ORDINANCE 87-30

TO RATIFY AND APPROVE AN
AGREEMENT IN LIEU OF ANNEXATION

BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The Agreement in Lieu of Annexation, attached hereto and incorporated herein, is hereby ratified and approved by the Common Council of the City of Bloomington.

SECTION II. The monies received by the City pursuant to this Agreement shall be deposited in the Special Non-Reverting Improvement Fund created by Ordinance 79-74, as amended by Ordinance 87-31.

SECTION III. Severability. If any section, sentence or provision of this Ordinance, or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION IV. This Ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 15 day of July, 1987.

Timothy Mayer, President
Bloomington Common Council

ATTEST:

Patricia Williams, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 16 day of July, 1987.

Patricia Williams, City Clerk

SIGNED AND APPROVED by me upon this 17th day of July, 1987.

Tomilea Allison, Mayor
City of Bloomington

SYNOPSIS

This Agreement in Lieu of Annexation provides for the payment of at least 2.1 million dollars to the City over a term of 15 years, in exchange for the agreement not to annex the parties prior to 2002. This Agreement replaces the 1979 Agreement, and includes payments of $375,000 for years of 1992-1994, for which no monies would have been received under the prior agreement.

Synopsis continued

Additionally, this Agreement establishes a Road and Traffic Improvement Account which dedicates monies to road and traffic improvements in the vicinity of the industries, and the industries agree to dedicate necessary right-of-way for such improvements.

Finally, the industries agree to secure and file dismissals of pending annexation challenges, and not to challenge any future annexations unless such annexation would give the City the required contiguity for annexation of an industrial party to the agreement.

AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of August, 1987, between the City of Bloomington, Indiana, hereinafter referred to as the "City", and the undersigned industries and businesses located in Richland and Van Buren Townships and that part of Bloomington Township located West of the Four-Lane #37 By-Pass and South of State Road #46, in Monroe county, Indiana, referred to as the "Industries",

WITNESSETH:

WHEREAS, the City of Bloomington and the Industries located in the vicinity of, but beyond the corporate limits of the City, recognize mutual interests and benefits in relationship to each other; and the Industries desire to share some of the financial support of the City; and the City desires to create a favorable environment for employment and capital expansion for the Industries; and,

WHEREAS, the City is empowered by Ind. Code §36-4-3-21 to enter into agreements to receive payments or contributions from parties owning or leasing land outside the corporate boundaries; and

WHEREAS, the City recognizes that the potential for impending inclusion of the Industries into the corporate limits of the City creates industrial planning concerns in terms of expansion, and that the encouragement of industrial expansion by these Industries via an agreement in lieu of annexation with a specified term is in the mutual best interests of the City and the Industries; it is with such understanding that this agreement is entered into.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS OF THE PARTIES, IT IS AGREED AND STIPULATED AS FOLLOWS:

1. The term of this Agreement shall be fifteen (15) years, commencing on the 15th day of August, 1987, and ending fifteen (15) years thereafter on the 14th day of August, 2002.

2. The parties hereto agree and declare as follows:

A) the Industries are a distinct asset to the Bloomington community;

B) the Industries, and each of them, benefit both directly and indirectly by the fact of their residence in the Bloomington community;

C) it is to the mutual interests of the parties hereto and to the community in general that the Industries receive services of the City and share the financial support of the City;

D) such mutual interests can best be served by the Industries making the payments herein stipulated to the City on a contractual basis, rather than by annexation of the Industries' properties to the City.

3. It is agreed between the City and the Industries that the Industries will pay to the City a minimum of two million one hundred thirty seven thousand five hundred dollars ($2,137,500) during the term of this Agreement as more fully specified below:

a) See Exhibit "A" attached hereto and incorporated herein.

b) The Industries shall make the payment in the proportion as follows:

General Electric Company	28.7%
Otis Elevator Company	26.6%
Westinghouse Electric Corporation	24.3%
Wetterau, Inc.	15.8%
Cook, Inc.	4.6%

c) Additional industries which become parties to this Agreement on or before August 15, 1987, shall enjoy a grace period of five (5) years before they share in the payment commitment. Commencing in November of 1992, all participating industries as of August 15, 1987, will redistribute their cost share of the minimum payment according to

comparative assessed valuations as of March 1, 1991.

4. Additional industries which become parties to this Agreement after August 15, 1987, shall also enjoy a five (5) year grace period before payments commence. Said industries shall pay seventeen percent (17%) of their assessed valuation as of March 1 of the year their payments commence times the then current tax rate of the City of Bloomington, with fifty percent (50%) of the amount serving as a credit to reduce the share paid by the other industries, and fifty percent (50%) increasing the amount over the minimum guaranteed payment of one hundred twenty-five thousand dollars ($125,000) or one hundred fifty thousand dollars ($150,000). However, Parties in Paragraph (3)(b) shall not guarantee the payment of increases of the minimum referred to by this paragraph.

