

INDOT

Acquisition
Document

9DSE9

Scan Key	377725
LA Code	3777
Parcel No.	25
Owner	LADIKA, FREDDIE L.

STATE OF INDIANA) IN THE VIGO SUPERIOR COURT DIV 4 2007017190

COUNTY OF VIGO) SS:
DULY ENTERED CASE NO. 04-0410-PL-09765

STATE OF INDIANA,)
Subject to final acceptance for transfer

Plaintiff,)
NOV 21 2007)

v.)
VIGO COUNTY AUDITOR)

FREDDIE L. LADIKA, DEBBIE HALL,)
TERRE HAUTE FIRST NATIONAL BANK and)
VIGO COUNTY, INDIANA,)

Defendants.)

RECEIVED
Patricia R. Mansard

NOV 15 2007

Clerk of the
Vigo Circuit Court

AGREED FINDINGS & JUDGMENT

Plaintiff, State of Indiana, by Steve Carter, Attorney General of Indiana, and
Gerry L. Burton, Deputy Attorney General; Defendant, Freddie L. Ladika, by counsel,
Terry R. Modesitt and Darrell Felling; Defendant Terre Haute First National Bank, by counsel,
Donald J. Bonomo; and Defendant, Vigo County, Indiana, by counsel, Robert L. Wright now jointly
move the Court for judgment in this case and in support whereof make the allegations which follow.

The Court, having examined the record and being duly advised, now finds:

1. Plaintiff filed its *Complaint for Appropriation of Real Estate* on October 12, 2004 and all Defendants were served with notice as provided by statute.
2. Defendants, Freddie L. Ladika; Vigo County, Indiana; and Terre Haute First National Bank appeared by counsel.
3. Defendant, Debbie Hall, has not appeared in this case.
4. On July 27, 2005, those real estate interests described in rhetorical paragraph four (IV) of Plaintiff's Complaint were ordered appropriated by the Court and appraisers were appointed to assess the benefits and damages, if any, from the Plaintiff's appropriation.

COPY

5. On October 20, 2005, the court-appointed appraisers reported to the Court that Defendants were entitled to total just compensation of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) due to Plaintiff's appropriation.

6. Defendant, Freddie L. Ladika, filed *Exceptions to the Report of Appraisers* on November 2, 2005.

7. Plaintiff deposited the court-appointed appraisers' fees of Four Thousand Five Hundred Dollars (\$4,500.00) and the court-appointed appraisers' award of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) with the Clerk of this Court on November 9, 2005.

8. Plaintiff and said Defendant, Freddie L. Ladika, agree to Plaintiff's appropriation of the real estate interests as described below and further agree that Defendant, Freddie L. Ladika, shall recover One Hundred Thirty Thousand Dollars (\$130,000.00) for the real estate acquired by Plaintiff and for any and all damages resulting from that acquisition, total just compensation of One Hundred Thirty Thousand Dollars (\$130,000.00) from Plaintiff in this case and that no other Defendant is entitled to recover any damages due to the acquisition.

9. All parties who requested trial by jury withdraw that request.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that there is no just reason to delay entry of judgment upon the terms contained herein and that Plaintiff, State of Indiana, now holds fee simple title and access rights to and a temporary right of way over portions of that real described below; that those real estate interests are free and clear of the interests of the named defendants and that said real estate acquired herein is now and hereby **ORDERED**

APPROPRIATED:

A part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25, Indiana Department of

Transportation L.A. Code 3777, described as follows: Beginning at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said northeastern line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said northeastern line; thence South 27 degrees 55 minutes 45 seconds West 6.856 meters (22.49 feet); thence North 67 degrees 27 minutes 26 seconds West 197.087 meters (646.61 feet) to the northwestern line of said lot; thence North 27 degrees 42 minutes 57 seconds East 25.093 meters (82.33 feet) along said northwestern line to the point of beginning and containing 3,152.2 square meters (33,930 square feet), more or less.

TOGETHER with the permanent extinguishment of all rights and easements of ingress and egress to, from and across the highway facility known as U.S.R. 641 and as Project STP-291-1(002) to and from the Grantor(s) remaining lands where they abut the Real Estate. This restriction is a covenant running with the land and shall be binding on the Grantor(s) and on all successors in title to the said abutting lands.

Lot 1 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25A, Indiana Department of Transportation L.A. Code 3777.

TOGETHER with the permanent extinguishment of all rights and easements of ingress and egress to, from and across the highway facility known as U.S.R. 641 and as Project STP-291-1(002) to and from the Grantor(s) remaining lands where they abut the Real Estate. This restriction is a covenant running with the land and shall be binding on the Grantor(s) and on all successors in title to the said abutting lands.

The following described right of way is temporary right of way for the purpose of constructing a driveway for service to the owner's private property and shall expire three years after construction on this project has commenced. A part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25B, Indiana Department of Transportation L.A. Code 3777, described as follows: Commencing at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said northeastern line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said

