

**BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form**

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	October 2, 2024	Meeting Date:	October 7, 2024
Contact Information:			
Requested by:	Mark Richards		
On Behalf of Organization or Individual:	Department of Planning & Engineering		
Telephone:	317-736-3631		
Email address:	mrichards@franklin.in.gov		
Mailing Address:	70 E. Monroe Street, Franklin, IN 46131		
Describe Request:			
Request acceptance and execution of Settlement Agreement and Temporary Construction Easements for the Paul Hand Road Reconstruction Project			
List Supporting Documentation Provided:			
Settlement Agreement Temporary Construction Easement Agreement – Drake Parcel Temporary Construction Easement Agreement – Bruce and Rebecca Smith Parcel Temporary Construction Easement Agreement – Charles and Sandra Smith Parcel			
Who will present the request?			
Name:	Mark Richards	Telephone:	317-736-3631

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 2024, by and among the CITY OF FRANKLIN, a municipality organized and formed under the laws of the State of Indiana by and through its Board of Public Works and Safety, and its successors and assigns, ("City") ; and Charles R. Smith, Sandra L. Smith, Bruce E. Smith, Rebecca J. Smith, and Babetta S. Drake, ("Owners") (City and Owners, referred to individually, as a "Party," and collectively as the "Parties").

RECITALS

WHEREAS, Owners are the owner of certain real estate located in Franklin, Indiana 46131, as Parcel Numbers 41-05-27-041-018.001-033, 41-05-27-041-018.002-033 and 41-05-27-041-018.000-033 and more particularly described in attached Exhibit "A" ("Owners Parcels");

WHEREAS, Owners are also prepared to grant a temporary construction easement to the City, across the Owners Parcels that are more particularly described and depicted in the attached Exhibit "B" ("Temporary Easement Area") for the construction of the road improvements;

WHEREAS, the City agrees to accept the Temporary Easement from Owners;

WHEREAS, the Parties have reached an agreement as to the Temporary Easement Area subject to the conditions as set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. REPRESENTATION, ACKNOWLEDGMENTS AND COVENANTS

- 1.1 Recitals. The above Recitals and Exhibits are true and accurate in all respects and incorporated within this Agreement as if fully rewritten. The Recitals and Exhibits set forth above accurately describe the Owners Parcels and Temporary Easement Area and the desires of the Parties;
- 1.2 True and Correct Statement. As a condition to the signing of this Agreement, the Parties are relying on the truth, completeness, and correctness of the statements and representations made herein, including the Recitals and Exhibits, and represent for themselves that this Agreement contains no material misrepresentations or omissions by any of the Parties to this Agreement;
- 1.3 Good Faith. As of the Effective Date, Parties and their agents have acted at all times in a fair and reasonable manner, and in good faith, in connection with their negotiations in connection with this Agreement. The execution and delivery of this Agreement by the Parties was and is their

free and voluntary act and deed, without any misapprehension as to the effect thereof, and without any coercion, duress, overreaching or any other misconduct by the other Party or their agent;

1.4 Legal Counsel. The Parties have had the opportunity to consult legal counsel concerning the execution and delivery of this Agreement;

1.5 Authority of Owners to Execute the Agreement;

(a) The execution, delivery, and performance by Owners of the Agreement and the other documents referred to herein which are required to be executed and delivered by Owners:

(i) Are within their powers and authority;

(ii) Do not contravene its Partnership Agreement, or any amendments thereto;

(iii) Do not contravene any agreements.

(b) No authorization or approval or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Owners of this Agreement or any of the agreements or documents referred to herein;

(c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of the Owners, as appropriate, in accordance with their respective terms;

(d) That the Owners are authorized to do business in the State of Indiana and validly exists under the laws of the State of Indiana.

1.6 Authority of the City to Execute Agreement;

(a) The execution, delivery and performance by the City of the Agreement:

(i) Are within its powers and authority;

(ii) Do not contravene its ordinances or laws of the State of Indiana;

(iii) Do not contravene any agreements;

(iv) That the undersigned representative of the City is authorized to act on behalf of and bind the City.

(b) No authorization or approval or action by, and no notice to or filing with any other governmental authority or regulatory body is required for the due execution, delivery, and performance by the

City of this Agreement or any of the agreements or documents referred to herein;

- (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of City, as appropriate, in accordance with their respective terms.

1.7 Owners Parcels Representations. Owners represent and warrant, as of the Effective Date, that:

- (a) Owners are the sole owner of the Owners Parcels;
- (b) There are not liens or encumbrances as to the Owners Parcels;
- (c) There are no pending litigation relating to the Owners Parcels;
- (d) Owners have not:
 - (i) Sold, assigned, pledged or transferred any of its rights, title or interest in the Owners Parcels;
 - (ii) Made a general assignment for the benefit of creditors;
 - (iii) Filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors;
 - (iv) Suffered the appointment of a receiver to take possession of all, or substantially all, of their assets; or
 - (v) Suffered the attachment or other judicial seizure of all, or substantially all, of their assets.
- (e) Owners' representations and warranties in this Agreement are and shall be true and correct at the Closing Date and shall survive the Effective Date.

1.8 Capitalized Terms. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the documents referenced in this Agreement.

SECTION 2. CONDITIONS PRECEDENT TO THE CITY'S PAYMENT TO THE OWNERS

2.1 The terms and conditions of the City's payment to Owners, as described in Section 3, shall not become effective or enforceable against the City until:

- (a) The Agreement has been executed by all Parties and delivered to each Party on or before the 15th day of October 2024, or the terms and conditions of the Agreement shall be null and void;

- (b) Owners have delivered, or caused to be delivered to the City, Temporary Construction Easements granting an easement to the City for the Temporary Easement Area, in the form of that attached hereto as Exhibit "C".

SECTION 3. PAYMENT

- 3.1 The City shall pay the Owners the sum of Seven Thousand One Hundred and Forty-Five Dollars and No Cents (\$7,145.00) within thirty (30) days of the Effective Date.

SECTION 4. CITY'S WARRANTIES

- 4.1 The City shall construct the Road Improvements so that farm equipment used by the Owners shall have the ingress and egress for farming, planting and harvesting crops on the remaining Owners Parcels and the Road Improvements shall be constructed consistent with the construction drawings ("Construction Drawings") attached as Exhibit "D". The Parties agree that construction of the Road Improvements in accordance with the Construction Drawings shall satisfy this obligation of the City;
- 4.2 During the construction of the Road Improvements, the City shall grant reasonable access at all times, from the Road Improvements to the remaining Owners Parcels for the purpose of farming, planting and harvesting crops on the remaining Owners Parcels. Owners or their Tenant farmer shall provide twenty-four (24) hours advance notice to the City Engineer so that access can be coordinated with the City Contractor. Said access may be outside of the roadway but across public right of way, depending upon construction activities at that time.

SECTION 5. REPRESENTATION OF COMPREHENSION OF DOCUMENT

- 5.1 In entering into this Agreement, the Parties represent and warrant that the terms of the Agreement have been completely read and explained to each and that the terms of the Agreement are fully understood and voluntarily accepted by each Party.

SECTION 6. ATTORNEY FEES

- 6.1 If any Party hereto commences any action arising out of this Agreement, including, without limitation, any action to enforce or interpret this Agreement, the prevailing Party or Parties in such action shall be entitled to recover reasonable attorney's fees and other expenses incurred in such action;
- 6.2 Any award of attorney's fees hereunder shall not be computed according to any court schedule, but, instead, shall be in such amount as to fully reimburse all reasonable attorney's fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all Parties to compensate fully the prevailing Party for all attorney's fees paid or incurred in good faith.

SECTION 7. GOVERNING LAW

- 7.1 This settlement agreement shall be construed and interpreted in accordance with the laws of the State of Indiana.

SECTION 8. ADDITIONAL DOCUMENTS

- 8.1 All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

SECTION 9. AMENDMENT AND ENTIRETY OF AGREEMENT

- 9.1 No waiver of or consent to any departure from any provision hereof shall be effective unless in writing and signed by the authorized representative of the Party against whom such a waiver or consent is asserted and shall be effective only in the specific instance and for the purpose for which given and to the extent specified in such writing;
- 9.2 No delay or omission by any Party hereto to exercise any right or remedy upon the happening of any event of default hereunder shall impair such right or remedy or be deemed to be a waiver of such event of default;
- 9.3 This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, agreements and understandings relative to such subject matter.

SECTION 10. THIRD-PARTY BENEFICIARIES

- 10.1 All of the conditions and obligations hereunder are imposed solely and exclusively for the benefit of the Parties hereto and their successors and assigns. No other person or entities shall obtain any interest herein or require satisfaction of such conditions in accordance with the terms hereof or be entitled to assume that any of the Parties hereto will enforce such conditions and obligations and no other person shall, under any circumstances, be beneficiary of such conditions.

SECTION 11. SEVERABILITY

- 11.1 In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if such invalid or unenforceable provisions had never been contained in this Agreement.

SECTION 12. TIME IS OF THE ESSENCE

- 12.1 The Parties further acknowledge that TIME IS OF THE ESSENCE with respect to the time for performance of the terms and provisions of this Agreement.

SECTION 13. NOTICES

- 13.1 All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service such as Federal Express, and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the date of posting by the United States Post Office, or (iii) if sent by overnight delivery service, the first business day after deposit of such notice with such delivery service.