5. The yearly payments shall be made in two (2) equal installments, payable to the City of Bloomington, on or before the first Monday of May and the first Monday of November of each year, beginning in November of 1987, with final payment due in November of 2002. Payments shall be mailed to the City Controller, P.O. Box 100 Bloomington, Indiana 47402.

6. There is hereby created a dedicated portion of the monies received pursuant to the Agreement to be known as the "Road and Traffic Improvement Account" within the Special Non-Reverting Improvement I Fund. The City shall dedicate an initial contribution of two hundred thousand dollars ($200,000) from the above-referenced Special Non-Reverting Improvement I Fund, from funds previously paid under the Agreement of October 5, 1979, into the "Road and Traffic Improvement Account."

Additionally, the City shall dedicate fifty percent (50%) of all future increases in payments which occur pursuant to Paragraph 4 of this Agreement and may include amounts as recommended by Paragraph 7(c) of this Agreement into said account. The Joint Committee created herein in Paragraph 7 shall make recommendations toward the expenditure of said monies.

7. There is hereby created a "Joint Committee" to be comprised of the following appointments: two representatives of the Industries, to be selected jointly by the original five industries which are parties to the Agreement, two representatives of the City Administration, to be appointed by the Mayor; one representative of the Common Council; one representative to the other industries in the vicinity of the parties to the Agreement which become parties to the Agreement prior to August 15, 1987; one representative of Monroe County, to be appointed by County Commissioners; and the Director of Economic Development. Terms of appointment shall be for a period of two (2) years. The Committee shall have the following responsibilities:

a) To encourage the addition of non-party industries into the terms and conditions of this Agreement pursuant to Paragraph 4;

b) To formulate priorities and assist in plans for utilization of the monies dedicated to road and traffic improvements in the vicinity of the Industries, including specifically the improvement and widening of Curry Pike and its connecting roads to the east;

c) To develop a system for the recognition of the contribution of industrial expansion and new jobs to the community, whereby a specific formula shall be calculated and recommended to the City to dedicate additional monies into the road and traffic improvement fund based upon increased payroll and capital improvements of the Industries.

d) To commence negotiations in 1991 for consideration of extension of this Agreement in 1992 through 2007.

8. The Industries hereby agree in principle to donate right-of-way necessary for road and traffic improvements, and to assist in the application procedures for state and federal monies for such improvements for the mutual benefit of the City, County, and Industries.

9. The Industries hereby agree to secure and file dismissals without prejudice on or before August 15, 1987, for the three pending challenges to Ordinance 86-52, which annexes a parcel of property on West Third Street into the City of Bloomington (Cause Numbers 53D018612CP0533, 53D038612CP0534, 53D038612CP0535 now pending in the Monroe County Superior Courts).

The industries which are parties to this agreement as of August 15, 1987 agree not to file any lawsuits that challenge annexation efforts of the City unless those efforts purport to annex the property of a party to this agreement or property which would give the City the required contiguity for annexation under Indiana Law.

Any attempt by the City to annex property which would give the City the required contiguity for annexation or any attempt by the City to annex property located in Richland or Van Buren Township currently owned by a party to this agreement (or subsequently acquired in reasonable expectation of expansion of the existing operations of that party) shall be considered an attempt to annex the property of that party and a breach of this agreement on the part of the City.

Annexation of the currently existing commercial development known as Marsh Food Store, Big Lots and the adjoining commercial development shall not be considered a breach of this Agreement; said area is delineated in Exhibit "B" which is attached hereto and incorporated herein. It is understood that

annexation may only encompass those parts of the property that are currently covered by commercial development (parking lots and buildings) on the date of this agreement.

Annexation of the currently existing commercial development known as Whitehall Plaza shall not be considered a breach of this Agreement; provided, however, this only applies to those portions of Whitehall Plaza that are currently developed and covered by parking lots and buildings as delineated in Exhibit "C" which is attached hereto and incorporated herein.

Industries which become parties after August 15, 1987 shall not file suit to challenge any annexation efforts of the City unless those efforts purport to annex the property of such industry.

10. In consideration of the covenants and monetary contributions of the Industries, the City agrees that the real property of the Industries which are parties hereto shall not be subject to annexation by the City prior to fifteen (15) years from the effective date of this Agreement.

11. Except as limited by the provisions in Paragraph 6 of this Agreement, all funds herein provided for to be paid by the Industries to the City may be used for any legal public purpose.

12. The City agrees that it will continue to furnish to the Industries municipal services, both governmental and proprietary, of the same nature and the same level as it is providing the Industries at the time of the signing of this Agreement. The City shall not be obligated to provide other services than those being provided at the time of the signing of this Agreement or to provide said services to another location.