northeastern line to the point of beginning of this description: thence continuing South 62 degrees 04 minutes 15 seconds East 18.000 meters (59.06 feet) along said northeastern line; thence South 27 degrees 55 minutes 45 seconds West 20.856 meters (68.43 feet); thence North 62 degrees 04 minutes 15 seconds West 80.000 meters (262.47 feet); thence North 27 degrees 55 minutes 45 seconds East 8.154 meters (26.75 feet); thence South 67 degrees 27 minutes 26 seconds East 62.275 meters (204.31 feet); thence North 27 degrees 55 minutes 45 seconds East 6.856 meters (22.49 feet) to the point of beginning and containing 1,062.2 square meters (11,433 square feet), more or less.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Defendant, Debbie Hall, is defaulted and shall take nothing in this case; and Defendants, Terre Haute First National Bank and Vigo County, Indiana, by agreement shall take nothing in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Defendant, Freddie L. Ladika, by agreement shall have and recover as total just compensation, for the State's appropriation in this case, the amount of One Hundred Thirty Thousand Dollars (\$130,000.00) plus accrued interest; that the Clerk shall immediately pay Defendant, Freddie L. Ladika Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) which is the amount of the court-appointed appraisers' award, deposited by the State with the Clerk; and, in addition, the Clerk of this Court shall pay Defendant, Freddie L. Ladika, any interest applied and held by the Clerk to these State-deposited funds in the same interest-bearing account; and that the State shall deposit with the Clerk an additional Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00) which is the difference between the judgment amount and court-appointed appraisers' award previously deposited in this case; and that the Clerk shall, immediately upon receipt of said amount, pay Defendant, Freddie L. Ladika, Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00), in full satisfaction of this judgment and any and all of Defendants' claims in this case.

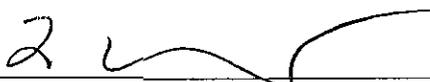
IT IS FURTHER ORDERED that the **Clerk of the Court shall** promptly send a certified copy of this *Agreed Findings and Judgment to the Auditor* of Vigo County, Indiana, and that the

Auditor shall remove the above-described real estate that the State acquired in fee simple from the tax records and rolls of the County and cancel all 2007 and subsequent years' taxes thereon and that the *Auditor shall submit evidence of this removal from the tax records*, by United States mail, to the undersigned Deputy Attorney General at the Office of the Attorney General of Indiana, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204-2770.

IT IS FURTHER ORDERED that the **Clerk of the Court shall** promptly send a certified copy of this Judgment **to the Recorder** of Vigo County, Indiana, and that the **Recorder shall**, pursuant to IC 8-23-7-31 and without payment of fee, record the transfer of the above-described real estate to the State of Indiana; and that *the Recorder shall submit evidence of the recorded transfer*, by United States mail, to the undersigned Deputy Attorney General at the Office of the Attorney General of Indiana, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204-2770.

AGREED TO AND APPROVED BY:

STEVE CARTER, Attorney General of Indiana
Attorney Reg. No. 4150-64

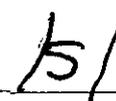


Terry R. Modesitt, *Attorney for Defendant,*
Freddie L. Ladika
Attorney No. 10118-84

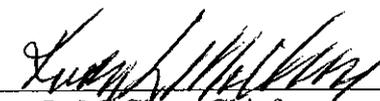
By: 

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49
Attorneys for Plaintiff

Plaintiff State of Indiana:



Darrell E. Felling, *Attorney for Defendant,*
Freddie L. Ladika
Attorney No. 6805-84

By: 

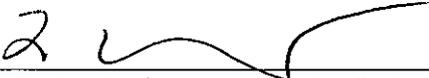
Kevan L. McClure, Chief
Division of Land Acquisition
Indiana Department of Transportation

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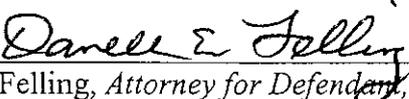
AGREED TO AND APPROVED BY:

STEVE CARTER, Attorney General of Indiana
Attorney Reg. No. 4150-64


Terry R. Modesitt, *Attorney for Defendant,*
Freddie L. Ladika
Attorney No. 10118-84

By: 
Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49
Attorneys for Plaintiff

Plaintiff State of Indiana:

✓ 
Darrell E. Felling, *Attorney for Defendant,*
Freddie L. Ladika
Attorney No. 6805-84

By: 
Kevan L. McClure, Chief
Division of Land Acquisition
Indiana Department of Transportation

Freddie L. Ladika

Defendant, Freddie L Ladika

151

Donald J. Bonomo, *Attorney for Defendant,*
Terre Haute First National Bank
Attorney No. 22279-49

Defendant, Terre Haute First National Bank:

By: _____

Name: _____

Title: _____

Robert L. Wright

Robert L. Wright, *Attorney for Defendant,*
Vigo County, Indiana
Attorney No. 1387-84

Date: _____

JUDGE, VIGO SUPERIOR COURT, DIV. 4

CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)

I hereby certify that the foregoing or attached Court Record or document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G).

151

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

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.

151

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.

✓ Freddie L. Ladika

Defendant, Freddie L Ladika

151

Donald J. Bonomo, *Attorney for Defendant,*

Terre Haute First National Bank

Attorney No. _____

Defendant, Terre Haute First National Bank:

By: _____

Name: _____

Title: _____

151

Robert L. Wright, *Attorney for Defendant,*

Vigo County, Indiana

Attorney No. _____

Date: _____

JUDGE, VIGO SUPERIOR COURT, DIV. 4

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Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.

Freddie L. Ladika

Defendant, Freddie L Ladika

Donald J. Bonomo

Donald J. Bonomo, Attorney for Defendant,
Terre Haute First National Bank
Attorney No. 22279-49

Defendant, Terre Haute First National Bank:

By: _____

Name: _____

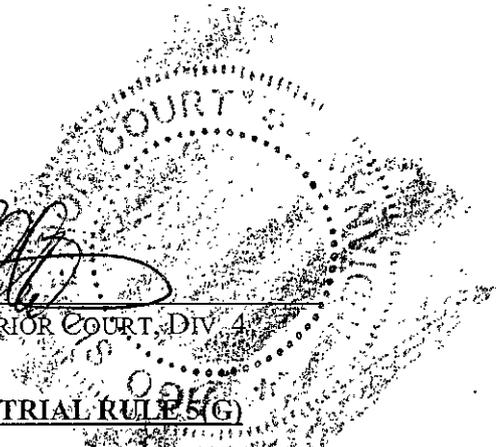
Title: _____

151

Robert L. Wright, Attorney for Defendant,
Vigo County, Indiana
Attorney No. 1387-84

Date: 11-15-07

[Signature]
JUDGE, VIGO SUPERIOR COURT, DIV. 4



CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)

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[Signature]

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

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[Signature]

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.

