

ORDINANCE 2013-_____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA, ANNEXING TERRITORY TO THE TOWN OF
WHITESTOWN, INDIANA, PLACING THE SAME WITHIN THE CORPORATE
BOUNDARIES THEREOF, AND MAKING THE SAME
A PART OF THE TOWN OF WHITESTOWN**

**EITELJORG/PULTE SUPER-VOLUNTARY ANNEXATION
Approximately 108.866 Acres**

WHEREAS, the Town Council ("Council") of the Town of Whitestown, Indiana ("Town") received a petition ("Petition") requesting that certain territory, generally located east of the Town's existing corporate limits along County Road 650 East and north of County Road 500 South, as hereinafter described ("Annexation Territory"), be annexed; and

WHEREAS, the Petition has been signed by the sole owner and contract purchaser (collectively, "Owner") of the Annexation Territory and is attached hereto as Exhibit 1; and

WHEREAS, all of the Annexation Territory was previously annexed by the Town in a prior annexation, pursuant to Ordinance No. 2012-21; and

WHEREAS, the Council delayed the effective date of the annexation in Ordinance No. 2012-21 for three (3) years; and

WHEREAS, Ordinance No. 2012-21 specifically allows property owners included within that annexation to file a petition with the Council "requesting that the annexation of their property be effective sooner"; and

WHEREAS, consistent with Ordinance No. 2012-21, the Owner has petitioned for immediate inclusion of the Annexation Territory within the corporate boundaries of the Town; and

WHEREAS, the Council deems it desirable and in the best interest of the Town to annex the Annexation Territory; and

WHEREAS, a map and legal description for the Annexation Territory are attached hereto as Exhibit 2A and Exhibit 2B, respectively; and

WHEREAS, where the legal description attached as Exhibit 2B describes land that is contiguous to a public highway right-of-way that has not previously been annexed, the Annexation Territory shall include the contiguous public highway right-of-way, even if not described in Exhibit 2B; and

WHEREAS, the Annexation Territory consists of approximately 108.866 acres and is contiguous to the existing Town limits; and

WHEREAS, responsible planning and state law require adoption of a fiscal plan and a definite policy for the provision of certain services to any annexed areas; and

WHEREAS, prior to adoption of this Ordinance, the Council, by resolution, will have adopted a written fiscal plan and definite policy for the provision of services of both a non-capital and capital nature in the Annexation Territory consistent with the fiscal plan for Ordinance No. 2012-21; and

WHEREAS, the written fiscal plan and definite policy adopted by resolution provide for the provision of services of a capital nature (including street construction, street lighting, sewer facilities, water facilities and storm water drainage facilities) to the Annexation Territory within three (3) years after the effective date of this annexation in the same manner those services are provided to areas within the current corporate boundaries, regardless of similar topography, patterns of land use, and population density and in a manner consistent with federal, state and local laws, procedures, and planning criteria; and

WHEREAS, the written fiscal plan and definite policy adopted by resolution provide for the provision of services of a non-capital nature (including police protection, fire protection, street and road maintenance, and other non-capital services normally provided within the corporate boundaries of the Town) to the Annexation Territory within one (1) year after the effective date of the annexation in a manner equivalent and standard in scope to those non-capital services provided to areas within the current corporate boundaries, regardless of similar topography, patterns of land use, and population density and in a manner consistent with federal, state and local laws, procedures, and planning criteria; and

WHEREAS, the terms and conditions of this annexation, including the written fiscal plan and definite policy, are fairly calculated to make the annexation fair and equitable to property owners and residents of the Annexation Territory, if any, and of the Town; and

WHEREAS, the Annexation Territory is contiguous to the existing corporate boundaries of the Town, and the Annexation Territory is needed and can be used by the Town for its development in the reasonably near future; and

WHEREAS, prior to the final adoption of this Ordinance, the Town will have conducted a public hearing pursuant to proper notice issued as required by law; and

WHEREAS, the Council finds that the Annexation pursuant to the terms of this Ordinance is fair and equitable and should be accomplished.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

1. The above recitals are incorporated herein by this reference as though fully set forth herein below.

2. In accordance with I.C. §36-4-3-5.1 and Ordinance No. 2012-21, the Annexation Territory is hereby immediately annexed to the Town and thereby included within its corporate boundaries pursuant to the terms of this Ordinance.
3. The Annexation Territory is assigned to Council District No. 3.
4. The Annexation Territory shall maintain its current zoning until such time the Town updates its comprehensive plan, zoning ordinance, or zoning map.
5. All prior Ordinances or parts thereof that may be inconsistent with any provision of this Ordinance are hereby repealed. The paragraphs, sentences, words, and Annexation Territory of this Ordinance are separable, and if a court of competent jurisdiction hereof declares any portion of this Ordinance or the Annexation Territory unconstitutional, invalid, or unenforceable for any reason, such declaration shall not affect the remaining portions of the Annexation Territory or this Ordinance.
6. The effective date of this annexation shall be thirty (30) days following its adoption, execution, and publication as required by law.