13. It is expressly understood and agreed that this Agreement is the individual contract of each of the Industries with the City, and that the obligations herein provided for are several and not joint as to the Industries; and that the obligations assumed herein by each of the industries is limited

to its payments as specified in Paragraph 3 and does not extend to the payments of any other Industry.

14. The Industries agree to be bound by their obligations contained herein for the full term of this Agreement even in the event that they might cease operation or remove their plant or operations to a new location.

15. Any Industry which is a party to this Agreement, upon the sale or lease or sublease of any of its Bloomington area business facilities or a part thereof, may, but need not, assign all or part of its rights and obligations hereunder to such purchaser, lessee or sub-lessee. In the event of such an assignment, such purchaser, lessee or sub-lessee shall become a party to this Agreement, the seller or lessor relieved of its obligation hereunder and the new party and the City bound by the terms hereof. Such conveyance or assignment shall not alter the obligation or rights of the City as contained herein.

16. In the event that any party to this Agreement fails to timely perform any of the obligations specified in this Agreement, then the other party, after notice to such party as hereinafter provided, may: a) at its option, declare this Agreement null and void as to the breaching party; or b) deem such failure a breach of the Agreement. Provided however, if one of the five (5) Industries named in Paragraph 3(b) defaults, one or all of the remaining five (5) Industries have the right to cure that default. In the event of a default by one of the five Industries named in Paragraph 3(b), notice must be sent to all of the Industries named in Paragraph 3(b). Any default by an Industry not named in Paragraph 3(b) shall not operate as a default against the Industries named in Paragraph 3(b).

In the event a party feels a failure to perform an obligation of this Agreement has occurred, it shall notify the defaulting party by certified mail of said failure, specifying the date of said failure, specifying the date by which such failure should be corrected, and may then initiate any action at

law or equity to remedy such failure after the date specified if the default has not been cured. The date specified shall not be less than 60 days from the date of the notice. Any disputed amounts shall be placed with a mutually agreed upon escrow agent until such time as the dispute is resolved. Any payments made by the defaulting party under this Agreement shall remain with the other party as liquidated damages.

In the event the party deems that such failure renders this Agreement null and void, then it shall so notify the defaulting party by certified mail of the default and the date by which such failure must be corrected (which shall not be less than 60 days from the date of the Notice) and may proceed to institute any action it is legally authorized to initiate including but not limited to annexation of property owned or leased by the defaulting party, or obtaining an injunction or restraining order prohibiting annexation.

It is further agreed by the parties hereto that the failure of a party to pursue its remedies shall not be deemed a waiver of the right to proceed against the same party or any other party hereto at a future time.

17. Upon full approval of this Agreement by the City of Bloomington, the Bloomington Common Council, The Bloomington Board of Public Works and proper execution of this Agreement, this Agreement shall supersede the Agreement entered into the 5th day of October, 1979. This Agreement contains the terms of all conditions, covenants, rights, responsibilities, and understandings between the parties hereto. Provided, however, if a breach of Paragraph 9 of this Agreement by the five (5) Industries named in Paragraph 3(b) renders this Agreement null and void, then the previous Agreement executed the 5th day of October, 1979, shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is executed for and on behalf of the City of Bloomington, Indiana, by the Mayor and the Board of Public Works, and attested by the City Clerk and the seal of the City affixed, and the Industries have caused this

Agreement to be executed by their respective duly authorized officers and their corporate seals affixed, all as of the 15th day of August, 1987. This Agreement shall be in full force and effect when executed by the parties heretofore set forth and approved by the Common Council of the City of Bloomington, Indiana.

City of Bloomington, IN:

Mayor Tomilea Allison

Attest:

Patricia Williams, City Clerk

Board of Public Works:

Frank Hrisomalos

Tobiatha Eagleson

Martha Sims

Industries:

GENERAL ELECTRIC CO.

By: _____

Typed Name: Thomas E. Dunham

Title: Vice President Production Division

Date: July 28, 1987

OTIS ELEVATOR CO.

By: _____

Typed Name: Charles Diasparra

Title: Plant Mgr.

Date: 7/27/87

WESTINGHOUSE ELECTRIC CORPORATION

By: W. P. Westlake

Typed Name: W. P. Westlake

Title: General Manager

Date: 7/23/87

WETTERAU FOODS, INC.

By: John R. Mundell

Typed Name: _____

Title: President

Date: 7/23/87

COOK INC.

By: Phyllis E. McCullough

Typed Name: _____

Title: Vice President

Date: 7/23/87

ADDITIONAL PARTIES

The following parties being industries within the area described in the foregoing Agreement effective August 15, 1987 hereby join in said Agreement and agree to bound by the terms and obligations thereof and to receive the benefits thereof including the agreement of the City of Bloomington not to annex the land of the party during the time of the above agreement and all extensions thereof as long as the payments required and the above provisions of the Agreement are complied with.