Distribution:

Gerry L. Burton
Deputy Attorney General
Office of the Attorney General
402 W. Washington Street, Fifth Floor
Indianapolis, IN 46204
Attorney for Plaintiff

Terry R. Modesitt
MODESITT LAW OFFICES, PC
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Attorney for Defendant, Freddie L. Ladika

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Donald J. Bonomo
COX, ZWERNER, GAMBILL & SULLIVAN
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Attorney for Defendant, Terre Haute First National Bank

Robert L. Wright
WRIGHT, SHAGLEY & LOWERY
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P. O. Box 8448
Terre Haute, In 47808-8448
Attorney for Defendant, Vigo County, Indiana

The Honorable James W. Bramble
Auditor, Vigo County, Indiana
131 Oak St.
Terre Haute, IN 47807

The Honorable Raymond Watts
Recorder, Vigo County, Indiana
199 Oak St.
Terre Haute, IN 47807

EXHIBIT "A"

Project STP-291-1(002)

Sheet 1 of 1

Code 3777

Parcel 25B Temporary Right of Way for Drive Construction

A part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, described as follows: Commencing at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said lot line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said lot line to the POINT OF BEGINNING of this description; thence continuing South 62 degrees 04 minutes 15 seconds East 18.000 meters (59.06 feet) along said lot line; thence South 27 degrees 55 minutes 45 seconds West 20.856 meters (68.43 feet); thence North 62 degrees 04 minutes 15 seconds West 80.000 meters (262.47 feet); thence North 27 degrees 55 minutes 45 seconds East 8.154 meters (26.75 feet); thence South 67 degrees 27 minutes 26 seconds East 62.275 meters (204.31 feet); thence North 27 degrees 55 minutes 45 seconds East 6.856 meters (22.49 feet) to the point of beginning and containing 1,062.2 square meters (11,433 square feet), more or less.



This description was prepared for the
Indiana Department of Transportation
on the 20th day of June, 2002

by Kevin M. Johnson
Kevin M. Johnson
Indiana Registered Land Surveyor
License Number LS29800012

EXHIBIT "A"

Project STP-291-1(002)
Code 3777
Parcel 25 Fee with Full Limitation of Access

Sheet 1 of 2

A part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being that part of the grantor's land lying within the right of way lines depicted on the attached Right of Way Parcel Plat, marked EXHIBIT "B", described as follows: Beginning at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said lot line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said lot line to point "204" designated on said parcel plat; thence South 27 degrees 55 minutes 45 seconds West 6.856 meters (22.49 feet) to point "205" designated on said parcel plat; thence North 67 degrees 27 minutes 26 seconds West 197.087 meters (646.61 feet) to the northwestern line of said lot; thence North 27 degrees 42 minutes 57 seconds East 25.093 meters (82.33 feet) along said lot line to the point of beginning and containing 3,152.2 square meters (33,930 square feet), more or less.



This description was prepared for the
Indiana Department of Transportation
on the 20th day of June, 2002

by Kevin M. Johnson
Kevin M. Johnson
Indiana Registered Land Surveyor
License Number LS29800012

EXHIBIT "A"

Project STP-291-1(002)

Sheet 2 of 2

Code 3777

Parcel 25A Fee with Full Limitation of Access (Excess Land Included)

Lot 1 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana.



This description was prepared for the
Indiana Department of Transportation
on the 9th day of February, 2004