To City:

City of Franklin
Office of the Mayor
70 East Monroe Street
Franklin, Indiana 46131

With Copy to (not constituting notice):

City Attorney
Lynnette Gray
Johnson Gray & Johnson
63 East Court Street
Franklin, IN 46131

To Owners:

Charles R. Smith, Sandra L. Smith, Bruce E. Smith
Rebecca Smith, and Babetta S. Drake
c/o Stephen L. Huddleston
98 West Jefferson Street
Franklin Indiana 46131

SECTION 14. SEPARATE SIGNATURES

- 14.1 To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart;

- 14.2 All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the Parties hereto;
- 14.3 Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

SECTION 15. CAPTIONS

- 15.1 The captions and headings of the various sections and paragraphs of this Agreement have been inserted only for the purpose of convenience of reference;
- 15.2 Such captions are not a part of this Agreement and shall not be deemed, in any manner, to modify, enlarge or restrict any of the provisions of this Agreement.

SECTION 16. EFFECTIVENESS

- 16.1 This Agreement shall become effective upon the last date of any Party and their attorneys to execute this Agreement ("Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year stated below.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]

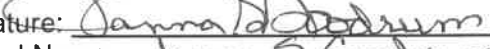

Charles R. Smith


Sandra L. Smith

STATE OF ILLINOIS)
)SS
COUNTY OF Vermilion)

On this 10th day of September 2024, before me personally appeared, Charles R. Smith and Sandra L. Smith, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: 
Notary Printed Name: Janna S Goodrum
Notary Public for Vermilion County
Commission Number 292075
My Commission Expires: 1-25-26



Bruce E. Smith
Bruce E. Smith
Rebecca J. Smith
Rebecca J. Smith

STATE OF GEORGIA)
COUNTY OF Catoosa)SS

On this 9 day of September 2024, before me personally appeared, Bruce E. Smith and Rebecca J. Smith, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Notary Signature: [Signature]
Notary Printed Name: _____
Notary Public for Catoosa County
Commission Number _____
My Commission Expires: _____

My Commission Expires June 30, 2028

Babetta S. Drake

Babetta S. Drake

STATE OF TENNESSEE)
)SS
COUNTY OF Bedford)

On this 12th day of September 2024, before me personally appeared, Babetta S. Drake, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Notary Signature: Tracey L. Pierce
Notary Printed Name: Tracey L. Pierce
Notary Public for Bedford County
Commission Number _____
My Commission Expires: 10/13/2027

City of Franklin
By:

Steve Barnett, Mayor

Dated: _____

STATE OF INDIANA)
)SS
COUNTY OF JOHNSON)

On this __ day of _____ 2024, before me personally appeared, City of Franklin, by its Mayor, Steve Barnett, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: _____
Notary Printed Name: _____
Notary Public for _____ County
Commission Number: _____
My Commission Expires: _____

This Instrument Prepared By: Stephen L. Huddleston, Attorney-at-Law, Huddleston & Huddleston, Clarke House, 98 West Jefferson Street, Franklin, IN 46131, at the specific request of the Owners and is based solely on information supplied by City and without examination for accuracy. This preparer assumes no liability for any errors, inaccuracy or omissions in this Agreement resulting from the information provided. The Parties accept this disclaimer by their execution of this Agreement.

EXHIBIT A
OWNERS PARCELS

Charles R. Smith and Sandra L. Smith Parcel

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:

Beginning at the Southeast Corner of said quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the East Line of said quarter section 2699.45 feet to the Northeast Corner of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along the North line of said quarter section 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.26 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along the South line of said quarter section 412.50 feet to the point of beginning, containing 25.56 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

Bruce E. Smith and Rebecca J. Smith Parcel

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:

Beginning at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 577.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said Quarter section 2700.58 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2701.39 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 421.50 feet to the point of beginning, containing 25.57 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

Babetta S. Drake Parcel

A part of the Southeast quarter of Section 27, township 13 North, range 4 East of the second principal meridian, Johnson County, Indiana, described as follows:

Commencing at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 412.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said quarter section 2700.26 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 165.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.58 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 165.00 feet to the point of beginning, containing 10.23 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

EXHIBIT B
TEMPORARY EASEMENT AREA

Charles R. Smith and Sandra L. Smith Temporary Easement Area

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:
Beginning at the Southeast Corner of said quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the East Line of said quarter section 2699.45 feet to the Northeast Corner of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along the North line of said quarter section 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.26 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along the South line of said quarter section 412.50 feet to the point of beginning, containing 25.56 acres, more or less. Containing in said nineteen-foot strip 0.180 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

Bruce E. Smith and Rebecca J. Smith Temporary Easement Area

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:
Beginning at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 577.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said Quarter section 2700.58 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said Quarter section 2701.39 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 421.50 feet to the point of beginning, containing 25.57 acres, more or less. Containing in said nineteen-foot strip 0.180 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

Babetta S. Drake Temporary Easement Area

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 North, range 4 East of the second principal meridian, Johnson County, Indiana, described as follows: Commencing at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 412.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said quarter section 2700.26 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 165.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.58 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 165.00 feet to the point of beginning, containing 10.23 acres, more or less. Containing in said nineteen-foot strip 0.072 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

EXHIBIT C
TEMPORARY CONSTRUCTION EASEMENTS FORM

Cross Reference

CROSS-REFERENCE: In accordance with Ind. Code § 32-23-2-5(a), the easement described herein burdens real estate acquired pursuant to Instrument No. 2004-005838 recorded in the Office of the Recorder of Johnson County, Indiana.

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made this ___ day of _____ 2024 by and between, the CITY OF FRANKLIN, a municipality organized and formed under the laws of the State of Indiana by and through its Board of Public Works and Safety, and its successors and assigns, ("City"); and Charles R. and Sandra L. Smith, individuals, of Hoopston, Illinois, 60942, ("Owner") (City and Owner, referred to individually, as a "Party," and collectively as the "Parties").

RECITALS

WHEREAS, Owner is the owner of certain real estate located in Franklin, Indiana 46131 as Parcel Number 41-05-27-041-018.001-033 and more particularly described in attached Exhibit "A" ("Owner Parcel");

WHEREAS, the City has acquired certain real estate for the purpose of construction of certain road improvements at the intersection of Graham Road and Paul Hand Road that is adjacent to the Owner's Parcel ("Road Improvements");

WHEREAS, the Owner Parcel and the Road Improvements are adjacent;

WHEREAS, City desires a temporary construction easement across the Owner Parcel, that is more particularly described and depicted in attached Exhibit "B" ("Temporary Easement") for the construction of the road improvements on Paul Hand Road ("Road Improvements") ;

WHEREAS, Owner desire to grant said temporary construction easement to the City, subject to the conditions set for in this Agreement;

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants, and agreements herein contained, and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and the above recitals and mutual covenants set forth herein, the Parties agree as follows:

SECTION 1. REPRESENTATIONS, ACKNOWLEDGEMENTS AND COVENANTS

- 1.1 Recitals. The above Recitals and Exhibits are true and accurate in all respects and incorporated within this Agreement as if fully rewritten. The

Recitals and Exhibits set forth above accurately describe the Owner Parcel and Temporary Easement Area and the desires of the Parties;

- 1.1 True and Correct Statement. As a condition to the signing of this Agreement, the Parties are relying on the truth, completeness, and correctness of the statements and representations made herein, including the Recitals and Exhibits, and represent for themselves that this Agreement contains no material misrepresentations or omissions by any of the Parties to this Agreement;
- 1.2 Good Faith. As of the Effective Date, Parties and their agents have acted at all times in a fair and reasonable manner, and in good faith, in connection with their negotiations in connection with this Agreement. The execution and delivery of this Agreement by the Parties was and is their free and voluntary act and deed, without any misapprehension as to the effect thereof, and without any coercion, duress, overreaching or any other misconduct by the other Party or their agent;
- 1.3 Legal Counsel. The Parties have had the opportunity to consult legal counsel concerning the execution and delivery of this Agreement;
- 1.4 Authority of Owner to Execute the Agreement;
 - (a) The execution, delivery, and performance by Owner of the Agreement and the other documents referred to herein which are required to be executed and delivered by Owner:
 - (i) Are within their powers and authority;
 - (ii) Do not contravene its Partnership Agreement, or any amendments thereto;
 - (iii) Do not contravene any agreements;
 - (b) No authorization or approval or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Owner of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of the Owner, as appropriate, in accordance with their respective terms.
- 1.5 Authority of the City to Execute Agreement;
 - (a) The execution, delivery and performance by the City of the Agreement:
 - (i) Are within its powers and authority;

- (ii) Do not contravene its ordinances or laws of the State of Indiana;
 - (iii) Do not contravene any agreements;
 - (iv) That the undersigned representative of the City is authorized to act on behalf of and bind the City.
 - (b) No authorization or approval or action by, and no notice to or filing with any other governmental authority or regulatory body is required for the due execution, delivery, and performance by the City of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of City, as appropriate, in accordance with their respective terms.
- 1.6 Owner Parcel Representations. Owner represents and warrants, as of the Effective Date, that:
- (a) Owner is the sole owner of the Owner Parcel;
 - (b) There are no liens or encumbrances as to the Owner Parcel;
 - (c) There are no pending litigation relating to the Owner Parcel;
 - (d) Owner has not:
 - (i) Sold, assigned, pledged or transferred any of their rights, title or interest in the Owner Parcel;
 - (ii) Made a general assignment for the benefit of creditors;
 - (iii) Filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by their creditors;
 - (iv) Suffered the appointment of a receiver to take possession of all, or substantially all, of their assets; or
 - (v) Suffered the attachment or other judicial seizure of all, or substantially all, of their assets.
 - (e) Owner's representations and warranties in this Agreement are and shall be true and correct at the Closing Date and shall survive the Effective Date.
- 1.7 Capitalized Terms. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the documents referenced in this Agreement.