Introduced by the Town Council of the Town of Whitestown, Indiana, on November 12, 2013, and duly adopted on _____.

THE TOWN COUNCIL OF THE TOWN
OF WHITESTOWN, INDIANA

YAY/NAY

Julie Whitman, President

Dawn Semmler, Member

Susan Austin, Member

Kevin Russell, Member

Eric Miller, Member

ATTEST:

Amanda Andrews, Clerk-Treasurer
Town of Whitestown, Indiana

2458593_1

**PETITION FOR AND CONSENT TO ANNEXATION
INTO THE TOWN OF WHITESTOWN, INDIANA**

WHEREAS, the undersigned (hereinafter the "Petitioner"), is the Contract Purchaser and the Owners are the fee simple owners of a certain parcel more particularly described in Exhibit "A" (the "Real Estate"); and

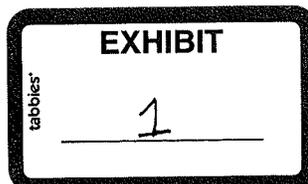
WHEREAS, the Petitioner and Owners desire the Real Estate to be annexed by the Town of Whitestown, Indiana (the "Town"), and otherwise consents to the annexation of the Real Estate by the Town; and

WHEREAS, the Petitioner and Owners do not desire to be annexed by any municipality other than Whitestown; and

WHEREAS, the Petitioner desires the annexation of the Real Estate by the Town to be effective immediately;

NOW THEREFORE, the Petitioner, in support of this Petition for and Consent to Annexation, hereby states the following:

1. The Petitioner is the Contract Purchaser of the Real Estate.
2. The Owners consent to the annexation as evidenced by the attached Exhibit "B".
3. The Real Estate is within the East Area annexed by the Town through the adoption of Ordinance 2012-21 (the "Ordinance"), the effective date for which annexation was postponed by the Ordinance for three (3) years from the date of its adoption in accordance with Ind. Code §36-4-3-22.
4. The Ordinance allows for property owners within the annexed area to apply for an earlier effective date for the annexation; which would constitute a super-voluntary annexation of the property.
5. The Petitioner desires the annexation of the Real Estate by the Town to be effective on a date earlier than that established in the Ordinance, in order to allow the Petitioner to begin developing the land and in accordance with the procedures established by the Town for subdividing and developing land within its jurisdiction.
6. The Petitioner further consents to annexation by Whitestown as may otherwise contemplated by Ind. Code §36-4-3-9.
7. That Petitioner and Owners understand that upon the separate and immediate annexation of the subject property, said real estate will not be eligible for municipal tax abatement available under Ordinance 2012-21.



WHEREAS, the Petitioner and Owner pray the Town Council of Whitestown adopt an Ordinance annexing the described property in to the boundaries of Whitestown Indiana with an immediate effective date.

PETITIONER

Signed:

