 22 minutes East, a distance of 277.00 feet to the center of U.S. Highway No. 35; thence North 72 degrees 50 minutes West along the center of said highway, a distance of 710.00 feet to the center of Warnke Road; thence North 01 degree 22 minutes West along the center of said road, a distance of 465.67 feet to the PLACE OF BEGINNING; EXCEPTING THEREFROM the following parcel:

Part of the Northwest Quarter of Section 35, Township 38 North, Range 4 West, LaPorte County, Indiana, being more particularly described as follows:

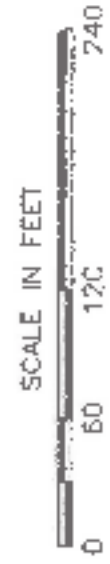
Commencing at the Northwest corner of said Section 35; thence South 89 degrees 23 minutes East along the North line of said Section 35, distance of 658.85 feet; thence South 01 degree 23 minutes East, a distance of 1,272.23 feet; thence South 59 degrees 36 minutes East, a distance of 696.66 feet to the PLACE OF BEGINNING; thence continue South 59 degrees 36 minutes East, a distance of 93.34 feet; thence South 01 degree 44 minutes East, a distance of 723.44 feet; thence North 72 degrees 50 minutes West, a distance of 83.01 feet; thence North 01 degree 51 minutes West, a distance of 246.20 feet to the PLACE OF BEGINNING.

Property Address: 3502 E Michigan Blvd, Michigan City, IN 46360



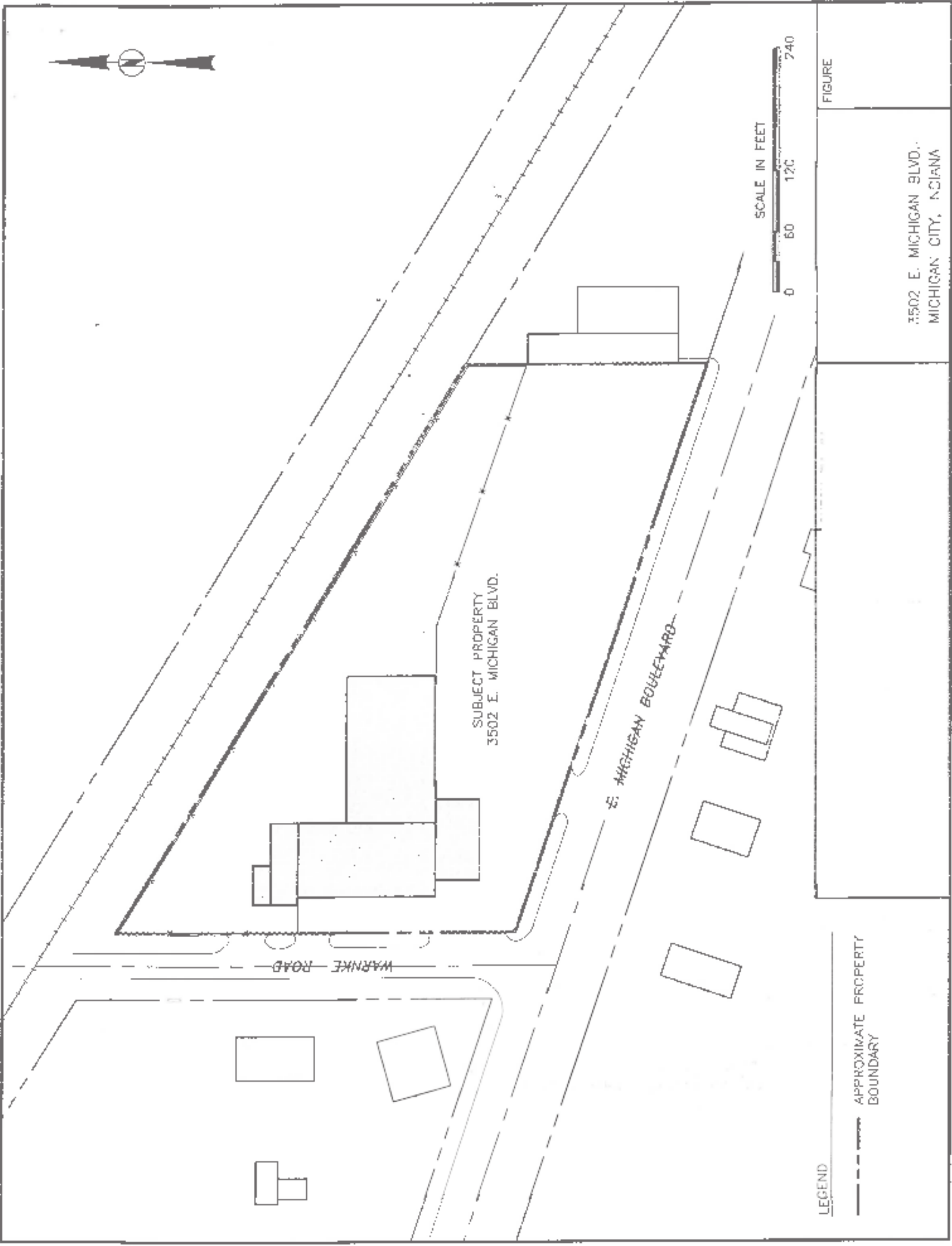
EXHIBIT B

MAP OF REAL ESTATE



FIGURE

3502 E. MICHIGAN BLVD.,
MICHIGAN CITY, INDIANA



SUBJECT PROPERTY
3502 E. MICHIGAN BLVD.