SECTION 2. GRANT OF EASEMENT

- 2.1 Owner hereby grants to City, its members, employees, contractors, invitees, and agents (collectively, "City Permittees"), a temporary, exclusive right, privilege and easement for the benefit of the City on, over, under, across and through that portion of the Owner Parcel, which is more particularly described in Exhibit B, Temporary Easement;
- 2.2 The City's use pursuant to such Temporary Easement shall not unreasonably interfere with the use, operation and enjoyment of the Owner Parcel;
- 2.3 The Easement shall be for the benefit of the Road Improvements and shall run with the Owner Parcel and shall be binding upon the successors and assigns of all persons and entities owning the Owner Parcel and shall benefit the successors and assigns of all persons and entities owning the Road Improvements and be for the exclusive use of the City only.

SECTION 3. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

- 3.1 Liens. City shall not permit any lien to remain against the Temporary Easement Area in connection with its use of or activities within the Temporary Easement. City shall indemnify, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any liens asserted against the Temporary Easement Area as the result of City's use of or activities in the Temporary Easement;
- 3.2 Term and Modification. The Temporary Easement granted herein shall be extinguished and become void and revert to the Owner and/or the Owner's successor(s) in title upon completion of the construction of the Road Improvements or after the 15th day of December 2025 whichever shall occur first. Said extinguishment shall be evidenced by a release document, which shall be executed and recorded by the City, at no cost to the Owner. Upon failure of the City to record said release, the Owner shall have the right to record a notice of termination, without consent from the City.

SECTION 4. PROTECTION OF THE IMPROVEMENTS

- 4.1 Owner shall at all times have the right to occupy the Temporary Easement Area; provided, that use of the Temporary Easement Area by Owner does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the Road Improvements.

SECTION 5. INDEMNIFICATION

- 5.1 City hereby agrees to indemnify, release, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any liens asserted against the Temporary Easement Area as the result of City's use of or activities in the Temporary Easement;

fees) resulting from or arising out of City's use of the Temporary Easement Area and the Temporary Easement.

SECTION 6. DAMAGES

- 6.1 Damages Caused by City. City agrees to repair or pay Owner for actual damages sustained by Owner to fences, gates, irrigation and drainage systems, drives, and crops that are permitted herein, when such damages arise out of City's assigns, agents, contractors, or sub-contractors.

SECTION 7. SEVERABILITY

- 7.1 If any provision of this Agreement or a portion thereof or the application thereof as to any person or circumstance shall be held invalid, inoperable or unenforceable, the remainder of this Agreement or the application of such remaining provision or portion thereof to any person or persons or circumstances shall not be affected;
- 7.2 It shall not be deemed that any such invalid provision affects consideration of the Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 8. NOTICES

- 8.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 8; or d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 8 as follows:

To City:

City of Franklin
Office of the Mayor
70 East Monroe Street
Franklin, Indiana 46131

With copy to (not constituting notice):

Lynnette Gray (not constituting notice)
City Attorney
Johnson, Gray and Johnson

63 East Court Street
Franklin, Indiana 46131

To Owner:

Charles R. and Sandra L. Smith
929 North Market Street
Hoopeston, Illinois 60942-1270

With a copy to (not constituting notice):

Stephen L. Huddleston
Huddleston & Huddleston
98 West Jefferson Street
Franklin Indiana 46131

- 8.2 Either Party may change their address for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

SECTION 9. GOVERNING LAW

- 9.1 This Agreement shall be construed in accordance with the laws of the State of Indiana;
- 9.2 This Agreement has been entered into in Indiana and shall be performable for all purposes in such State.

SECTION 10. ATTORNEY FEES

- 10.1 In any legal or equitable proceeding to determine the rights of the Parties to enforce or restrain the breach of this Agreement, the losing Party or Parties, as determined by the court, hearing officer, other tribunal, or arbiter utilized for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing Party or Parties;
- 10.2 Prevailing Party shall include, but not be limited to, a Party who obtains legal counsel or brings an action against the other by reasons of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

SECTION 11. AMENDMENT AND ENTIRETY OF AGREEMENT

- 11.1 No waiver of or consent to any departure from any provision hereof shall be effective unless in writing and signed by the authorized representative of the Party against whom such a waiver or consent is asserted and shall be effective only in the specific instance and for the purpose for which given and to the extent specified in such writing;

- 11.2 No delay or omission by any Party hereto to exercise any right or remedy upon the happening of any event of default hereunder shall impair such right or remedy or be deemed to be a waiver of such event of default;
- 11.3 This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, agreements and understandings relative to such subject matter.

SECTION 12. COUNTERPARTS

- 12.1 This Agreement may be executed in multiple counterparts, each of which shall contain an original, and all of which taken together shall constitute one and the same agreement; provided, however, that the Agreement shall be of no force or effect until signed by all Parties hereto.

SECTION 13. CAPTIONS

- 13.1 The captions and headings of the various sections and paragraphs of this Agreement have been inserted only for the purpose of convenience of reference;
- 13.2 Such captions are not a part of this Agreement and shall not be deemed, in any manner, to modify, enlarge or restrict any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Easement to be executed as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]

Charles R. Smith

Sandra L. Smith

STATE OF ILLINOIS)
)SS
COUNTY OF _____)

On this ___ day of _____ 2024, before me personally appeared,
Charles R. Smith and Sandra L. Smith, to me known to be the persons described in and
who executed the foregoing instrument and acknowledged that they executed the same
as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal in the County and State aforesaid, the day and year first above written.

Notary Signature: _____
Notary Printed Name: _____
Notary Public for _____ County
Commission Number _____
My Commission Expires: _____

City of Franklin

By:

Steve Barnett, Mayor

Dated: _____

STATE OF INDIANA)
)SS
COUNTY OF JOHNSON)

On this ____ day of _____ 2024, before me personally appeared, City of Franklin, by its Mayor, Steve Barnett, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: _____

Notary Printed Name: _____

Notary Public for _____ County

Commission Number: _____

My Commission Expires: _____

This Instrument Prepared By: Stephen L. Huddleston, Attorney-at-Law, Huddleston & Huddleston, Clarke House, 98 West Jefferson Street, Franklin, IN 46131, at the specific request of the Owner and is based solely on information supplied by City and without examination for accuracy. This preparer assumes no liability for any errors, inaccuracy or omissions in this Agreement resulting from the information provided. The Parties accept this disclaimer by their execution of this Agreement.

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.

/s/Stephen L. Huddleston

EXHIBIT "A"
OWNER PARCEL
LEGAL DESCRIPTION

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:

Beginning at the Southeast Corner of said quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the East Line of said quarter section 2699.45 feet to the Northeast Corner of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along the North line of said quarter section 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.26 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along the South line of said quarter section 412.50 feet to the point of beginning, containing 25.56 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

EXHIBIT "B"
PAGE 1 OF 2
EASEMENT AREA
LEGAL DESCRIPTION

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:
Beginning at the Southeast Corner of said quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the East Line of said quarter section 2699.45 feet to the Northeast Corner of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along the North line of said quarter section 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.26 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along the South line of said quarter section 412.50 feet to the point of beginning, containing 25.56 acres, more or less. Containing in said nineteen-foot strip 0.180 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