by Kevin M. Johnson

Kevin M. Johnson
Indiana Registered Land Surveyor
License Number LS29800012

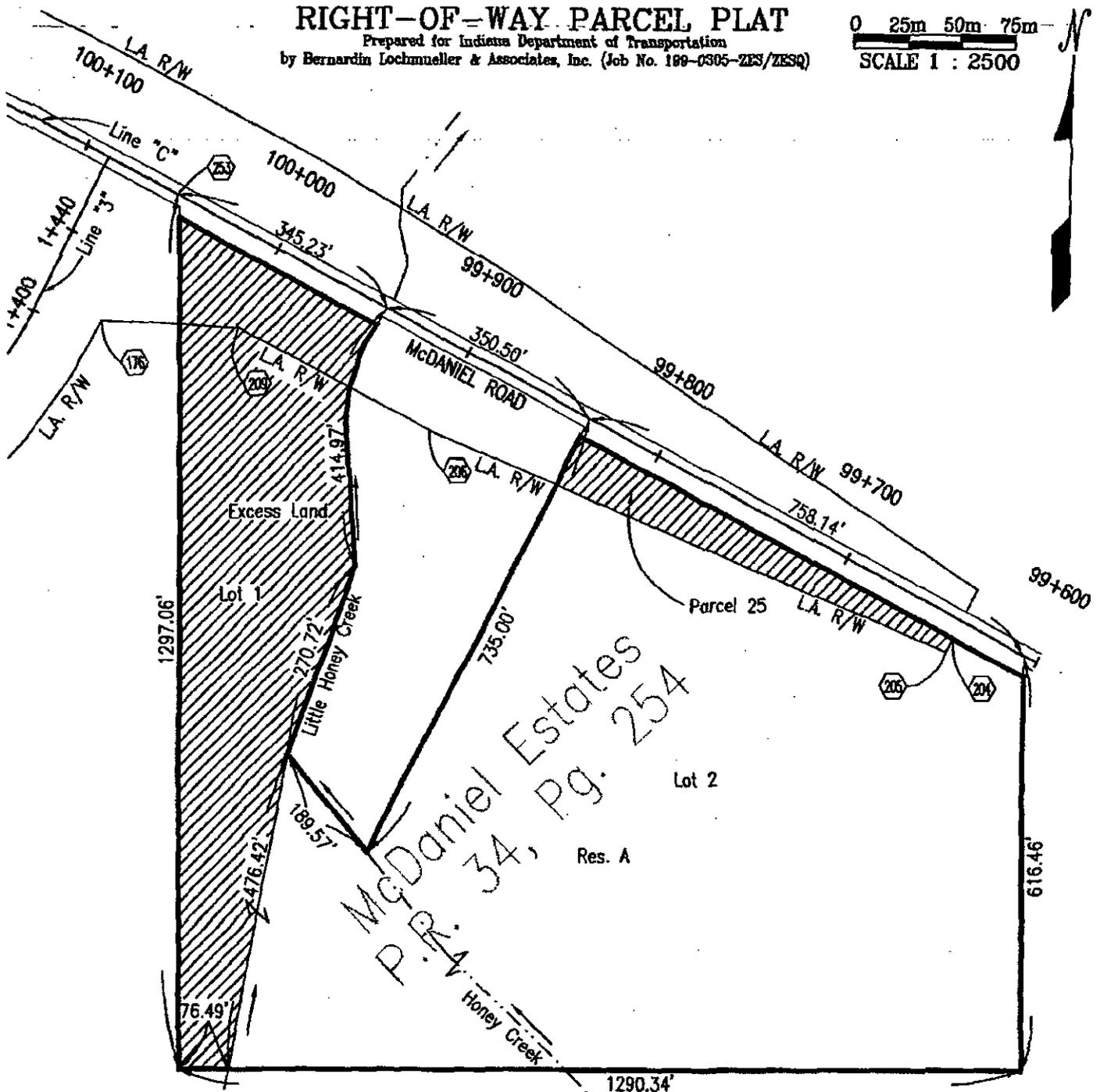
EXHIBIT "B"

SHEET 1 OF 2

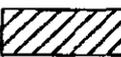
RIGHT-OF-WAY PARCEL PLAT

Prepared for Indiana Department of Transportation
by Bernardin Lochmueller & Associates, Inc. (Job No. 189-0305-ZES/ZESQ)

0 25m 50m 75m
SCALE 1 : 2500



Rev. 2/9/2004 Changed Lot 1 to a total take with excess land K.M. Johnson

PARCEL: 25	OWNER: Ladika, Freddie L.	DRAWN BY: K.M. Johnson 6/20/2002
CODE: 3777		CHECKED BY: R.F. Lewis 7/1/2002
PROJECT: STP-291-1(002)		DES. NO.: 9138220
ROAD: U.S.R. 641	 HATCHED AREA IS THE APPROXIMATE TAKING	DEED RECORD 442, PAGE 1366, DATED 4/21/97
COUNTY: Vigo		
SECTION: 13	NOTE: PROPERTY LINE DIMENSIONS ARE SHOWN IN ENGLISH	
TOWNSHIP: 11 N.		
RANGE: 9 W.		

PARCEL COORDINATE CHART (shown in meters)

Point	Centerline	Station	Offset	Northing	Easting
253*					
176	"3"	1+410.201	30m	9567.1422	6616.6699
204	"C"	99+640	R (9.144m)	9423.2515	7013.3827
205	"C"	99+640	16m	9417.1940	7010.1715
206	"C"	99+900	40m	9517.2558	6769.1113
209	"C"	100+000	40m	9563.7645	6680.5848

NOTE: STATIONS & OFFSETS CONTROL OVER BOTH NORTH & EAST COORDINATES AND BEARINGS & DISTANCES.

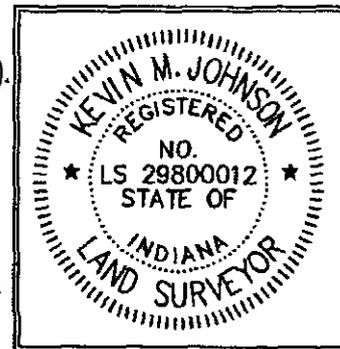
* SEE LOCATION CONTROL ROUTE SURVEY PLAT.

SURVEYOR'S STATEMENT

To the best of my knowledge and belief, this plat, together with the "Location Control Route Survey" recorded in Instrument No. 200012661 in the Office of the Recorder of Vigo County, Indiana, (incorporated and made a part hereof by reference) comprise a Route Survey executed in accordance with Indiana Administrative Code 865 IAC 1-12, ("Rule 12").

This plat was prepared using information obtained from the County records. It does not represent a survey of the owner's property. Dimensions shown along the existing property lines are taken from the listed record documents.