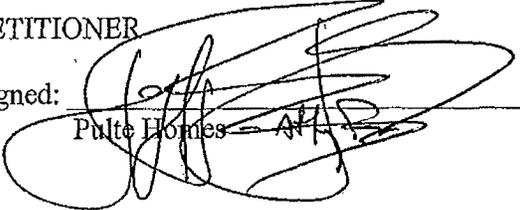
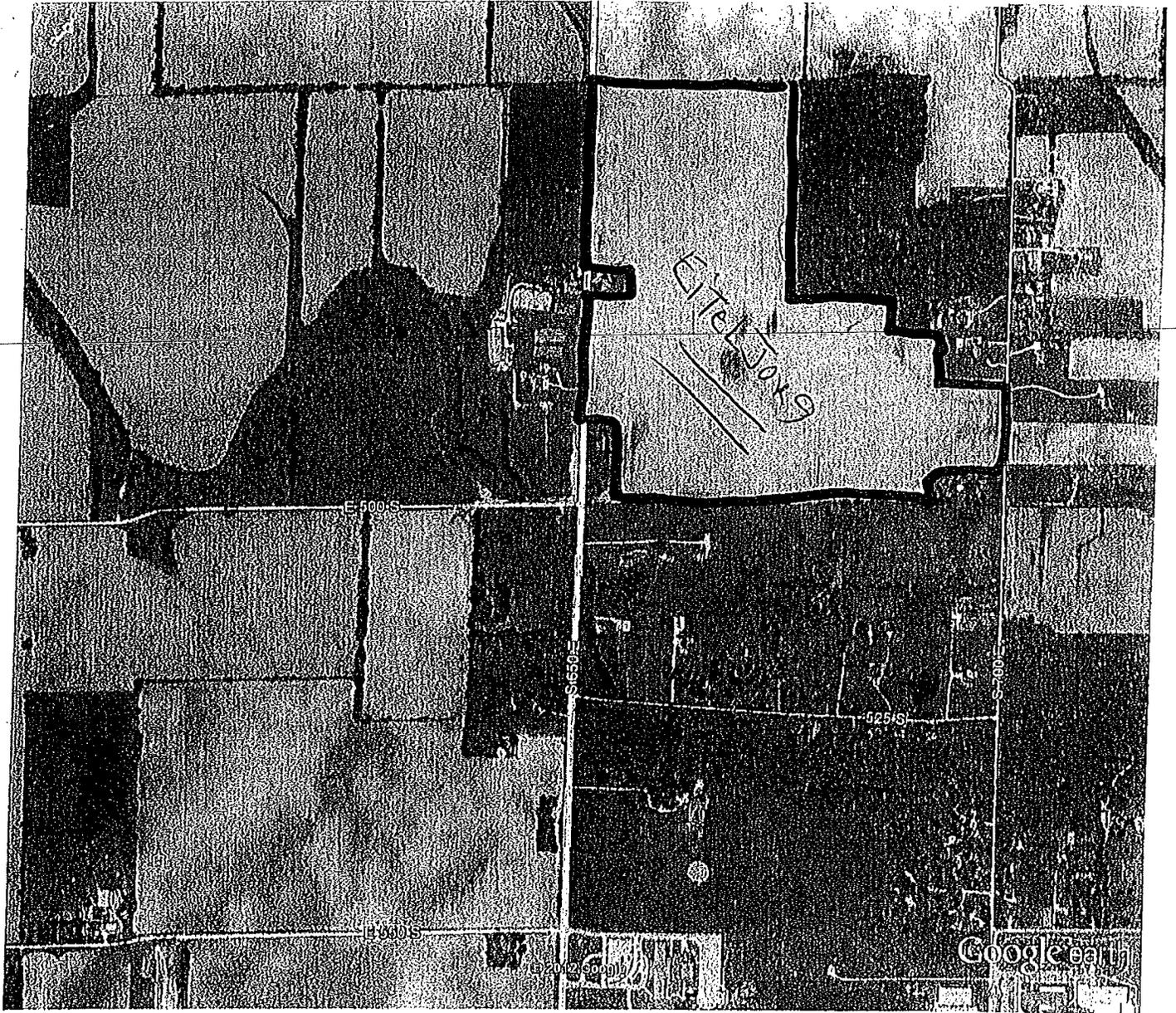