INDUSTRY: SCHULTE CORPORATION

By: James R. Carlin

Typed Name: JAMES R. CARLIN

Title: CONTROLLER

Date: 8/13/87

INDUSTRY: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

WESTINGHOUSE ELECTRIC CORPORATION

By: W. P. Westlake

Typed Name: W. P. Westlake

Title: General Manager

Date: 7/23/87

WETTERAU FOODS, INC.

By: _____

Typed Name: John R. Abrell

Title: _____

Date: _____

COOK INC.

By: Phyllis E. McCullough

Typed Name: Phyllis E. McCullough

Title: Vice President

Date: 7/23/87

ADDITIONAL PARTIES

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INDUSTRY: Public Investment Corporation

By: Walter F. Roll

Typed Name: Walter F. Roll

Title: President

Date: August 3, 1987

INDUSTRY: DUNN, FERGUSON, RAGLE

By: _____

Typed Name: Charles H. Dunn, Jr., James H. Ferguson, Peggy J. Ragle

Title: Owners

Date: August 3, 1987

INDUSTRY: Exmin Corporation

By: [signature]

Typed Name: Derek G. Fullerton

Title: President

Date: August 14, 1987

INDUSTRY: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

INDUSTRY: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

INDUSTRY: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

INDUSTRY: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

INDUSTRY: SABIN CORPORATION

By: Donald R. Hollinger

Typed Name: Donald R. Hollinger

Title: President

Date: August 4, 1987

INDUSTRY: ATR Coil Company, Inc.

By: Roland F. Nobis

Typed Name: Roland F. Nobis

Title: President

Date: August 10, 1987

INDUSTRY: Whitestone Products

By: John Bennett

Typed Name: John Bennett

Title: Plant Manager

Date: August 13, 1987

CERTIFICATE

The City Controller hereby certifies that the foregoing additional owners of Industrial land became parties to the Agreement prior to August 15, 1987.

Beth Merrian
City Controller

ADDITIONAL PARTIES ADDED AFTER AUGUST 15, 1987 AS FOLLOWS:

INDUSTRY: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

Approved by City of Bloomington. The above party has been duly added to the Agreement.

_____
City Controller

INDUSTRY: _____

By:_____

Typed Name:_____

Title:_____

Date:_____

Approved by City of Bloomington. The above party has been duly added to the Agreement.

_____
City Controller

INDUSTRY: _____

By:_____

Typed Name:_____

Title:_____

Date:_____

Approved by City of Bloomington. The above party has been duly added to the Agreement.

_____
City Controller

INDUSTRY: _____

By:_____

Typed Name:_____

Title:_____

Date:_____

Approved by City of Bloomington. The above party has been duly added to the Agreement.

_____
City Controller

INDUSTRY: _____

By:_____

Typed Name:_____

Title:_____

Date:_____

Approved by City of Bloomington. The above party has been duly added to the Agreement.

_____
City Controller

Agree2:Westside disk

EXHIBIT A

Schedule of Payments

November 1987	$62,500
May 1988	$62,500
November 1988	$62,500
May 1989	$62,500
November 1989	$62,500
May 1990	$62,500
November 1990	$62,500
May 1991	$62,500
November 1991	$62,500
May 1992	$62,500
November 1992	$62,500
May 1993	$62,500
November 1993	$62,500
May 1994	$62,500
November 1994	$62,500
May 1995	$75,000
November 1995	$75,000
May 1996	$75,000
November 1996	$75,000
May 1997	$75,000
November 1997	$75,000
May 1998	$75,000
November 1998	$75,000
May 1999	$75,000
November 1999	$75,000
May 2000	$75,000
November 2000	$75,000
May 2001	$75,000
November 2001	$75,000
May 2002	$75,000
November 2002	$75,000

AGREEMENT OF EXEMPTION FROM ANNEXATION CHALLENGE

GENERAL LOCATION- A part of the area North of Hwy.48 (3rd St.), East of Curry Pike and West of the current Corporate Limits; also being a part of the Southeast Quarter of Section 36,T9N - R2W Monroe County, Indiana.