EXHIBIT "B"
PAGE 2 OF 2

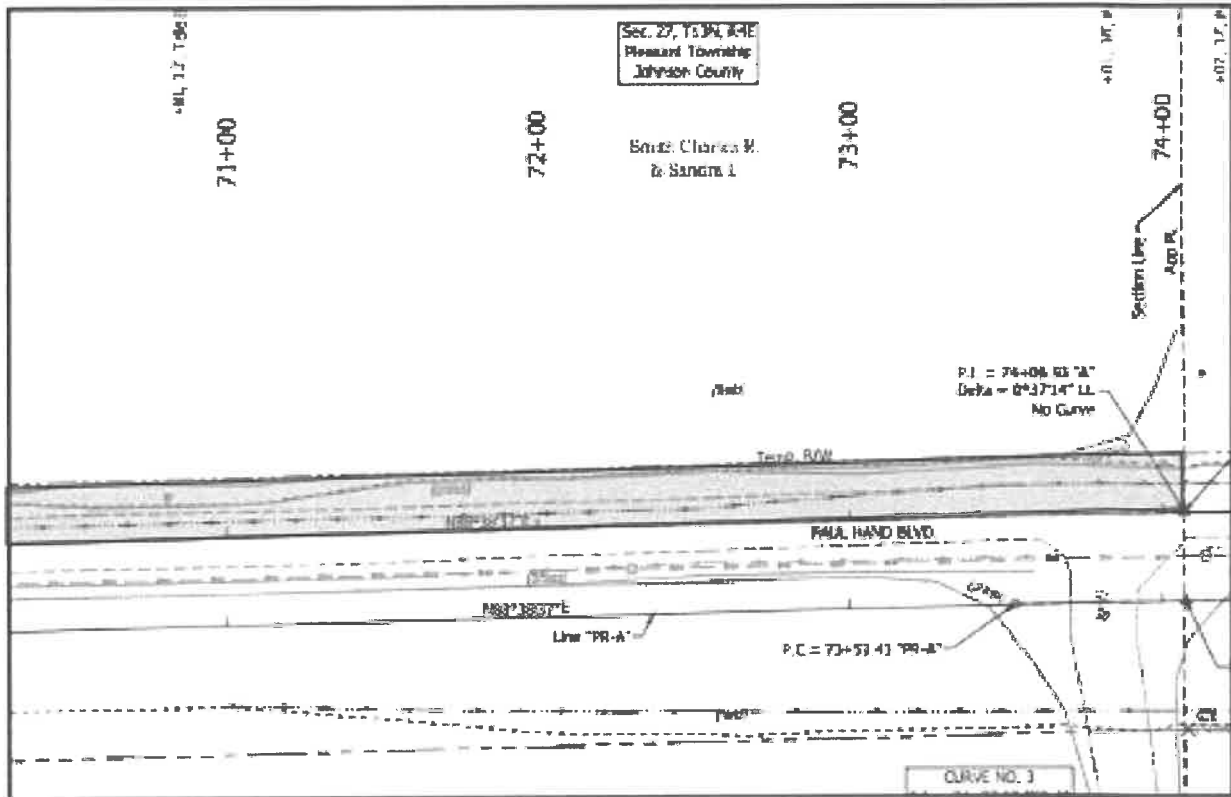
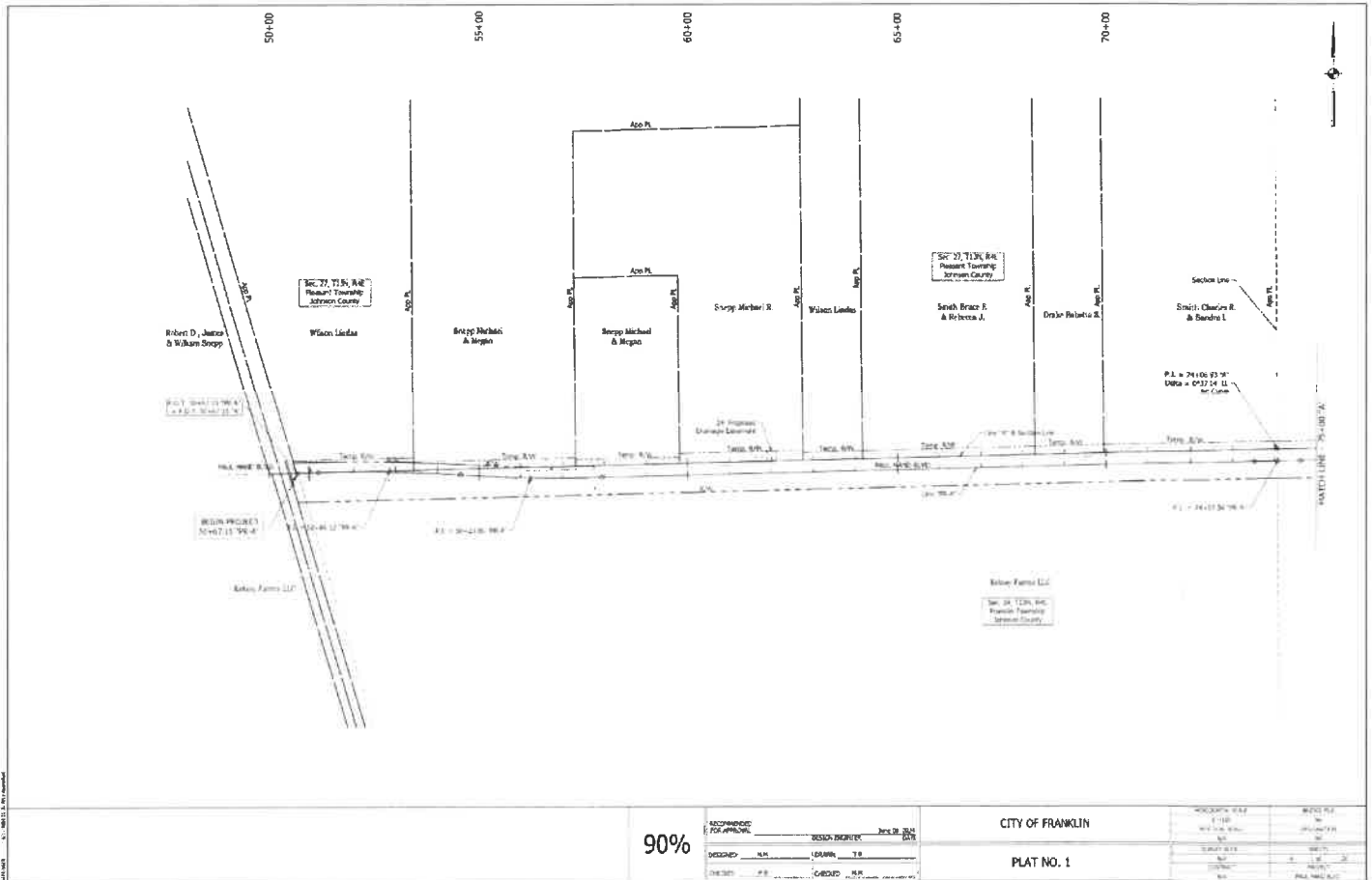


EXHIBIT D **CONSTRUCTION DRAWINGS**



Cross Reference

CROSS-REFERENCE: In accordance with Ind. Code § 32-23-2-5(a), the easement described herein burdens real estate acquired pursuant to Instrument No. 2004-005846 recorded in the Office of the Recorder of Johnson County, Indiana.

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made this ____ day of _____ 2024 by and between, the CITY OF FRANKLIN, a municipality organized and formed under the laws of the State of Indiana by and through its Board of Public Works and Safety, and its successors and assigns, ("City"); and Babetta S. Drake, an individual, of Shelbyville, Tennessee 37160, ("Owner") (City and Owner, referred to individually, as a "Party," and collectively as the "Parties").

RECITALS

WHEREAS, Owner is the owner of certain real estate located in Franklin, Indiana 46131 as Parcel Number 41-05-27-041-018.000-033 and more particularly described in attached Exhibit "A" ("Owner Parcel");

WHEREAS, the City has acquired certain real estate for the purpose of construction of certain road improvements at the intersection of Graham Road and Paul Hand Road that is adjacent to the Owner's Parcel ("Road Improvements");

WHEREAS, the Owner Parcel and the Road Improvements are adjacent;

WHEREAS, City desires a temporary construction easement across the Owner Parcel, that is more particularly described and depicted in attached Exhibit "B" ("Temporary Easement") for the construction of the road improvements on Paul Hand Road ("Road Improvements") ;

WHEREAS, Owner desire to grant said temporary construction easement to the City, subject to the conditions set for in this Agreement;

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants, and agreements herein contained, and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and the above recitals and mutual covenants set forth herein, the Parties agree as follows:

SECTION 1. REPRESENTATIONS, ACKNOWLEDGEMENTS AND COVENANTS

- 1.1 Recitals. The above Recitals and Exhibits are true and accurate in all respects and incorporated within this Agreement as if fully rewritten. The Recitals and

Exhibits set forth above accurately describe the Owner Parcel and Temporary Easement Area and the desires of the Parties;

- 1.2 True and Correct Statement. As a condition to the signing of this Agreement, the Parties are relying on the truth, completeness, and correctness of the statements and representations made herein, including the Recitals and Exhibits, and represent for themselves that this Agreement contains no material misrepresentations or omissions by any of the Parties to this Agreement;
- 1.3 Good Faith. As of the Effective Date, Parties and their agents have acted at all times in a fair and reasonable manner, and in good faith, in connection with their negotiations in connection with this Agreement. The execution and delivery of this Agreement by the Parties was and is their free and voluntary act and deed, without any misapprehension as to the effect thereof, and without any coercion, duress, overreaching or any other misconduct by the other Party or their agent;
- 1.4 Legal Counsel. The Parties have had the opportunity to consult legal counsel concerning the execution and delivery of this Agreement;
- 1.5 Authority of Owner to Execute the Agreement;
 - (a) The execution, delivery, and performance by Owner of the Agreement and the other documents referred to herein which are required to be executed and delivered by Owner:
 - (i) Are within their powers and authority;
 - (ii) Do not contravene its Partnership Agreement, or any amendments thereto;
 - (iii) Do not contravene any agreements;
 - (b) No authorization or approval or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Owner of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of the Owner, as appropriate, in accordance with their respective terms.
- 1.6 Authority of the City to Execute Agreement;
 - (a) The execution, delivery and performance by the City of the Agreement:
 - (i) Are within its powers and authority;
 - (ii) Do not contravene its ordinances or laws of the State of Indiana;

- (iii) Do not contravene any agreements;
 - (iv) That the undersigned representative of the City is authorized to act on behalf of and bind the City.
 - (b) No authorization or approval or action by, and no notice to or filing with any other governmental authority or regulatory body is required for the due execution, delivery, and performance by the City of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of City, as appropriate, in accordance with their respective terms.
- 1.7 Owner Parcel Representations. Owner represents and warrants, as of the Effective Date, that:
- (a) Owner is the sole owner of the Owner Parcel;
 - (b) There are no liens or encumbrances as to the Owner Parcel;
 - (c) There are no pending litigation relating to the Owner Parcel;
 - (d) Owner has not:
 - (i) Sold, assigned, pledged or transferred any of their rights, title or interest in the Owner Parcel;
 - (ii) Made a general assignment for the benefit of creditors;
 - (iii) Filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by their creditors;
 - (iv) Suffered the appointment of a receiver to take possession of all, or substantially all, of their assets; or
 - (v) Suffered the attachment or other judicial seizure of all, or substantially all, of their assets.
 - (e) Owner's representations and warranties in this Agreement are and shall be true and correct at the Closing Date and shall survive the Effective Date.
- 1.8 Capitalized Terms. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the documents referenced in this Agreement.