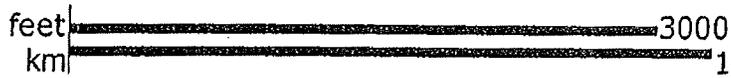
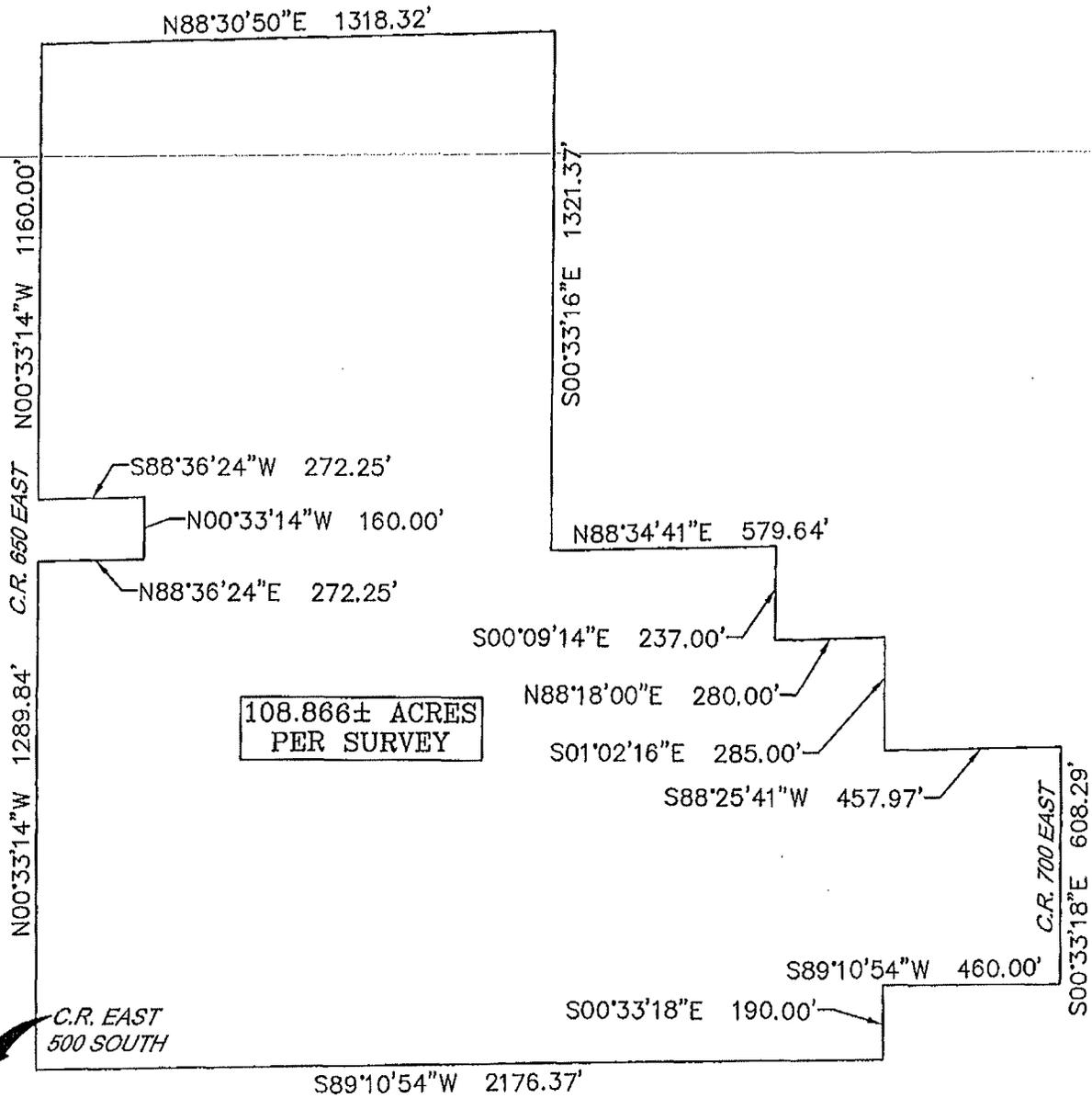