Kevin M. Johnson 9 FEB. 2002
 Kevin M. Johnson Date
 Reg. Land Surveyor No. LS29800012
 State of Indiana



PARCEL: 25 CODE: 3777 PROJECT: STP-291-1(002) ROAD: U.S.R. 641 COUNTY: Vigo SECTION: 13 TOWNSHIP: 11 N. RANGE: 9 W.	DRAWN BY: K.M. Johnson 6/20/2002 CHECKED BY: R.F. Lewis 7/1/2002 DES. NO.: 9138220
BERNARDIN LOCHMUELLER & ASSOC. INC. 7830 Rockville Road, Suite C Indianapolis, IN 46214 (317) 209-1130	

STATE OF INDIANA)
)
COUNTY OF VIGO) GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENT, that the undersigned, FREDDIE L. LADIKA, for valid and adequate consideration, the receipt and sufficiency of which is hereby acknowledged does hereby release, acquit and forever discharge the State of Indiana, its officers, its agents, servants, representatives, successors, heirs, assigns, and all other persons, firms, or corporations who can or may be liable, of and from any and all actions, causes of action, claims, demands, damages, costs, that the undersigned might now have or might subsequently accrue to the undersigned on account of, or in any way growing out of any and all known and unknown damages of whatsoever nature, whether past or present.

Further, for the consideration enumerated herein, each party agrees that the terms of this Release and Settlement are privileged and absolutely confidential with any party being harmed by any breach of said confidentiality agreement. All terms contained herein as to privilege or confidentiality shall extend to the undersigned, its agents, employees, servants and attorneys.

I hereby acknowledge full satisfaction and settlement of all such claims and causes of action and fully understand that neither I nor my representatives, officers, directors, or assigns can make any further claim against the persons, firms or corporations who are hereby released, or by any person or persons representing them or any of them.

It is distinctly understood and agreed as follows: 1) that this release shall act and operate as a *Full and Completed Release of any and all persons and entities, whether or not expressly named or described herein*, from any and all liability on account of the acts and things above set out; 2) that it shall cover all damages, known or unknown, regardless of whether the damages are more serious or different than I now know or understand them to be; 3) that it shall not be

subject to any claim of mistake of fact; 4) that this release expresses a full and complete settlement of liability claimed and denied; and, 5) regardless of the adequacy or inadequacy of the amount paid, it is intended to be final and complete.

It is further understood and agreed that this settlement is a compromise of doubtful and disputed claims, and that the payment of sums herein mentioned is not to be construed as an admission of liability on the part of the persons, firms and corporations who are hereby released, by whom liability is expressly denied.

I agree to indemnify and hold harmless the persons and entities hereby released against any loss, costs, damages, liens, expenses (including attorney's fees) or other liability claimed or imposed upon the persons or entities hereby released, or any of them, by reason of any third person or entity claiming to have an interest in the matters referred to herein, or claiming to be an assignee or subrogee of any of the claims or causes of action mentioned above, or claiming a right of indemnity against the persons and entities hereby released, or any of them, or claiming to have been damaged as a result of the issues contained in the pleadings.

I hereby declare and represent that in making this Release I relied wholly upon my own judgment, belief and knowledge of the nature, extent and duration of said damages, and that I have not been influenced to any extent whatever in making this Release by any representations or statements regarding said damages, or regarding any other matters made by the persons, firms or corporations who are hereby released, or by any person or persons representing them or any of them.

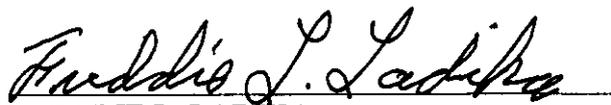
It is further understood and agreed that there is no promise or agreement on the part of the persons, firms, and corporations who are hereby released to do or omit to do any act or thing

not herein mentioned, that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

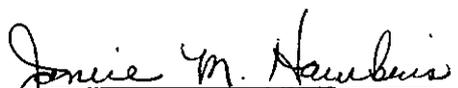
The undersigned represent and warrant that the person executing this document on its behalf has full and complete legal authority to do so

I further state that I have either read the foregoing Release, or have had it read to me, understand the contents thereof, and sign the same as a free act.

WITNESS my hand and seal this 21 day of December, 2007


FREDDIE L. LADIKA

Sworn to and subscribed before me this 21 day of December, 2007.


Notary Public (Written Signature)

Janice M. Hawkins
Notary Public (Printed Signature)

My County of Residence: Vigo

My Commission Expires: August 30, 2014

RECEIVED

DEC 27 2007

ATTORNEY GENERAL'S OFFICE
REAL ESTATE

RECEIVED
DEC 27 2007
ATTORNEY GENERAL'S OFFICE
REAL ESTATE

**DARRELL E. FELLING
ATTORNEY AT LAW**

106 S. Indiana Street
P. O. Box 612
Greencastle, IN 46135

Phone: (765) 653-5555
FAX: (765) 653-8293

DATE: August 8, 2007

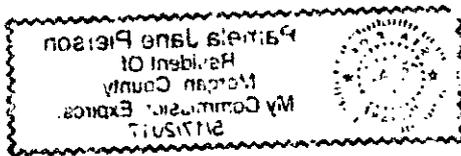
TO: Gerry L. Burton

FROM: **Darrell E. Felling**

ENCLOSED: Executed Agreed Findings and Judgment

RE: State of Indiana VS. Freddie L. Ladika, et al.