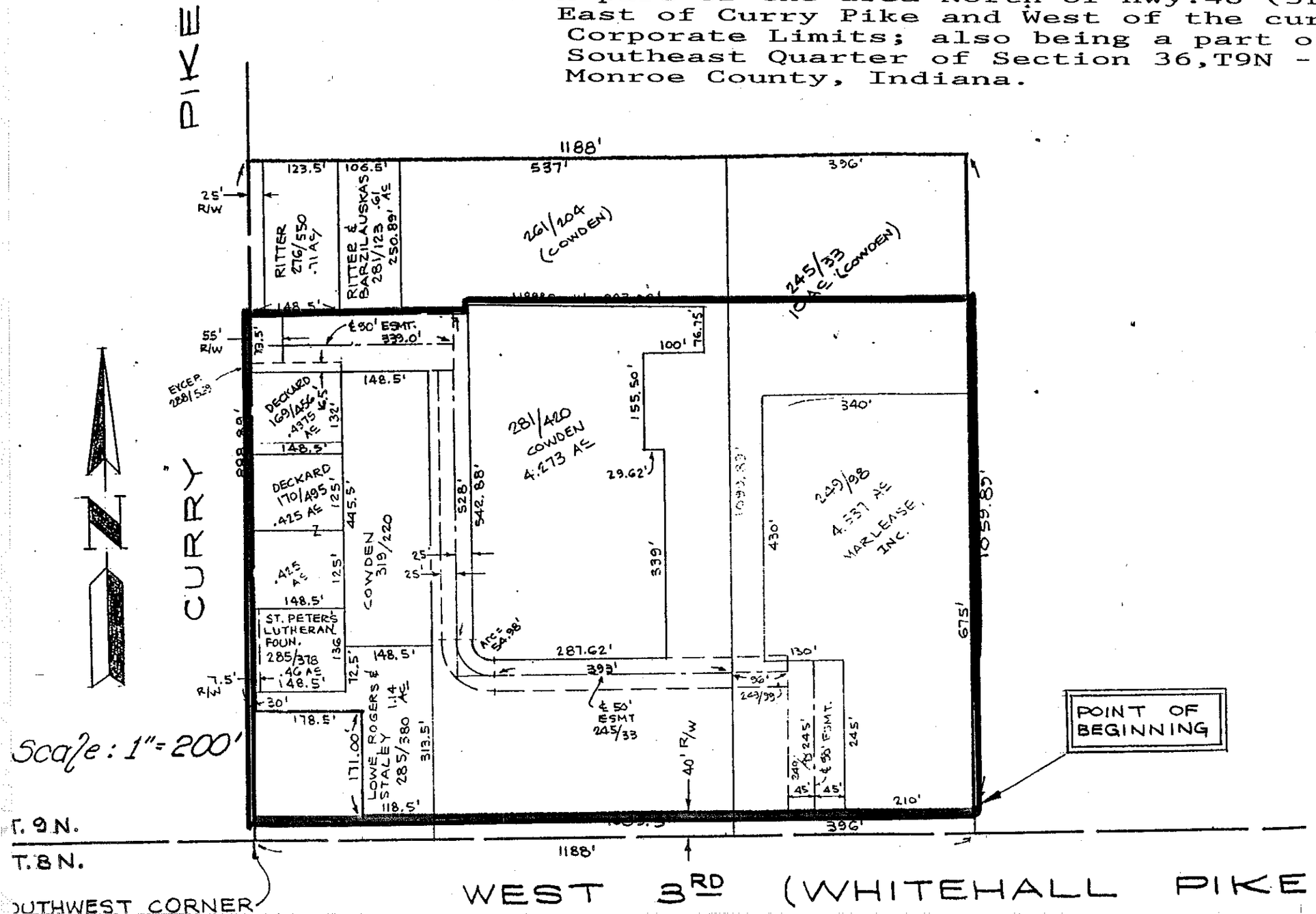


EXHIBIT B

AGREEMENT OF EXEMPTION FROM ANNEXATION CHALLENGE

GENERAL LOCATION- A part of the area South of Hwy.48 (3rd St.), East of Curry Pike and West of the current Corporate Limits; also being a part of the Northeast Quarter of Section 1, T8N - R2W Monroe County, Indiana.

N

Scale: 1"=200'