Pulte Homes

EXHIBIT "A"



Google earth



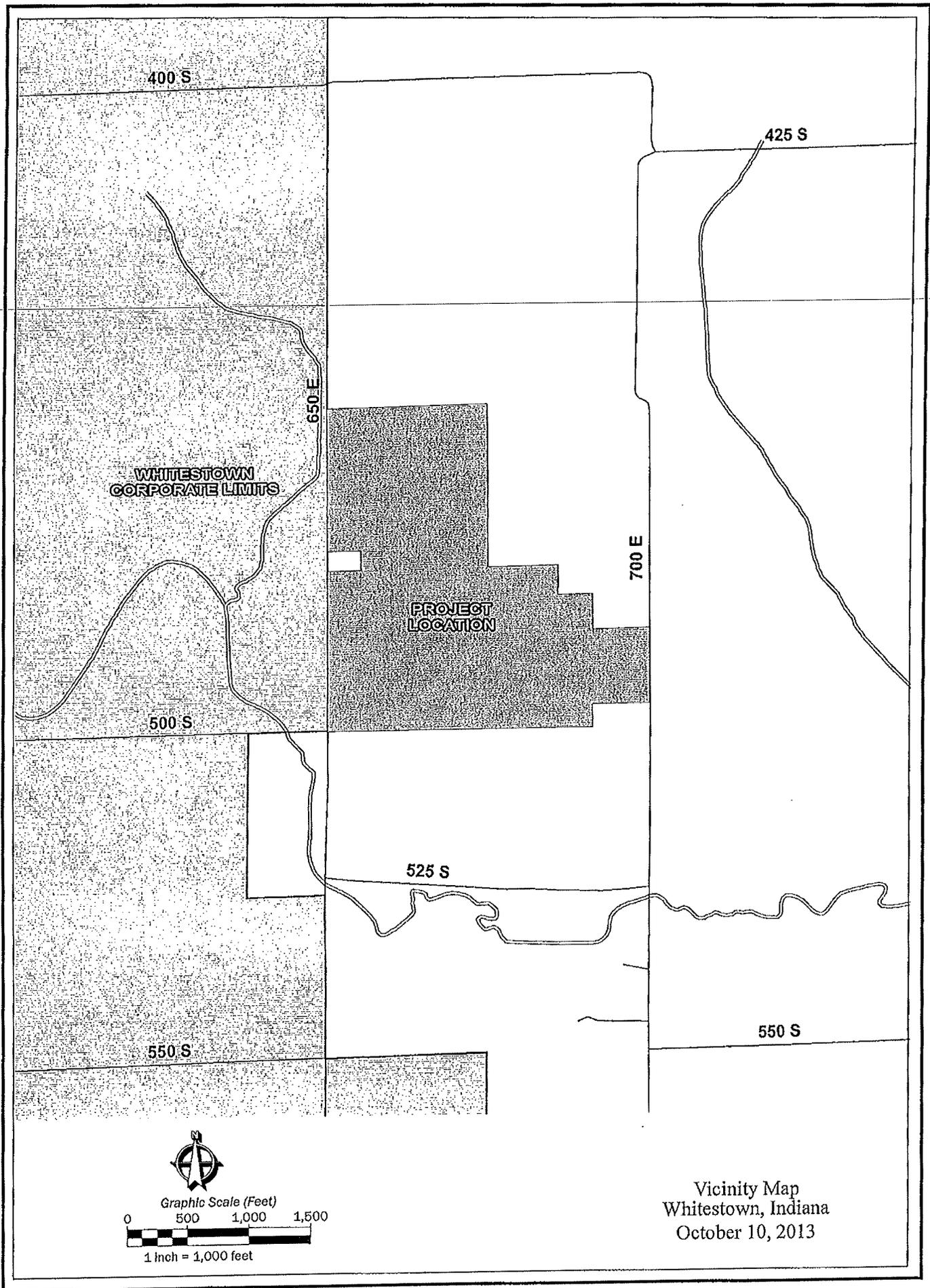


108.866± ACRES
PER SURVEY

C.R. EAST
500 SOUTH



EITELJORG PROPERTY
SITE PLAN
WHITESTOWN, INDIANA
10/09/2013



400 S

425 S

WHITESTOWN
CORPORATE LIMITS

650 E

PROJECT
LOCATION

700 E

500 S

525 S

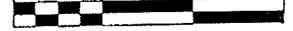
550 S

750 E



Graphic Scale (Feet)

0 500 1,000 1,500



1 inch = 1,000 feet

Vicinity Map
Whitestown, Indiana
October 10, 2013

OWNERS AUTHORIZATION

Project _____ Docket _____

That Harrison Eiteljorg II and Jack Eiteljorg after being first duly sworn, depose and say:

1. That we are the owner(s) of the real estate located at 4947 S. Main Street and as detailed in the deed included with this Application.
2. That we have read and examined the Annexation Application, and are familiar with its contents.
3. That we have no objection to, and consent to such request as set forth in the application.
4. That such request being made by the applicant is a condition to the sale of the above referenced property.

By: Harrison Eiteljorg II
Harrison Eiteljorg II

State of Pennsylvania)
County of Montgomery) SS:

Subscribed and sworn to before me this day of October 14, 2013

Walter Gaines / Walter Gaines
Notary Public Signature / Notary Public Printed

My commission expires 6/25/16

My county of residence is Philadelphia County.

COMMONWEALTH OF PENNSYLVANIA
 Notarial Seal
 Walter Gaines, Notary Public
 Lower Merion Twp., Montgomery County
 My Commission Expires June 25, 2016
 MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

By: Jack Eitelberg
Jack Eitelberg
State of Texas
County of Kodell) SS:

Subscribed and sworn to before me this day of October 15, 2013.

Justin M. Blohm / Justin M. Blohm
Notary Public Signature / Notary Public Printed

My commission expires March 8, 2017

My county of residence is Brew County.

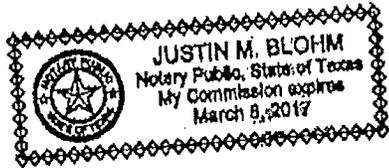


Exhibit "B"

20070000805
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALOWIN
01-23-2007 At 02:32 PM.
DEED 26.00

(5)
2400
+ 2 NON
WOODEN & M - LAUGHLIN

CO-TRUSTEES' DEED

THE HARRISON EITELJORG REVOCABLE TRUST - JN, an Indiana trust, created pursuant to Trust Agreement dated September 29, 1994, as amended ("Grantor"), for Ten and no/100 Dollars (\$10.00) and other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, convey to each of HARRISON EITELJORG II and JACK EITELJORG (collectively, "Grantees"), an undivided one-half (1/2) interest as a tenant in common and to the real estate located in Boone County, Indiana, and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (the "Real Estate").

This conveyance is made subject to the following:

1. The liens of unpaid real estate taxes for the current and prior years, and for subsequent years, which Grantees assume and agree to pay.
2. All other liens, encumbrances, easements, restrictions, covenants, rights-of-way and matters of record.

IN WITNESS WHEREOF, the undersigned have executed this Co-Trustees' Deed this 14th day of July, 2006.

THE HARRISON EITELJORG
REVOCABLE TRUST-JN

By: Harrison Eiteljorg II
Harrison Eiteljorg II, Co-Trustee of the
Harrison Eiteljorg Revocable Trust - JN

By: Roger Eiteljorg
Roger Eiteljorg, Co-Trustee of the
Harrison Eiteljorg Revocable Trust - JN

By: John A. Lienhart
John A. Lienhart, Co-Trustee of the
Harrison Eiteljorg Revocable Trust - JN

DULY ENTERED FOR TAXATION
[Signature]
SUBJECT TO FINAL ACCEPTANCE
AUDITOR, BOONE COUNTY

STATE OF PA)
) SS:
COUNTY OF Montgomery

Before me, a Notary Public in and for said County and State, personally appeared Harrison Biteljorg II, who, after having been duly sworn, acknowledged the execution of the foregoing Co-Trustees' Deed.