SECTION 2. GRANT OF EASEMENT

- 2.1 Owner hereby grants to City, its members, employees, contractors, invitees, and agents (collectively, "City Permittees"), a temporary, exclusive right, privilege and easement for the benefit of the City on, over, under, across and through that portion of the Owner Parcel, which is more particularly described in Exhibit B, Temporary Easement;
- 2.2 The City's use pursuant to such Temporary Easement shall not unreasonably interfere with the use, operation and enjoyment of the Owner Parcel;
- 2.3 The Easement shall be for the benefit of the Road Improvements and shall run with the Owner Parcel and shall be binding upon the successors and assigns of all persons and entities owning the Owner Parcel and shall benefit the successors and assigns of all persons and entities owning the Road Improvements and be for the exclusive use of the City only.

SECTION 3. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

- 3.1 Liens. City shall not permit any lien to remain against the Temporary Easement Area in connection with its use of or activities within the Temporary Easement. City shall indemnify, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any liens asserted against the Temporary Easement Area as the result of City's use of or activities in the Temporary Easement;
- 3.2 Term and Modification. The Temporary Easement granted herein shall be extinguished and become void and revert to the Owner and/or the Owner's successor(s) in title upon completion of the construction of the Road Improvements or after the 15th day of December 2025 whichever shall occur first. Said extinguishment shall be evidenced by a release document, which shall be executed and recorded by the City, at no cost to the Owner. Upon failure of the City to record said release, the Owner shall have the right to record a notice of termination, without consent from the City.

SECTION 4. PROTECTION OF THE IMPROVEMENTS

- 4.1 Owner shall at all times have the right to occupy the Temporary Easement Area; provided, that use of the Temporary Easement Area by Owner does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the Road Improvements.

SECTION 5. INDEMNIFICATION

- 5.1 City hereby agrees to indemnify, release, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting

from or arising out of City's use of the Temporary Easement Area and the Temporary Easement.

SECTION 6. DAMAGES

- 6.1 Damages Caused by City. City agrees to repair or pay Owner for actual damages sustained by Owner to fences, gates, irrigation and drainage systems, drives, and crops that are permitted herein, when such damages arise out of City's assigns, agents, contractors, or sub-contractors.

SECTION 7. SEVERABILITY

- 7.1 If any provision of this Agreement or a portion thereof or the application thereof as to any person or circumstance shall be held invalid, inoperable or unenforceable, the remainder of this Agreement or the application of such remaining provision or portion thereof to any person or persons or circumstances shall not be affected;
- 7.2 It shall not be deemed that any such invalid provision affects consideration of the Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 8. NOTICES

- 8.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 8; or d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 8 as follows:

To City:

City of Franklin
Office of the Mayor
70 East Monroe Street
Franklin, Indiana 46131

With copy to (not constituting notice):

Lynnette Gray (not constituting notice)
City Attorney
Johnson, Gray and Johnson
63 East Court Street
Franklin, Indiana 46131

To Owner:

Babetta S. Drake
414 Regent Drive
Shelbyville, Tennessee 37160

With a copy to (not constituting notice):

Stephen L. Huddleston
Huddleston & Huddleston
98 West Jefferson Street
Franklin Indiana 46131

- 8.2 Either Party may change their address for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

SECTION 9. GOVERNING LAW

- 9.1 This Agreement shall be construed in accordance with the laws of the State of Indiana;
- 9.2 This Agreement has been entered into in Indiana and shall be performable for all purposes in such State.

SECTION 10. ATTORNEY FEES

- 10.1 In any legal or equitable proceeding to determine the rights of the Parties to enforce or restrain the breach of this Agreement, the losing Party or Parties, as determined by the court, hearing officer, other tribunal, or arbiter utilized for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing Party or Parties;
- 10.2 Prevailing Party shall include, but not be limited to, a Party who obtains legal counsel or brings an action against the other by reasons of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

SECTION 11. AMENDMENT AND ENTIRETY OF AGREEMENT

- 11.1 No waiver of or consent to any departure from any provision hereof shall be effective unless in writing and signed by the authorized representative of the Party against whom such a waiver or consent is asserted and shall be effective only in the specific instance and for the purpose for which given and to the extent specified in such writing;
- 11.2 No delay or omission by any Party hereto to exercise any right or remedy upon the happening of any event of default hereunder shall impair such right or remedy or be deemed to be a waiver of such event of default;
- 11.3 This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, agreements and understandings relative to such subject matter.

SECTION 12. COUNTERPARTS

- 12.1 This Agreement may be executed in multiple counterparts, each of which shall contain an original, and all of which taken together shall constitute one and the same agreement; provided, however, that the Agreement shall be of no force or effect until signed by all Parties hereto.

SECTION 13. CAPTIONS

- 13.1 The captions and headings of the various sections and paragraphs of this Agreement have been inserted only for the purpose of convenience of reference;
- 13.2 Such captions are not a part of this Agreement and shall not be deemed, in any manner, to modify, enlarge or restrict any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Easement to be executed as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]

Babetta S. Drake
Babetta S. Drake

STATE OF TENNESSEE)
)SS
COUNTY OF Bedford)

On this 12th day of September 2024, before me personally appeared, Babetta S. Drake, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Notary Signature: Tracey L. Pierce
Notary Printed Name: Tracey L. Pierce
Notary Public for Bedford County
Commission Number _____
My Commission Expires: 10/13/2027

City of Franklin

By: _____

Steve Barnett, Mayor

Dated: _____

STATE OF INDIANA)
)SS
COUNTY OF JOHNSON)

On this ___ day of _____ 2024, before me personally appeared, City of Franklin, by its Mayor, Steve Barnett, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: _____

Notary Printed Name: _____

Notary Public for _____ County

Commission Number: _____

My Commission Expires: _____

This Instrument Prepared By: Stephen L. Huddleston, Attorney-at-Law, Huddleston & Huddleston, Clarke House, 98 West Jefferson Street, Franklin, IN 46131, at the specific request of the Owner and is based solely on information supplied by City and without examination for accuracy. This preparer assumes no liability for any errors, inaccuracy or omissions in this Agreement resulting from the information provided. The Parties accept this disclaimer by their execution of this Agreement.

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.

/s/Stephen L. Huddleston

EXHIBIT "A"
OWNER PARCEL
LEGAL DESCRIPTION

A part of the Southeast quarter of Section 27, township 13 North, range 4 East of the second principal meridian, Johnson County, Indiana, described as follows:

Commencing at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 412.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said quarter section 2700.26 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 165.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.58 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 165.00 feet to the point of beginning, containing 10.23 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

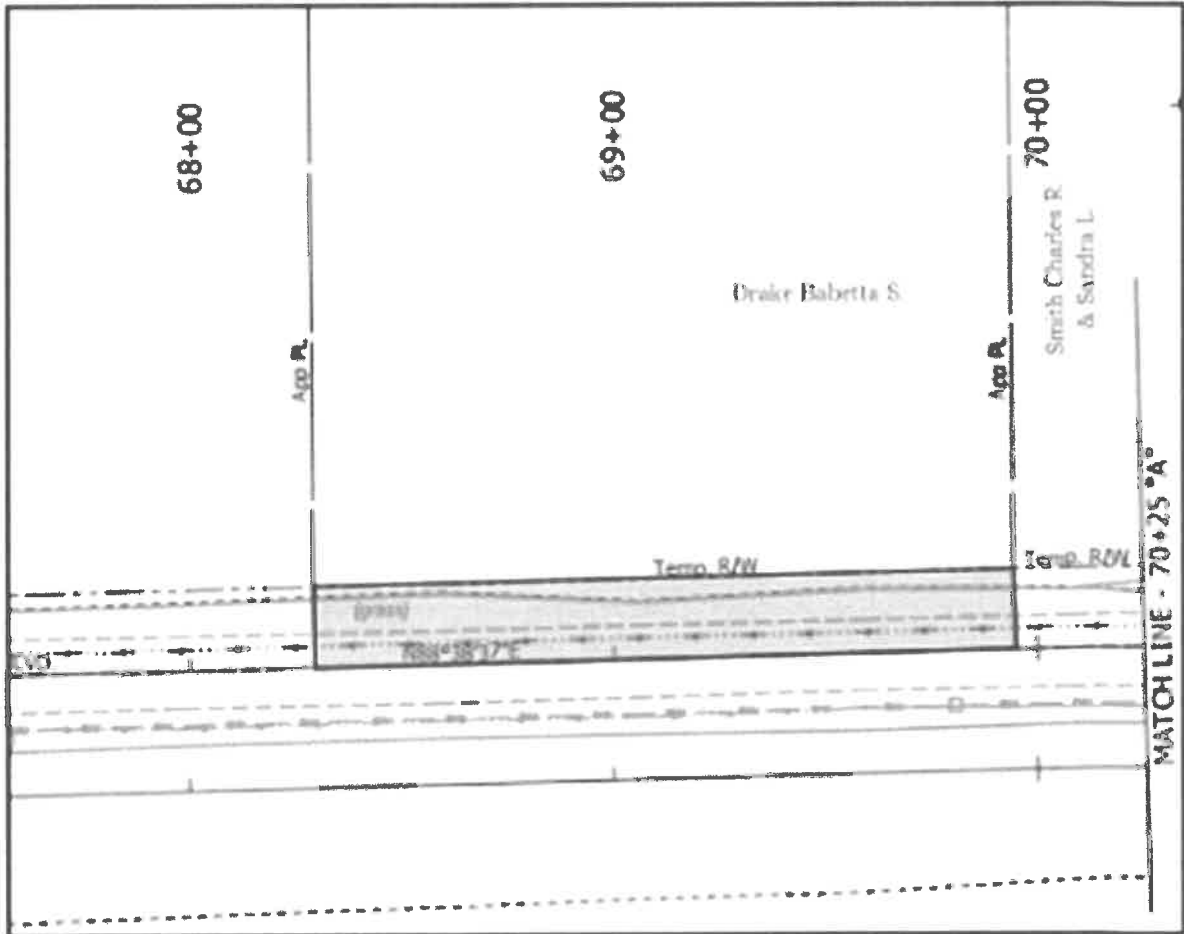
EXHIBIT "B"
PAGE 1 OF 2
EASEMENT AREA
LEGAL DESCRIPTION

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 North, range 4 East of the second principal meridian, Johnson County, Indiana, described as follows: Commencing at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 412.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said quarter section 2700.26 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 165.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.58 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 165.00 feet to the point of beginning, containing 10.23 acres, more or less. Containing in said nineteen-foot strip 0.072 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

EXHIBIT "B"
PAGE 2 OF 2



Cross Reference

CROSS-REFERENCE: In accordance with Ind. Code § 32-23-2-5(a), the easement described herein burdens real estate acquired pursuant to Instrument No. 2004-005842 recorded in the Office of the Recorder of Johnson Couty, Indiana.