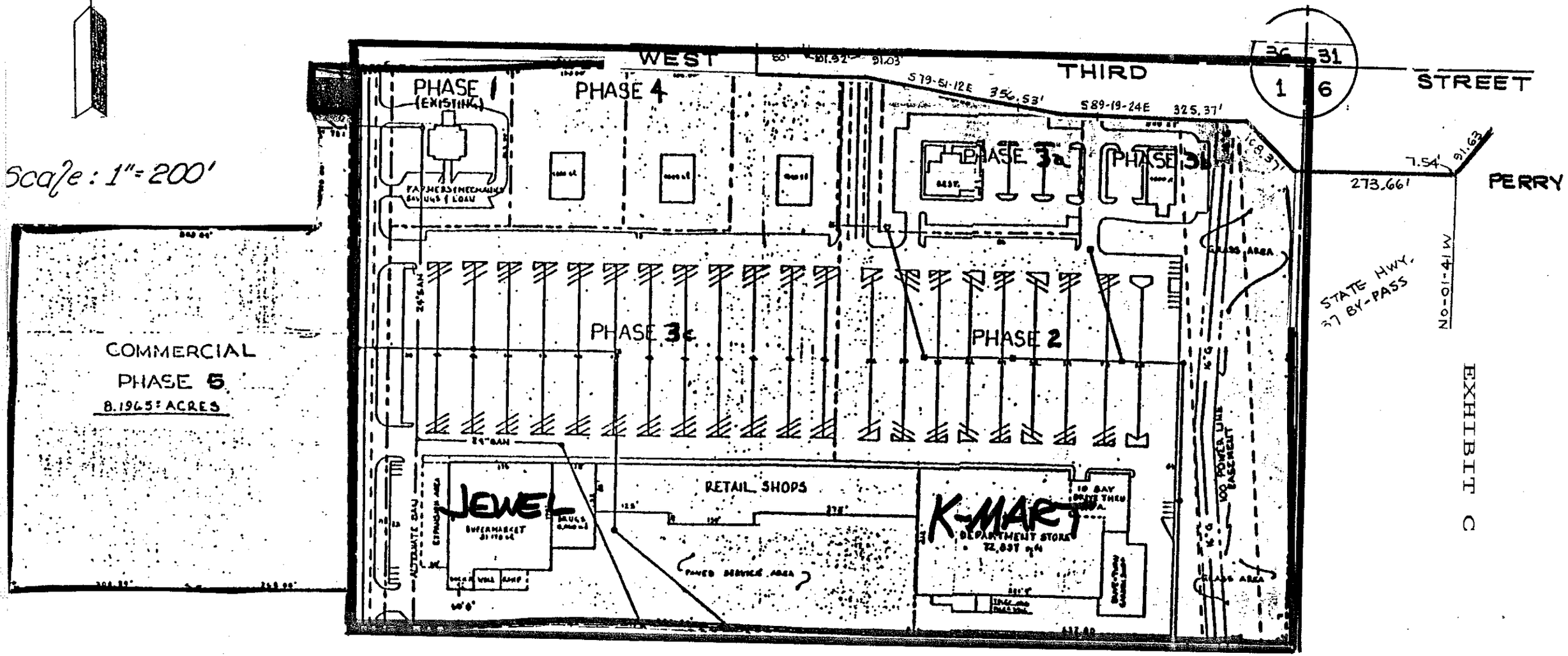
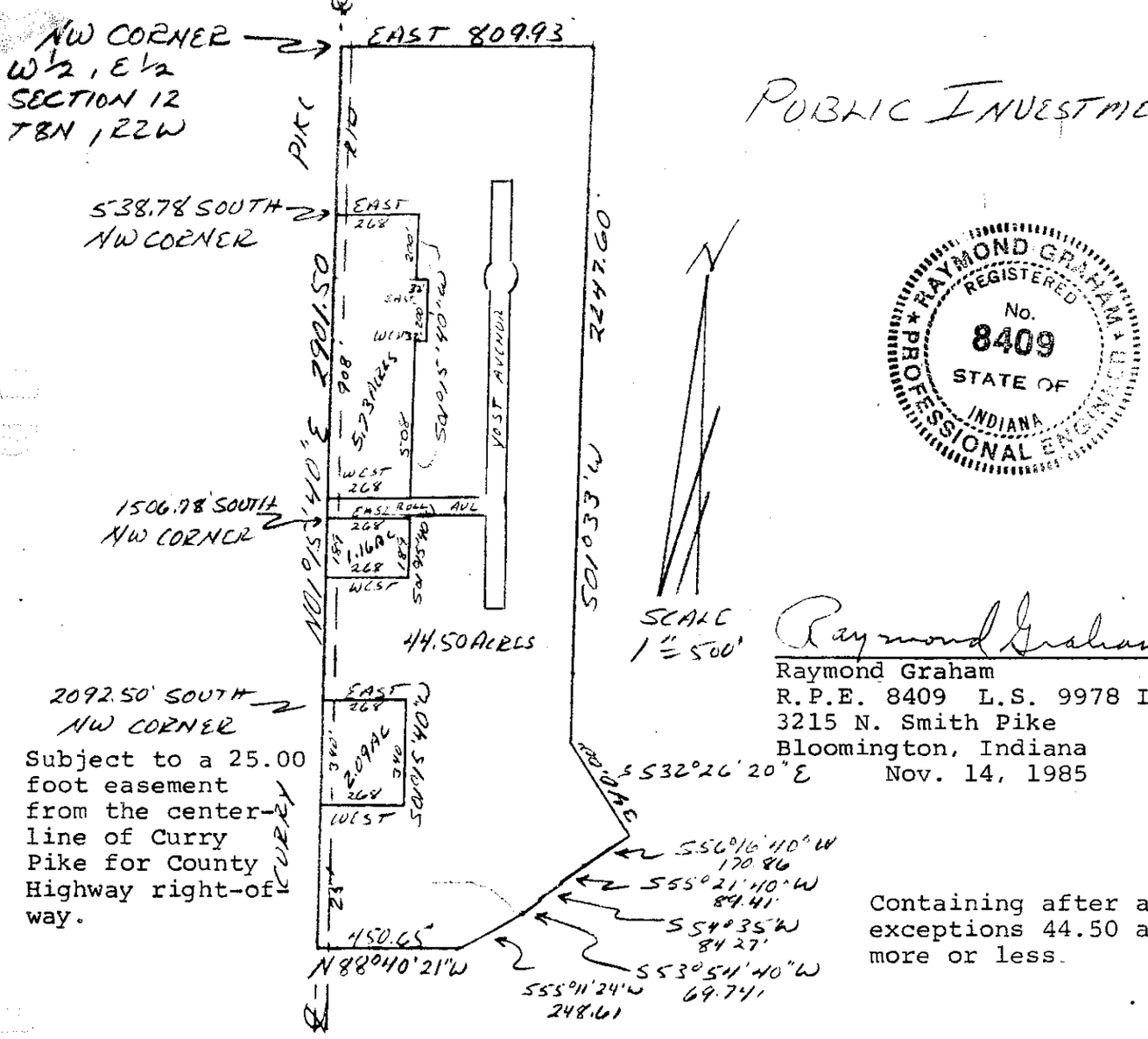