WITNESS, my hand and Notarial Seal this 24th day of November, 2006.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Nancy J. Hewitt, Notary Public
Lower Merion Twp., Montgomery County
My Commission Expires Apr. 14, 2008
Member, Pennsylvania Association of Notaries

Nancy J. Hewitt
() Notary Public

My Commission Expires:

11/14/08

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Roger Biteljorg, who, after having been duly sworn, acknowledged the execution of the foregoing Co-Trustees' Deed.

WITNESS, my hand and Notarial Seal this 9th day of January, 2007.

Tonya M. Thompson
(Tonya M. Thompson) Notary Public



My Commission Expires:

3-14-07

My County of Residence:

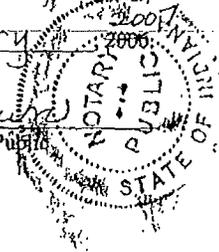
3-14-07 Marion

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared John A. Lienhart, who, after having been duly sworn, acknowledged the execution of the foregoing Trustees' Deed.

WITNESS, my hand and Notarial Seal this 11th day of January

Carla Y. Brown
(CARLA Y. BROWN) Notary Public



My Commission Expires:

August 2, 2007

My County of Residence:

Johnson

This instrument prepared by Kent M. Broach, Attorney at Law, Wooden & McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204.

Send Tax Statements and Return Deed to: 142 Gays Lane
Haverhill, MA 01831

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

Kent M. Broach
Kent M. Broach

EXHIBIT "A"

A part of the Southeast Quarter of Section 30 Township 18 North Range 2 East of the Second Principal Meridian, located in Worth Township, Boone County, Indiana, and being more particularly described as follows, to-wit:

Beginning at a railroad rail at the Southwest corner of the Southeast Quarter of Section 30 Township and Range aforesaid; thence North 0 degrees 05 minutes 18 seconds West with the half Section line for a distance of 1289.84 feet; thence North 89 degrees 04 minutes 20 seconds East to an iron pipe for a distance of 272.25 feet; thence North 0 degrees 05 minutes 18 seconds West to an iron pipe for a distance of 160.00 feet; thence South 89 degrees 04 minutes 20 seconds West to the half Section line for a distance of 272.25 feet; thence North 0 degrees 05 minutes 18 seconds West with the half Section line for a distance of 1160.00 feet; thence North 89 degrees 03 minutes 12 seconds East along an existing fence to a corner post being the Northeast corner of the Northwest Quarter of the Southeast Quarter of Section 30 for a distance of 1315.80 feet; thence South 0 degrees 02 minutes 06 seconds East along an existing fence to the Southeast corner of the Northwest Quarter of the Southeast Quarter of Section 30 for a distance of 1320.45 feet; thence North 88 degrees 49 minutes 01 seconds East along an existing fence line to an iron pipe for a distance of 579.64 feet; thence South 0 degrees 07 minutes 23 seconds East to an iron pipe for a distance of 237.00 feet; thence North 88 degrees 49 minutes 01 seconds East to an iron pipe for a distance of 280.00 feet; thence South 0 degrees 07 minutes 23 seconds East to an iron pipe for a distance of 285.00 feet; thence North 88 degrees 49 minutes 01 second East to the East Section of Section 30 for a distance of 460.00 feet; thence South 0 degrees 07 minutes 23 seconds East along the East Section line of Section 30 for a distance of 609.32 feet; thence South 89 degrees 37 minutes 45 seconds West to an iron pipe for a distance of 460.00 feet; thence South 0 degrees 07 minutes 23 seconds East to an iron pipe for a distance of 190.00 feet; thence South 89 degrees 37 minutes 45 seconds West along an existing fence line and the South Section line of Section 30 to a railroad rail for a distance of 2174.65 feet to the point of beginning.