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made this ____ day of _____ 2024 by and between, the CITY OF FRANKLIN, a municipality organized and formed under the laws of the State of Indiana by and through its Board of Public Works and Safety, and its successors and assigns, ("City"); and Bruce E. Smith and Rebecca J. Smith, individuals, of Flintstone, Georgia, 30725, ("Owner") (City and Owner, referred to individually, as a "Party," and collectively as the "Parties").

RECITALS

WHEREAS, Owner is the owner of certain real estate located in Franklin, Indiana 46131 as Parcel Number 41-05-27-041-018.002-033 and more particularly described in attached Exhibit "A" ("Owner Parcel");

WHEREAS, the City has acquired certain real estate for the purpose of construction of certain road improvements at the intersection of Graham Road and Paul Hand Road that is adjacent to the Owner's Parcel ("Road Improvements");

WHEREAS, the Owner Parcel and the Road Improvements are adjacent;

WHEREAS, City desires a temporary construction easement across the Owner Parcel, that is more particularly described and depicted in attached Exhibit "B" ("Temporary Easement") for the construction of the road improvements on Paul Hand Road ("Road Improvements") ;

WHEREAS, Owner desire to grant said temporary construction easement to the City, subject to the conditions set for in this Agreement;

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants, and agreements herein contained, and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and the above recitals and mutual covenants set forth herein, the Parties agree as follows:

SECTION 1. REPRESENTATIONS, ACKNOWLEDGEMENTS AND COVENANTS

- 1.1 Recitals. The above Recitals and Exhibits are true and accurate in all respects and incorporated within this Agreement as if fully rewritten. The Recitals and Exhibits set forth above accurately describe the Owner Parcel and Temporary Easement Area and the desires of the Parties;
- 1.2 True and Correct Statement. As a condition to the signing of this Agreement, the Parties are relying on the truth, completeness, and correctness of the statements and representations made herein, including the Recitals and Exhibits, and represent for themselves that this Agreement contains no material misrepresentations or omissions by any of the Parties to this Agreement;
- 1.3 Good Faith. As of the Effective Date, Parties and their agents have acted at all times in a fair and reasonable manner, and in good faith, in connection with their negotiations in connection with this Agreement. The execution and delivery of this Agreement by the Parties was and is their free and voluntary act and deed, without any misapprehension as to the effect thereof, and without any coercion, duress, overreaching or any other misconduct by the other Party or their agent;
- 1.4 Legal Counsel. The Parties have had the opportunity to consult legal counsel concerning the execution and delivery of this Agreement;
- 1.5 Authority of Owner to Execute the Agreement;
 - (a) The execution, delivery, and performance by Owner of the Agreement and the other documents referred to herein which are required to be executed and delivered by Owner:
 - (i) Are within their powers and authority;
 - (ii) Do not contravene its Partnership Agreement, or any amendments thereto;
 - (iii) Do not contravene any agreements;
 - (b) No authorization or approval or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Owner of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of the Owner, as appropriate, in accordance with their respective terms.
- 1.6 Authority of the City to Execute Agreement;
 - (a) The execution, delivery and performance by the City of the Agreement:

- (i) Are within its powers and authority;
 - (ii) Do not contravene its ordinances or laws of the State of Indiana;
 - (iii) Do not contravene any agreements;
 - (iv) That the undersigned representative of the City is authorized to act on behalf of and bind the City.
- (b) No authorization or approval or action by, and no notice to or filing with any other governmental authority or regulatory body is required for the due execution, delivery, and performance by the City of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of City, as appropriate, in accordance with their respective terms.

1.7 Owner Parcel Representations. Owner represents and warrants, as of the Effective Date, that:

- (a) Owner is the sole owner of the Owner Parcel;
- (b) There are no liens or encumbrances as to the Owner Parcel;
- (c) There are no pending litigation relating to the Owner Parcel;
- (d) Owner has not:
 - (i) Sold, assigned, pledged or transferred any of their rights, title or interest in the Owner Parcel;
 - (ii) Made a general assignment for the benefit of creditors;
 - (iii) Filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by their creditors;
 - (iv) Suffered the appointment of a receiver to take possession of all, or substantially all, of their assets; or
 - (v) Suffered the attachment or other judicial seizure of all, or substantially all, of their assets.
- (e) Owner's representations and warranties in this Agreement are and shall be true and correct at the Closing Date and shall survive the Effective Date.

- 1.8 Capitalized Terms. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the documents referenced in this Agreement.

SECTION 2. GRANT OF EASEMENT

- 2.1 Owner hereby grants to City, its members, employees, contractors, invitees, and agents (collectively, "City Permittees"), a temporary, exclusive right, privilege and easement for the benefit of the City on, over, under, across and through that portion of the Owner Parcel, which is more particularly described in Exhibit B, Temporary Easement;
- 2.2 The City's use pursuant to such Temporary Easement shall not unreasonably interfere with the use, operation and enjoyment of the Owner Parcel;
- 2.3 The Easement shall be for the benefit of the Road Improvements and shall run with the Owner Parcel and shall be binding upon the successors and assigns of all persons and entities owning the Owner Parcel and shall benefit the successors and assigns of all persons and entities owning the Road Improvements and be for the exclusive use of the City only.

SECTION 3. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

- 3.1 Liens. City shall not permit any lien to remain against the Temporary Easement Area in connection with its use of or activities within the Temporary Easement. City shall indemnify, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any liens asserted against the Temporary Easement Area as the result of City's use of or activities in the Temporary Easement;
- 3.2 Term and Modification. The Temporary Easement granted herein shall be extinguished and become void and revert to the Owner and/or the Owner's successor(s) in title upon completion of the construction of the Road Improvements or after the 15th day of December 2025 whichever shall occur first. Said extinguishment shall be evidenced by a release document, which shall be executed and recorded by the City, at no cost to the Owner. Upon failure of the City to record said release, the Owner shall have the right to record a notice of termination, without consent from the City.

SECTION 4. PROTECTION OF THE IMPROVEMENTS

- 4.1 Owner shall at all times have the right to occupy the Temporary Easement Area; provided, that use of the Temporary Easement Area by Owner does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the Road Improvements.

SECTION 5. INDEMNIFICATION

- 5.1 City hereby agrees to indemnify, release, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of City's use of the Temporary Easement Area and the Temporary Easement.

SECTION 6. DAMAGES

- 6.1 Damages Caused by City. City agrees to repair or pay Owner for actual damages sustained by Owner to fences, gates, irrigation and drainage systems, drives, and crops that are permitted herein, when such damages arise out of City's assigns, agents, contractors, or sub-contractors.

SECTION 7. SEVERABILITY

- 7.1 If any provision of this Agreement or a portion thereof or the application thereof as to any person or circumstance shall be held invalid, inoperable or unenforceable, the remainder of this Agreement or the application of such remaining provision or portion thereof to any person or persons or circumstances shall not be affected;
- 7.2 It shall not be deemed that any such invalid provision affects consideration of the Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 8. NOTICES

- 8.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 8; or d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 8 as follows:

To City:

City of Franklin
Office of the Mayor
70 East Monroe Street
Franklin, Indiana 46131

With copy to (not constituting notice):

Lynnette Gray (not constituting notice)
City Attorney
Johnson, Gray and Johnson
63 East Court Street
Franklin, Indiana 46131

To Owner:

Bruce E. Smith and Rebecca J. Smith
75 Elaine Drive
Flintstone, Georgia 30725

With a copy to (not constituting notice):

Stephen L. Huddleston
Huddleston & Huddleston
98 West Jefferson Street
Franklin Indiana 46131

- 8.2 Either Party may change their address for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

SECTION 9. GOVERNING LAW

- 9.1 This Agreement shall be construed in accordance with the laws of the State of Indiana;
- 9.2 This Agreement has been entered into in Indiana and shall be performable for all purposes in such State.

SECTION 10. ATTORNEY FEES

- 10.1 In any legal or equitable proceeding to determine the rights of the Parties to enforce or restrain the breach of this Agreement, the losing Party or Parties, as determined by the court, hearing officer, other tribunal, or arbiter utilized for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing Party or Parties;
- 10.2 Prevailing Party shall include, but not be limited to, a Party who obtains legal counsel or brings an action against the other by reasons of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

SECTION 11. AMENDMENT AND ENTIRETY OF AGREEMENT

- 11.1 No waiver of or consent to any departure from any provision hereof shall be effective unless in writing and signed by the authorized representative of the Party against whom such a waiver or consent is asserted and shall be effective only in the specific instance and for the purpose for which given and to the extent specified in such writing;
- 11.2 No delay or omission by any Party hereto to exercise any right or remedy upon the happening of any event of default hereunder shall impair such right or remedy or be deemed to be a waiver of such event of default;
- 11.3 This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, agreements and understandings relative to such subject matter.