EXHIBIT C

PUBLIC INVESTMENT

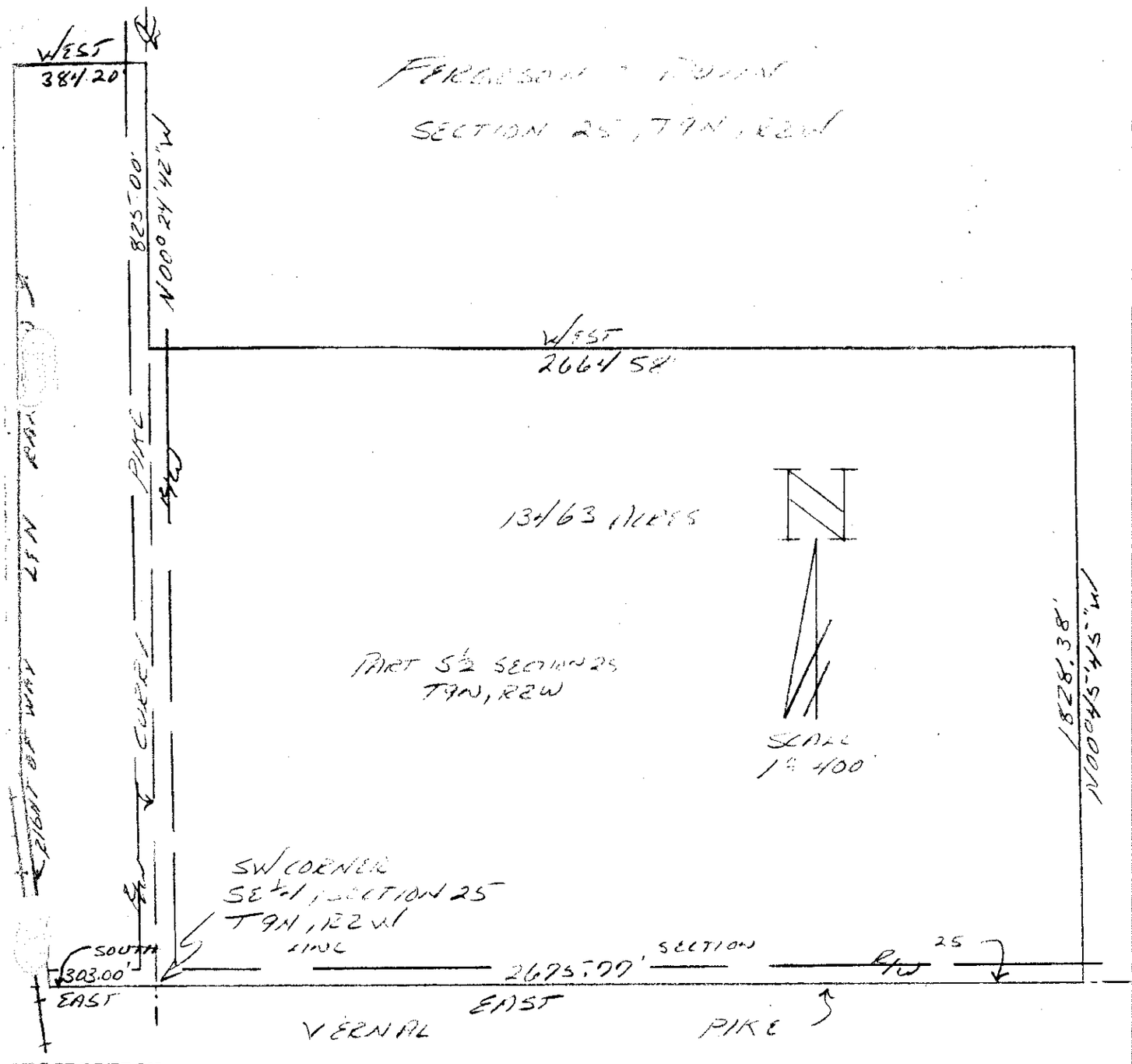


Raymond Graham
R.P.E. 8409 L.S. 9978 IND.
3215 N. Smith Pike
Bloomington, Indiana
Nov. 14, 1985

Subject to a 25.00 foot easement from the center-line of Curry Pike for County Highway right-of-way.