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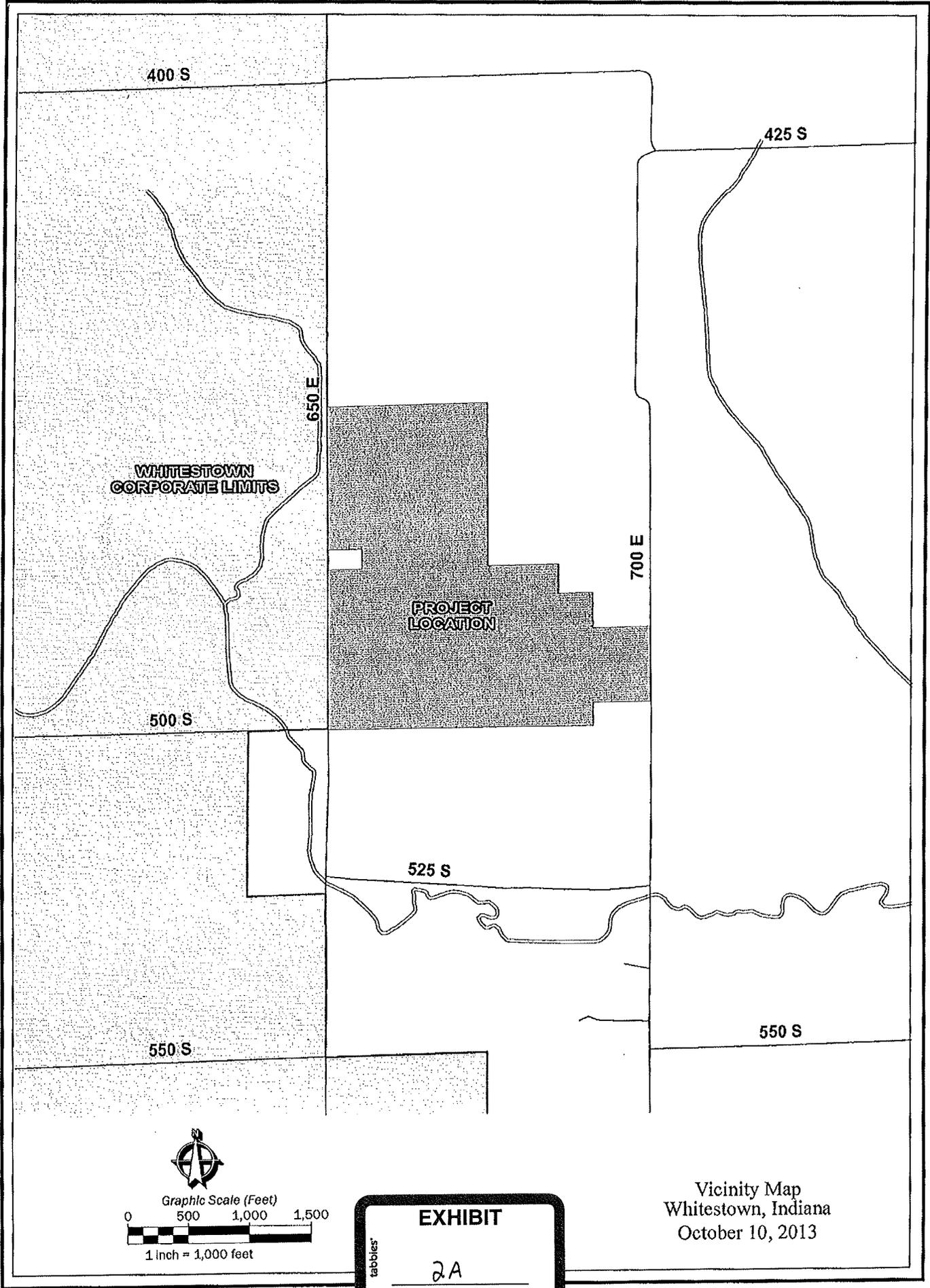
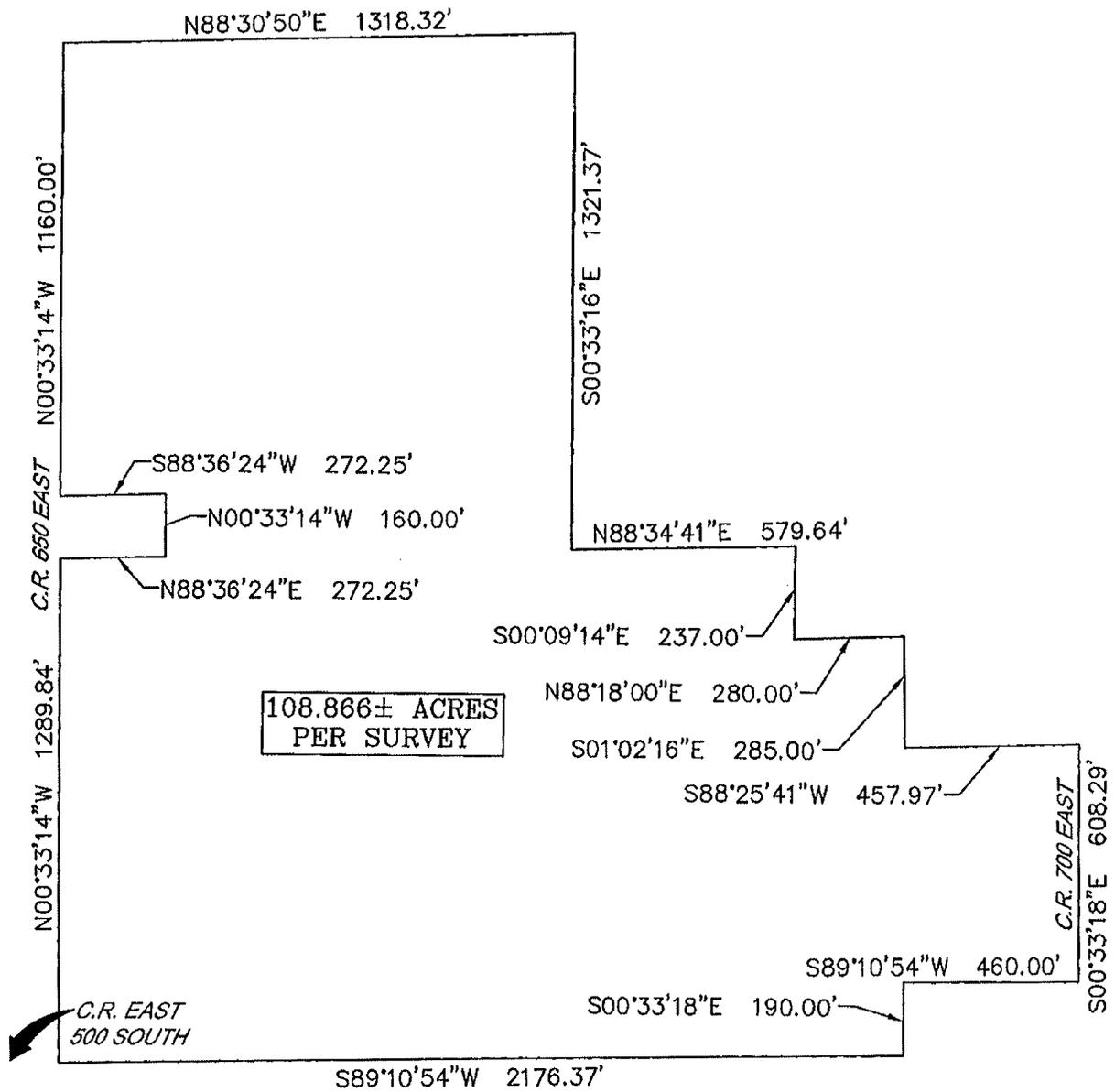