SECTION 12. COUNTERPARTS

- 12.1 This Agreement may be executed in multiple counterparts, each of which shall contain an original, and all of which taken together shall constitute one and the same agreement; provided, however, that the Agreement shall be of no force or effect until signed by all Parties hereto.

SECTION 13. CAPTIONS

- 13.1 The captions and headings of the various sections and paragraphs of this Agreement have been inserted only for the purpose of convenience of reference;
- 13.2 Such captions are not a part of this Agreement and shall not be deemed, in any manner, to modify, enlarge or restrict any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Easement to be executed as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]

Bruce E. Smith
Bruce E. Smith
Rebecca J. Smith
Rebecca J. Smith

STATE OF GEORGIA)

COUNTY OF ~~Hall~~ ^{SS} Catoosa

On this 9 day of September 2024, before me personally appeared, Bruce E. Smith and Rebecca J. Smith, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Notary Signature: [Signature]
Notary Printed Name: _____
Notary Public for Catoosa County
Commission Number _____
My Commission Expires: _____

My Commission Expires June 30, 2028

City of Franklin

By: _____

Steve Barnett, Mayor

Dated: _____

STATE OF INDIANA)
)SS
COUNTY OF JOHNSON)

On this ___ day of _____ 2024, before me personally appeared, City of Franklin, by its Mayor, Steve Barnett, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: _____

Notary Printed Name: _____

Notary Public for _____ County

Commission Number: _____

My Commission Expires: _____

This Instrument Prepared By: Stephen L. Huddleston, Attorney-at-Law, Huddleston & Huddleston, Clarke House, 98 West Jefferson Street, Franklin, IN 46131, at the specific request of the Owner and is based solely on information supplied by City and without examination for accuracy. This preparer assumes no liability for any errors, inaccuracy or omissions in this Agreement resulting from the information provided. The Parties accept this disclaimer by their execution of this Agreement.

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.

/s/Stephen L. Huddleston

EXHIBIT "A"
OWNER PARCEL
LEGAL DESCRIPTION

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:

Beginning at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 577.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said Quarter section 2700.58 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2701.39 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 421.50 feet to the point of beginning, containing 25.57 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

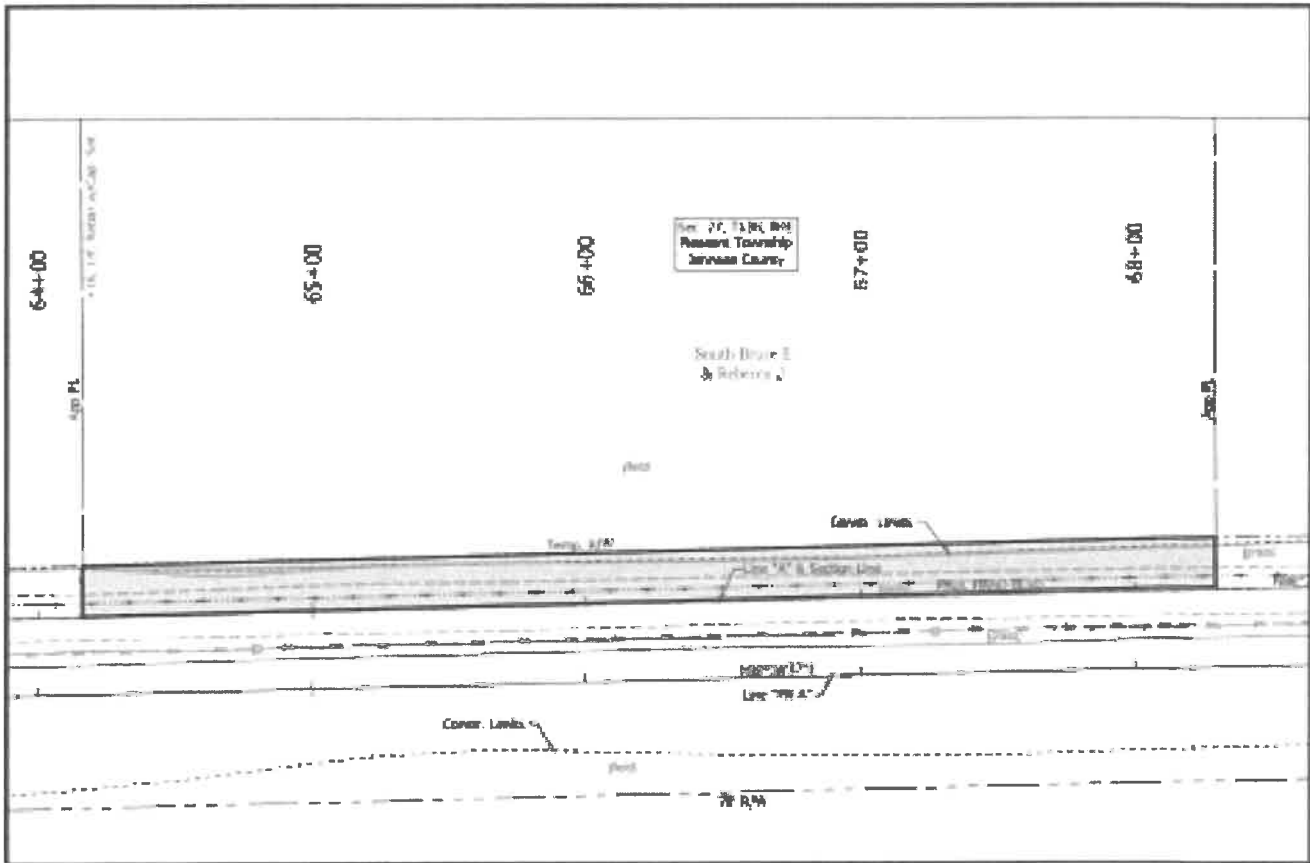
EXHIBIT "B"
PAGE 1 OF 2
EASEMENT AREA
LEGAL DESCRIPTION

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:
Beginning at the Southeast Corner of said quarter section; thence South 89 degrees 04 minutes 01 seconds West (assumed bearing) on and along the South Line of said quarter section 577.50 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East parallel to the East line of said Quarter section 2700.58 feet to the North line of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along said North line 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said Quarter section 2701.39 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along said South line 421.50 feet to the point of beginning, containing 25.57 acres, more or less. Containing in said nineteen-foot strip 0.180 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

EXHIBIT "B"
PAGE 2 OF 2



Cross Reference

CROSS-REFERENCE: In accordance with Ind. Code § 32-23-2-5(a), the easement described herein burdens real estate acquired pursuant to Instrument No. 2004-005838 recorded in the Office of the Recorder of Johnson County, Indiana.

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made this ____ day of _____ 2024 by and between, the CITY OF FRANKLIN, a municipality organized and formed under the laws of the State of Indiana by and through its Board of Public Works and Safety, and its successors and assigns, ("City"); and Charles R. Smith and Sandra L. Smith, individuals, of Hoopeston, Illinois 60942, ("Owner") (City and Owner, referred to individually, as a "Party," and collectively as the "Parties").

RECITALS

WHEREAS, Owner is the owner of certain real estate located in Franklin, Indiana 46131 as Parcel Number 41-05-27-041-018.001-033 and more particularly described in attached Exhibit "A" ("Owner Parcel");

WHEREAS, the City has acquired certain real estate for the purpose of construction of certain road improvements at the intersection of Graham Road and Paul Hand Road that is adjacent to the Owner's Parcel ("Road Improvements");

WHEREAS, the Owner Parcel and the Road Improvements are adjacent;

WHEREAS, City desires a temporary construction easement across the Owner Parcel, that is more particularly described and depicted in attached Exhibit "B" ("Temporary Easement") for the construction of the road improvements on Paul Hand Road ("Road Improvements") ;

WHEREAS, Owner desire to grant said temporary construction easement to the City, subject to the conditions set for in this Agreement;

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants, and agreements herein contained, and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and the above recitals and mutual covenants set forth herein, the Parties agree as follows:

SECTION 1. REPRESENTATIONS, ACKNOWLEDGEMENTS AND COVENANTS

- 1.1 Recitals. The above Recitals and Exhibits are true and accurate in all respects and incorporated within this Agreement as if fully rewritten. The Recitals and Exhibits set forth above accurately describe the Owner Parcel and Temporary Easement Area and the desires of the Parties;
- 1.2 True and Correct Statement. As a condition to the signing of this Agreement, the Parties are relying on the truth, completeness, and correctness of the statements and representations made herein, including the Recitals and Exhibits, and represent for themselves that this Agreement contains no material misrepresentations or omissions by any of the Parties to this Agreement;
- 1.3 Good Faith. As of the Effective Date, Parties and their agents have acted at all times in a fair and reasonable manner, and in good faith, in connection with their negotiations in connection with this Agreement. The execution and delivery of this Agreement by the Parties was and is their free and voluntary act and deed, without any misapprehension as to the effect thereof, and without any coercion, duress, overreaching or any other misconduct by the other Party or their agent;
- 1.4 Legal Counsel. The Parties have had the opportunity to consult legal counsel concerning the execution and delivery of this Agreement;
- 1.5 Authority of Owner to Execute the Agreement;
 - (a) The execution, delivery, and performance by Owner of the Agreement and the other documents referred to herein which are required to be executed and delivered by Owner:
 - (i) Are within their powers and authority;
 - (ii) Do not contravene its Partnership Agreement, or any amendments thereto;
 - (iii) Do not contravene any agreements;
 - (b) No authorization or approval or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Owner of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of the Owner, as appropriate, in accordance with their respective terms.
- 1.6 Authority of the City to Execute Agreement;
 - (a) The execution, delivery and performance by the City of the Agreement:

- (i) Are within its powers and authority;
 - (ii) Do not contravene its ordinances or laws of the State of Indiana;
 - (iii) Do not contravene any agreements;
 - (iv) That the undersigned representative of the City is authorized to act on behalf of and bind the City.
- (b) No authorization or approval or action by, and no notice to or filing with any other governmental authority or regulatory body is required for the due execution, delivery, and performance by the City of this Agreement or any of the agreements or documents referred to herein;
 - (c) This Agreement and the other documents create and constitute legal, valid, enforceable and binding obligations of City, as appropriate, in accordance with their respective terms.