- Per your request
- Please review and, if changes are desired, please note & return
- Please sign and return original, if acceptable
- Enclosed is a copy for your information and records
- If acceptable, please obtain all signatures marked and return to this office
- Please file and return a "FILED" marked copy in the enclosed SASE
- Please remit filing fee to our office of \$_____ in cash or money order payable to _____ County Clerk (Clerk will not accept personal checks)
- Take note of Court Date
- Please contact this office upon receipt
- Please call the office to schedule an appointment
- Please make payment, or I will be unable to continue on your case
- Other _____
- _____
- _____



INDIANA DEPT OF TRANSPORTATION
100 N SENATE AV, RECORDS
INDIANAPOLIS IN 46209

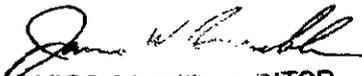
DULY ENTERED TAXATION
Subject to final acceptance for transfer



007002958 MC \$19.00
02/23/2007 09:25:46A 5 PGS
RAYMOND L. WATTS
VIGO County Recorder IN
Recorded as Presented

FEB 23 2007

STATE OF INDIANA


VIGO COUNTY AUDITOR

OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

STEVE CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

February 20, 2007

The Honorable James W. Bramble
Auditor, Vigo County, Indiana
Vigo County Annex Building
131 Oak Street
Terre Haute, IN 47807

RE: *Certification of Payment of Court-appointed Appraisers' Award and Request for Transfer*
State of Indiana v Freddie L. Ladika, et al.
Vigo Superior Court Div. 4, Cause No. 84D04-0410-PL-09765

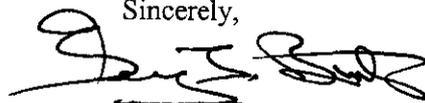
Dear Auditor Bramble:

Enclosed are an original and one copy of *Certification of Payment of Court-appointed Appraisers' Award and Request for Transfer* in the above-captioned case. The real estate interests appropriated by the State are located in Vigo County as described in this Certification and that real estate should be removed from the tax records of the County in accordance with IC 32-24-1-10.

Please file-stamp this letter indicating that the real estate has been removed from the tax rolls, forward to the County Recorder to record the transfer to the State of these real estate interests in the deed records of your county and return it to this office in the enclosed postage-prepaid return envelope. The attached Certification is furnished for such disposition as may be desired by you and the Recorder's Office.

Thank you for your assistance with this matter.

Sincerely,



Gerry L. Burton
Deputy Attorney General
Direct Dial: 317-234-2484

BGC/pcs
Enclosure

cc: Raymond Watts, Vigo County Recorder (w/o encl.), County Annex Building at 199 Oak Street: Terre Haute, IN 47807

CCDE: 3777

PARCEL: 25

Freddie's

FEB 23 2007



VIGO COUNTY AUDITOR

OF VIGO COUNTY, INDIANA:

2

CERTIFICATION OF PAYMENT OF COURT-APPOINTED APPRAISERS' AWARD AND
REQUEST FOR TRANSFER

Steve Carter, Attorney General of Indiana, by Gerry L. Burton, Deputy Attorney General,
for and on behalf of the State of Indiana, certifies:

1. That the State of Indiana is the Plaintiff in the case titled State of Indiana v. Frankie L. Ladika, et al., pending in Vigo Superior Court No. 4, as Cause No. 84D04-0410-PL-09765. This case is an action in eminent domain in which the State is appropriating the real estate described as:

FEE SIMPLE TITLE AND ACCESS RIGHTS TO AND A TEMPORARY RIGHT OF WAY TO HIGHWAY PARCEL 25, being a part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25, Indiana Department of Transportation L.A. Code 3777, described as follows: Beginning at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said northeastern line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said northeastern line; thence South 27 degrees 55 minutes 45 seconds West 6.856 meters (22.49 feet); thence North 67 degrees 27 minutes 26 seconds West 197.087 meters (646.61 feet) to the northwestern line of said lot; thence North 27 degrees 42 minutes 57 seconds East 25.093 meters (82.33 feet) along said northwestern line to the point of beginning and containing 3,152.2 square meters (33,930 square feet), more or less.

TOGETHER with the permanent extinguishment of all rights and easements of ingress and egress to, from and across the highway facility known as U.S.R. 641 and as Project STP-291-1(002) to and from the Grantor(s) remaining lands where they abut the Real Estate. This restriction is a covenant running with the land and shall be binding on the Grantor(s) and on all successors in title to the said abutting lands.

Lot 1 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25A, Indiana Department of Transportation L.A. Code 3777.

TOGETHER with the permanent extinguishment of all rights and easements of ingress and egress to, from and across the highway facility known as U.S.R. 641 and as Project STP-291-1(002) to and from the Grantor(s) remaining lands where they abut the Real Estate. This restriction is a covenant running with the land and shall be binding on the Grantor(s) and on all successors in title to the said abutting lands.

The following described right of way is temporary right of way for the purpose of constructing a driveway for service to the owner's private property and shall expire three years after construction on this project has commenced. A part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25B, Indiana Department of Transportation L.A. Code 3777, described as follows: Commencing at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said northeastern line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said northeastern line to the point of beginning of this description: thence continuing South 62 degrees 04 minutes 15 seconds East 18.000 meters (59.06 feet) along said northeastern line; thence South 27 degrees 55 minutes 45 seconds West 20.856 meters (68.43 feet); thence North 62 degrees 04 minutes 15 seconds West 80.000 meters (262.47 feet); thence North 27 degrees 55 minutes 45 seconds East 8.154 meters (26.75 feet); thence South 67 degrees 27 minutes 26 seconds East 62.275 meters (204.31 feet); thence North 27 degrees 55 minutes 45 seconds East 6.856 meters (22.49 feet) to the point of beginning and containing 1,062.2 square meters (11,433 square feet), more or less.

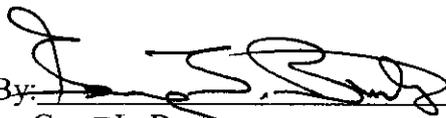
2. That on October 20, 2005, the court-appointed appraisers returned a report to the Court with total damages for Seventy-two Thousand Five Hundred Dollars (\$72,500.00), which was paid to the Clerk of Court, by the Plaintiff, on November 9, 2005.