E. MICHIGAN BOULEVARD

WARNKE ROAD

LEGEND
- - - - - APPROXIMATE PROPERTY
- - - - - BOUNDARY

2015R-11736
LAPORTE COUNTY RECORDER
BARBARA A. DEAN
10/02/2015 01:19:45PM
RECORDING FEE \$18.00
PAGES: 2

INDIANA LANDTRUST COMPANY

Trustee's Deed 1400883 Chccm

This Indenture Witnesseth that GRANTOR, INDIANA LAND TRUST COMPANY, formerly known as LAKE COUNTY TRUST COMPANY, not personally but as Trustee under the provisions of a Trust Agreement dated January 20, 2011 and known as Trust No. 6175, in Lake County, and State of Indiana, does hereby grant, bargain, sell and convey to GRANTEE:

Mulder Michigan City Investment Group, LLC

for the sum of Ten Dollars (\$10.00) and other good and valuable consideration the following described Real Estate in the **County of LaPorte** and State of Indiana, to wit:

See Attached Exhibit A

Tax Parcel # 46-01-35-152-001.000-022

Commonly known as: 3502 E. Michigan Blvd., Michigan City, IN 46360

Address of Grantee: ~~3502 E. Michigan Blvd., Michigan City, IN 46360~~ 31 Kendall Point Dr Oswego IL 60543

After recording, return deed and mail future tax statements to: ~~3502 E. Michigan Blvd., Michigan City, IN 46360~~ 31 Kendall Point Dr. Oswego IL 60543

This Deed is executed pursuant to, and in the exercise of, the power and authority granted to and vested in the said Trustee by the terms of said Deed or Deeds in Trust delivered to the said Trustee in pursuance of the Trust Agreement above mentioned, and subject to all restrictions of record.

IN WITNESS WHEREOF, the said INDIANA LAND TRUST COMPANY, formerly known as LAKE COUNTY TRUST COMPANY, as Trustee, by Richard Caprio as Trust Officer, has hereunto set its hand this 16th day of March, 2015.

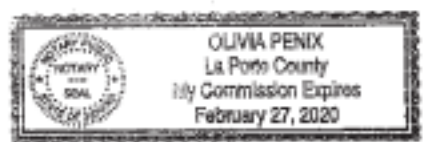
INDIANA LAND TRUST COMPANY, as Trustee as aforesaid,
BY:

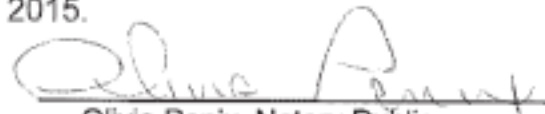

Richard Caprio, Trust Officer

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard Caprio Trust Officer of the Indiana Land Trust Company*, who acknowledged the execution of the foregoing instrument as the free and voluntary act of said corporation, and as her free and voluntary act, acting for such corporation as Trustee. * FKA Lake County Trust Company

Witness my hand and seal this 16th day of March, 2015.




Olivia Penix, Notary Public
My Commission expires: 02-27-2020
Resident of LaPorte County, Indiana

This instrument was prepared by: Richard Caprio

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

CHICAGO TITLE INSURANCE COMPANY

EXHIBIT "A"

Part of the Northwest Quarter of Section 35, Township 38 North, Range 4 West of the Second Principal Meridian, LaPorte County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Section 35; thence North 89 degrees 23 minutes East, a distance of 658.85 feet to the center of a highway called Warnke Road; thence South 01 degrees 22 minutes East along the center of said road, a distance of 1,272.23 feet to the Southerly right of way of the Nickel Plate Railroad to the PLACE OF BEGINNING; thence South 59 degrees 33 minutes East along said right of way line, a distance of 790.00 feet; thence South 01 degrees 22 minutes East, a distance of 277.00 feet to the center of U.S. Highway No. 35; thence North 72 degrees 50 minutes West along the center of said highway, a distance of 710.00 feet to the center of Warnke Road; thence North 01 degree 22 minutes West along the center of said road, a distance of 466.67 feet to the PLACE OF BEGINNING; EXCEPTING THEREFROM the following parcel:

Part of the Northwest Quarter of Section 35, Township 38 North, Range 4 West, LaPorte County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Section 35; thence South 89 degrees 23 minutes East along the North line of said Section 35, distance of 658.85 feet; thence South 01 degree 23 minutes East, a distance of 1,272.23 feet; thence South 59 degrees 36 minutes East, a distance of 696.66 feet to the PLACE OF BEGINNING; thence continue South 59 degrees 36 minutes East, a distance of 93.34 feet; thence South 01 degree 44 minutes East, a distance of 223.44 feet; thence North 72 degrees 50 minutes West, a distance of 83.01 feet; thence North 01 degree 51 minutes West, a distance of 246.20 feet to the PLACE OF BEGINNING.

Property Address: 3502 E Michigan Blvd, Michigan City, IN 46360