1.7 Owner Parcel Representations. Owner represents and warrants, as of the Effective Date, that:

- (a) Owner is the sole owner of the Owner Parcel;
- (b) There are no liens or encumbrances as to the Owner Parcel;
- (c) There are no pending litigation relating to the Owner Parcel;
- (d) Owner has not:
 - (i) Sold, assigned, pledged or transferred any of their rights, title or interest in the Owner Parcel;
 - (ii) Made a general assignment for the benefit of creditors;
 - (iii) Filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by their creditors;
 - (iv) Suffered the appointment of a receiver to take possession of all, or substantially all, of their assets; or
 - (v) Suffered the attachment or other judicial seizure of all, or substantially all, of their assets.
- (e) Owner's representations and warranties in this Agreement are and shall be true and correct at the Closing Date and shall survive the Effective Date.

- 1.8 Capitalized Terms. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the documents referenced in this Agreement.

SECTION 2. GRANT OF EASEMENT

- 2.1 Owner hereby grants to City, its members, employees, contractors, invitees, and agents (collectively, "City Permittees"), a temporary, exclusive right, privilege and easement for the benefit of the City on, over, under, across and through that portion of the Owner Parcel, which is more particularly described in Exhibit B, Temporary Easement;
- 2.2 The City's use pursuant to such Temporary Easement shall not unreasonably interfere with the use, operation and enjoyment of the Owner Parcel;
- 2.3 The Easement shall be for the benefit of the Road Improvements and shall run with the Owner Parcel and shall be binding upon the successors and assigns of all persons and entities owning the Owner Parcel and shall benefit the successors and assigns of all persons and entities owning the Road Improvements and be for the exclusive use of the City only.

SECTION 3. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

- 3.1 Liens. City shall not permit any lien to remain against the Temporary Easement Area in connection with its use of or activities within the Temporary Easement. City shall indemnify, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any liens asserted against the Temporary Easement Area as the result of City's use of or activities in the Temporary Easement;
- 3.2 Term and Modification. The Temporary Easement granted herein shall be extinguished and become void and revert to the Owner and/or the Owner's successor(s) in title upon completion of the construction of the Road Improvements or after the 15th day of December 2025 whichever shall occur first. Said extinguishment shall be evidenced by a release document, which shall be executed and recorded by the City, at no cost to the Owner. Upon failure of the City to record said release, the Owner shall have the right to record a notice of termination, without consent from the City.

SECTION 4. PROTECTION OF THE IMPROVEMENTS

- 4.1 Owner shall at all times have the right to occupy the Temporary Easement Area; provided, that use of the Temporary Easement Area by Owner does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the Road Improvements.

SECTION 5. INDEMNIFICATION

- 5.1 City hereby agrees to indemnify, release, hold harmless and defend Owner, and their successors and assigns, for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of City's use of the Temporary Easement Area and the Temporary Easement.

SECTION 6. DAMAGES

- 6.1 Damages Caused by City. City agrees to repair or pay Owner for actual damages sustained by Owner to fences, gates, irrigation and drainage systems, drives, and crops that are permitted herein, when such damages arise out of City's assigns, agents, contractors, or sub-contractors.

SECTION 7. SEVERABILITY

- 7.1 If any provision of this Agreement or a portion thereof or the application thereof as to any person or circumstance shall be held invalid, inoperable or unenforceable, the remainder of this Agreement or the application of such remaining provision or portion thereof to any person or persons or circumstances shall not be affected;
- 7.2 It shall not be deemed that any such invalid provision affects consideration of the Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 8. NOTICES

- 8.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 8; or d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 8 as follows:

To City:

City of Franklin
Office of the Mayor
70 East Monroe Street
Franklin, Indiana 46131

With copy to (not constituting notice):

Lynnette Gray (not constituting notice)
City Attorney
Johnson, Gray and Johnson
63 East Court Street
Franklin, Indiana 46131

To Owner:

Charles R. Smith and Sandra L. Smith
929 North Market Street
Hoopeston, Illinois 60942-1270

With a copy to (not constituting notice):

Stephen L. Huddleston
Huddleston & Huddleston
98 West Jefferson Street
Franklin Indiana 46131

- 8.2 Either Party may change their address for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

SECTION 9. GOVERNING LAW

- 9.1 This Agreement shall be construed in accordance with the laws of the State of Indiana;
- 9.2 This Agreement has been entered into in Indiana and shall be performable for all purposes in such State.

SECTION 10. ATTORNEY FEES

- 10.1 In any legal or equitable proceeding to determine the rights of the Parties to enforce or restrain the breach of this Agreement, the losing Party or Parties, as determined by the court, hearing officer, other tribunal, or arbiter utilized for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing Party or Parties;
- 10.2 Prevailing Party shall include, but not be limited to, a Party who obtains legal counsel or brings an action against the other by reasons of the other's breach or

default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

SECTION 11. AMENDMENT AND ENTIRETY OF AGREEMENT

- 11.1 No waiver of or consent to any departure from any provision hereof shall be effective unless in writing and signed by the authorized representative of the Party against whom such a waiver or consent is asserted and shall be effective only in the specific instance and for the purpose for which given and to the extent specified in such writing;
- 11.2 No delay or omission by any Party hereto to exercise any right or remedy upon the happening of any event of default hereunder shall impair such right or remedy or be deemed to be a waiver of such event of default;
- 11.3 This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, agreements and understandings relative to such subject matter.

SECTION 12. COUNTERPARTS

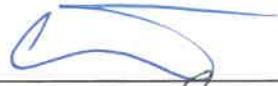
- 12.1 This Agreement may be executed in multiple counterparts, each of which shall contain an original, and all of which taken together shall constitute one and the same agreement; provided, however, that the Agreement shall be of no force or effect until signed by all Parties hereto.

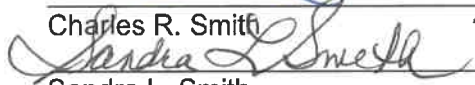
SECTION 13. CAPTIONS

- 13.1 The captions and headings of the various sections and paragraphs of this Agreement have been inserted only for the purpose of convenience of reference;
- 13.2 Such captions are not a part of this Agreement and shall not be deemed, in any manner, to modify, enlarge or restrict any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Easement to be executed as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]




Charles R. Smith


Sandra L. Smith

STATE OF ILLINOIS)
)SS
COUNTY OF Vermilion)

On this 10th day of September 2024, before me personally appeared, Charles R. Smith and Sandra L. Smith, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: 
Notary Printed Name: Janna S. Goodrum
Notary Public for Vermilion County
Commission Number 292075
My Commission Expires: 1-25-26



City of Franklin

By: _____

Steve Barnett, Mayor

Dated: _____

STATE OF INDIANA)
)SS
COUNTY OF JOHNSON)

On this ___ day of _____ 2024, before me personally appeared, City of Franklin, by its Mayor, Steve Barnett, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Signature: _____

Notary Printed Name: _____

Notary Public for _____ County

Commission Number: _____

My Commission Expires: _____

This Instrument Prepared By: Stephen L. Huddleston, Attorney-at-Law, Huddleston & Huddleston, Clarke House, 98 West Jefferson Street, Franklin, IN 46131, at the specific request of the Owner and is based solely on information supplied by City and without examination for accuracy. This preparer assumes no liability for any errors, inaccuracy or omissions in this Agreement resulting from the information provided. The Parties accept this disclaimer by their execution of this Agreement.

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.

s/Stephen L. Huddleston

EXHIBIT "A"
OWNER PARCEL
LEGAL DESCRIPTION

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:

Beginning at the Southeast Corner of said quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the East Line of said quarter section 2699.45 feet to the Northeast Corner of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along the North line of said quarter section 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.26 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along the South line of said quarter section 412.50 feet to the point of beginning, containing 25.56 acres, more or less.

Subject to all legal rights-of-way, easements, and restrictions of record.

EXHIBIT "B"
PAGE 1 OF 2
EASEMENT AREA
LEGAL DESCRIPTION

Nineteen feet by parallel lines off the entire South side of the following described tract of land:

A part of the Southeast quarter of section 27, township 13 north, range 4 east of the second principal meridian, Johnson County, Indiana, described as follows:
Beginning at the Southeast Corner of said quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the East Line of said quarter section 2699.45 feet to the Northeast Corner of said quarter section; thence South 89 degrees 10 minutes 46 seconds West on and along the North line of said quarter section 412.50 feet; thence South 00 degrees 00 minutes 00 seconds West parallel to the East line of said quarter section 2700.26 feet to the South line of said quarter section; thence North 89 degrees 04 minutes 01 seconds East on and along the South line of said quarter section 412.50 feet to the point of beginning, containing 25.56 acres, more or less. Containing in said nineteen-foot strip 0.180 acres, more or less.

All bearings in this description which are not quoted from previous instruments are based on the bearing system of the Location Control Route Survey recorded as Instrument Number 2023-020223 in the Office of the Recorder of Johnson County, Indiana.

EXHIBIT "B"
PAGE 2 OF 2