EXHIBIT
tabbles
2A

Vicinity Map
Whitestown, Indiana
October 10, 2013



EITELJORG PROERTY
SITE PLAN
WHITESTOWN, INDIANA
10/09/2013



EXHIBIT "A"

A part of the Southeast Quarter of Section 30 Township 18 North Range 2 East of the Second Principal Meridian, located in Worth Township, Boone County, Indiana, and being more particularly described as follows, to-wit:

Beginning at a railroad rail at the Southwest corner of the Southeast Quarter of Section 30 Township and Range aforesaid; thence North 0 degrees 05 minutes 18 seconds West with the half Section line for a distance of 1289.84 feet; thence North 89 degrees 04 minutes 20 seconds East to an iron pipe for a distance of 272.25 feet; thence North 0 degrees 05 minutes 18 seconds West to an iron pipe for a distance of 160.00 feet; thence South 89 degrees 04 minutes 20 seconds West to the half Section line for a distance of 272.25 feet; thence North 0 degrees 05 minutes 18 seconds West with the half Section line for a distance of 1160.00 feet; thence North 89 degrees 03 minutes 12 seconds East along an existing fence to a corner post being the Northeast corner of the Northwest Quarter of the Southeast Quarter of Section 30 for a distance of 1315.80 feet; thence South 0 degrees 02 minutes 06 seconds East along an existing fence to the Southeast corner of the Northwest Quarter of the Southeast Quarter of Section 30 for a distance of 1320.45 feet; thence North 88 degrees 49 minutes 01 seconds East along an existing fence line to an iron pipe for a distance of 579.64 feet; thence South 0 degrees 07 minutes 23 seconds East to an iron pipe for a distance of 237.00 feet; thence North 88 degrees 49 minutes 01 seconds East to an iron pipe for a distance of 280.00 feet; thence South 0 degrees 07 minutes 23 seconds East to an iron pipe for a distance of 285.00 feet; thence North 88 degrees 49 minutes 01 second East to the East Section of Section 30 for a distance of 460.00 feet; thence South 0 degrees 07 minutes 23 seconds East along the East Section line of Section 30 for a distance of 609.32 feet; thence South 89 degrees 37 minutes 45 seconds West to an iron pipe for a distance of 460.00 feet; thence South 0 degrees 07 minutes 23 seconds East to an iron pipe for a distance of 190.00 feet; thence South 89 degrees 37 minutes 45 seconds West along an existing fence line and the South Section line of Section 30 to a railroad rail for a distance of 2174.65 feet to the point of beginning.

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