4

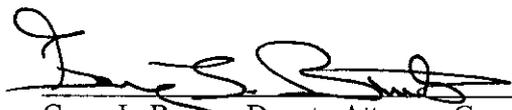
3. Pursuant to IC 32-24-1-10, the Auditor of Vigo County is required to immediately transfer the real estate to the name of the State of Indiana on the tax records of the County.

Respectfully submitted,

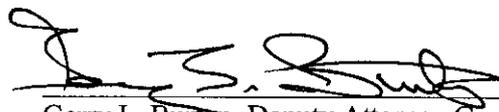
STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By: 
Gerry L. ~~Burton~~
Deputy Attorney General
Atty. No. 3031-49

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.


Gerry L. ~~Burton~~, Deputy Attorney General
Attorney No. 3031-49

I hereby certify that the foregoing or attached Court Record or document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G).


Gerry L. ~~Burton~~, Deputy Attorney General
Attorney No. 3031-49

Office of the Attorney General
Indiana Government Center South, Fifth Floor

302 West Washington Street
Indianapolis, IN 46204
(317) 234-2484

X 5

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.



FILE COPY

STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 W. WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
www.AttorneyGeneral.IN.gov

TELEPHONE: 317.232.6201
FAX: 317.232.7979

STEVE CARTER
INDIANA ATTORNEY GENERAL

November 8, 2007

The Honorable Christopher A. Newton
Judge, Vigo Superior Court Division 4
33 South 3rd St.
Terre Haute, IN 47807

RE: State of Indiana v. Freddie L. Ladika, et al.
Cause No: 84D04-0410-PL-09765

Dear Judge Newton:

Enclosed are an original and eight (8) copies of an *Agreed Findings and Judgment* in the above-referenced case, signed by all requisite parties and submitted for entry, pending your approval.

If the Judgment is acceptable to you, please sign it and forward to the Clerk for entry and distribution of file-marked copies in the enclosed addressed envelopes, including certified copies of the Judgment to the Auditor and Recorder of Vigo County for tax and recordation purposes.

Thank you for your assistance in this matter.

Sincerely,

Gerry L. Burton
Deputy Attorney General
Direct Dial: 317-234-2484

GLB/pcs
Enclosures

cc: Terry R. Modesitt, *Attorney for Defendant Freddie L. Ladika*; Darrell E. Felling, *Attorney for Defendant, Freddie L. Ladika*; Donald J. Bonomo, *Attorney for Defendant, Terre Haute First National Bank*; Robert L. Wright, *Attorney for Defendant, Vigo County, Indiana*

STATE OF INDIANA) IN THE VIGO SUPERIOR COURT DIV 4
) SS:
COUNTY OF VIGO) CAUSE NO. 84D04-0410-PL-09765
))
STATE OF INDIANA,)
))
Plaintiff,)
))
v.)
))
FREDDIE L. LADIKA, DEBBIE HALL,)
TERRE HAUTE FIRST NATIONAL BANK and)
VIGO COUNTY, INDIANA,)
))
Defendants.)

AGREED FINDINGS & JUDGMENT

Plaintiff, State of Indiana, by Steve Carter, Attorney General of Indiana, and Gerry L. Burton, Deputy Attorney General; Defendant, Freddie L. Ladika, by counsel, Terry R. Modesitt and Darrell Felling; Defendant Terre Haute First National Bank, by counsel, Donald J. Bonomo; and Defendant, Vigo County, Indiana, by counsel, Robert L. Wright now jointly move the Court for judgment in this case and in support whereof make the allegations which follow.

The Court, having examined the record and being duly advised, now finds:

1. Plaintiff filed its *Complaint for Appropriation of Real Estate* on October 12, 2004 and all Defendants were served with notice as provided by statute.
2. Defendants, Freddie L. Ladika; Vigo County, Indiana; and Terre Haute First National Bank appeared by counsel.
3. Defendant, Debbie Hall, has not appeared in this case.
4. On July 27, 2005, those real estate interests described in rhetorical paragraph four (IV) of Plaintiff's Complaint were ordered appropriated by the Court and appraisers were appointed to assess the benefits and damages, if any, from the Plaintiff's appropriation.

5. On October 20, 2005, the court-appointed appraisers reported to the Court that Defendants were entitled to total just compensation of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) due to Plaintiff's appropriation.

6. Defendant, Freddie L. Ladika, filed *Exceptions to the Report of Appraisers* on November 2, 2005.

7. Plaintiff deposited the court-appointed appraisers' fees of Four Thousand Five Hundred Dollars (\$4,500.00) and the court-appointed appraisers' award of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) with the Clerk of this Court on November 9, 2005.

8. Plaintiff and said Defendant, Freddie L. Ladika, agree to Plaintiff's appropriation of the real estate interests as described below and further agree that Defendant, Freddie L. Ladika, shall recover One Hundred Thirty Thousand Dollars (\$130,000.00) for the real estate acquired by Plaintiff and for any and all damages resulting from that acquisition, total just compensation of One Hundred Thirty Thousand Dollars (\$130,000.00) from Plaintiff in this case and that no other Defendant is entitled to recover any damages due to the acquisition.