Containing after all exceptions 44.50 acres, more or less.

DESCRIPTION:
A part of the West half of the East half of Section 12, Township 8 North, Range 2 West, Monroe County, Indiana, bounded and described as follows: Beginning at the Northwest corner of said half half, said point being in Curry Pike, thence running East for 809.93 feet, thence South 01 degree 33 minutes West for 2247.60 feet, thence South 32 degrees 26 minutes 20 seconds East for 340.00 feet and to the right-of-way of State Road No. 45, thence running with said right-of-way South 56 degrees 16 minutes 40 seconds West for 170.86 feet, thence South 55 degrees 21 minutes 40 seconds West for 89.41 feet, thence South 54 degrees 35 minutes West for 84 27 feet, thence South 53 degrees 54 minutes 40 seconds West for 69.74 feet, thence South 55 degrees 11 minutes 24 seconds West for 248.61 feet, thence leaving said right-of-way and running North 88 degrees 40 minutes 21 seconds West for 450.65 feet and to the West line of said half half and the centerline of Curry Pike, thence running with said line and in said road North 01 degrees 15 minutes 40 seconds East for 2901.50 feet and to the point of beginning.
EXCEPTING therefrom a part of said half half section bounded as follows: Beginning at a point that is 538.78 feet South of the Northwest corner of the West half of the East half in Section 12, Township 8 North, Range 2 West, thence running East for 268 feet, thence South 01 degrees 15 minutes 40 seconds West for 200 feet, thence East for 32 feet, thence South 01 degree 15 minutes 40 seconds West for 200 feet, thence West for 32 feet, thence South 01 degree 15 minutes 40 seconds West for 508 feet, thence East for 268.00 feet and to the West line of said half half, and to a point in Curry Pike, thence running with said line and in said road North 01 degree 15 minutes 40 seconds East for 908 00 feet and to the point of beginning Containing in all 5.73 acres.
ALSO EXCEPTING therefrom a part of said half half section bounded as follows: Beginning at a point that is 1506.78 feet South of the Northwest corner of the West half of the East half of Section 12, Township 8 North, Range 2 West, thence running East for 268 feet, thence South 01 degree 15 minutes 40 seconds West for 189 feet, thence West for 268 feet and to the West line of said half half, and to a point in Curry Pike, thence running on said line and in said road North 01 degree 15 minutes 40 seconds East for 189 feet and to the point of beginning Containing in all 1.16 acre, more or less.
ALSO EXCLUDING therefrom a part of said half half section bounded as follows: Beginning at a point that is 2092.50 feet South of the Northwest corner of the West half of the East half of Section 12, Township 8 North, Range 2 West, thence running East for 268 feet, thence South 01 degree 15 minutes 40 seconds West for 340 feet, thence West for 268 feet and to the West line of said half half, thence North 01°15'40" East for 340 feet to the beginning.



DESCRIPTION:
A part of the South half of Section 25, Township 9 North, Range 2 West, in Monroe County, Indiana, bounded and described as follows: Beginning at the Southwest corner of the Southeast quarter of said Section 25; said point also being the intersection of the centerline of Curry Pike with the centerline of Vernal Pike; thence from said point of beginning running East with the South line of said Section 25 and the said centerline of Vernal Pike a distance of 2675.77 feet; thence leaving said South line and said Vernal Pike centerline and running North 00 degreees 45 minutes 45 seconds West for 1828.38 feet; thence West for 2664.58 feet and to a point in the centerline of the aforementioned Curry Pike; thence with said road centerline North 00 degrees 24 minutes 42 seconds West for 825.00 feet; thence leaving the said Curry Pike centerline and running West for 384.20 and to the East right-of-way of the L & N Railroad; thence running Southerly with the said railroad right-of-way to the aforementioned South line of said Section 25; said point being 303.00 feet West of the said Southwest corner of the said Southeast quarter of the said Section 25; thence running East on the said South line for 303.00 feet and to the point of beginning. Containing in all 134.63 acres, more or less.

Raymond Graham

RAYMOND GRAHAM
R P.E. 8409 L S 9978 IND
3215 N Smith Pike
Bloomington, Indiana
August 12, 1987

RAYMOND GRAHAM
REGISTERED
No. 8409
STATE OF INDIANA
PROFESSIONAL ENGINEER

The attached signature on behalf of Shulte Corporation was received by the Office of the City Controller prior to August 15, 1987, and is hereby incorporated into the signature pages of the original document. The City Controller hereby certifies that the foregoing additional owner of Industrial land became party to the Agreement prior to August 15, 1987.

Betty I. Merriman
City Controller