9. All parties who requested trial by jury withdraw that request.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that there is no just reason to delay entry of judgment upon the terms contained herein and that Plaintiff, State of Indiana, now holds fee simple title and access rights to and a temporary right of way over portions of that real described below; that those real estate interests are free and clear of the interests of the named defendants and that said real estate acquired herein is now and hereby **ORDERED**

APPROPRIATED:

A part of the Lot 2 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25, Indiana Department of

Transportation L.A. Code 3777, described as follows: Beginning at the northwest corner of said lot; thence South 62 degrees 17 minutes 03 seconds East 65.204 meters (213.92 feet) along the northeastern line of said lot; thence along said northeastern line Southeasterly 11.136 meters (36.54 feet) along an arc to the right having a radius of 2,990.856 meters (9,812.52 feet) and subtended by a long chord having a bearing of South 62 degrees 10 minutes 39 seconds East and a length of 11.136 meters (36.54 feet); thence South 62 degrees 04 minutes 15 seconds East 119.971 meters (393.61 feet) along said northeastern line; thence South 27 degrees 55 minutes 45 seconds West 6.856 meters (22.49 feet); thence North 67 degrees 27 minutes 26 seconds West 197.087 meters (646.61 feet) to the northwestern line of said lot; thence North 27 degrees 42 minutes 57 seconds East 25.093 meters (82.33 feet) along said northwestern line to the point of beginning and containing 3,152.2 square meters (33,930 square feet), more or less.

TOGETHER with the permanent extinguishment of all rights and easements of ingress and egress to, from and across the highway facility known as U.S.R. 641 and as Project STP-291-1(002) to and from the Grantor(s) remaining lands where they abut the Real Estate. This restriction is a covenant running with the land and shall be binding on the Grantor(s) and on all successors in title to the said abutting lands.

Lot 1 in McDaniel Estates, a subdivision in the Northwest Quarter of the Southwest Quarter of Section 13, Township 11 North, Range 9 West, the plat of which subdivision is recorded in Plat Record 34, page 254, in the Office of the Recorder of Vigo County, Indiana, and being Parcel 25A, Indiana Department of Transportation L.A. Code 3777.

TOGETHER with the permanent extinguishment of all rights and easements of ingress and egress to, from and across the highway facility known as U.S.R. 641 and as Project STP-291-1(002) to and from the Grantor(s) remaining lands where they abut the Real Estate. This restriction is a covenant running with the land and shall be binding on the Grantor(s) and on all successors in title to the said abutting lands.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Defendant, Debbie Hall, is defaulted and shall take nothing in this case; and Defendants, Terre Haute First National Bank and Vigo County, Indiana, by agreement shall take nothing in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Defendant, Freddie L. Ladika, by agreement shall have and recover as total just compensation, for the State's appropriation in this case, the amount of One Hundred Thirty Thousand Dollars (\$130,000.00) plus accrued interest; that the Clerk shall immediately pay Defendant, Freddie L. Ladika Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) which is the amount of the court-appointed appraisers' award, deposited by the State with the Clerk; and, in addition, the Clerk of this Court shall pay Defendant, Freddie L. Ladika, any interest applied and held by the Clerk to these State-deposited funds in the same interest-bearing account; and that the State shall deposit with the Clerk an additional Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00) which is the difference between the judgment amount and court-appointed appraisers' award previously deposited in this case; and that the Clerk shall, immediately upon receipt of said amount, pay Defendant, Freddie L. Ladika, Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00), in full satisfaction of this judgment and any and all of Defendants' claims in this case.

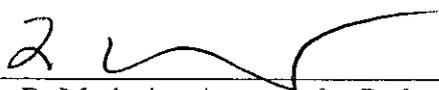
IT IS FURTHER ORDERED that the **Clerk of the Court shall** promptly send a certified copy of this *Agreed Findings and Judgment to the Auditor* of Vigo County, Indiana, and that the

Auditor shall remove the above-described real estate that the State acquired in fee simple from the tax records and rolls of the County and cancel all 2007 and subsequent years' taxes thereon and that the *Auditor shall submit evidence of this removal from the tax records*, by United States mail, to the undersigned Deputy Attorney General at the Office of the Attorney General of Indiana, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204-2770.

IT IS FURTHER ORDERED that the **Clerk of the Court shall** promptly send a certified copy of this Judgment to the **Recorder** of Vigo County, Indiana, and that the **Recorder shall**, pursuant to IC 8-23-7-31 and without payment of fee, record the transfer of the above-described real estate to the State of Indiana; and that *the Recorder shall submit evidence of the recorded transfer*, by United States mail, to the undersigned Deputy Attorney General at the Office of the Attorney General of Indiana, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204-2770.

AGREED TO AND APPROVED BY:

STEVE CARTER, Attorney General of Indiana
Attorney Reg. No. 4150-64

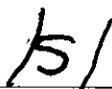


Terry R. Modesitt, *Attorney for Defendant*,
Freddie L. Ladika
Attorney No. 10118-84



By: Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49
Attorneys for Plaintiff

Plaintiff State of Indiana:



Darrell E. Felling, *Attorney for Defendant*,
Freddie L. Ladika
Attorney No. 6805-84

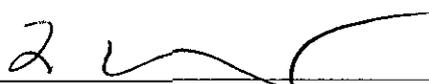
By: Kevan L. McClure
Kevan L. McClure, Chief
Division of Land Acquisition
Indiana Department of Transportation

Auditor shall remove the above-described real estate that the State acquired in fee simple from the tax records and rolls of the County and cancel all 2007 and subsequent years' taxes thereon and that the *Auditor shall submit evidence of this removal from the tax records*, by United States mail, to the undersigned Deputy Attorney General at the Office of the Attorney General of Indiana, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204-2770.

IT IS FURTHER ORDERED that the **Clerk of the Court shall** promptly send a certified copy of this Judgment **to the Recorder** of Vigo County, Indiana, and that the **Recorder shall**, pursuant to IC 8-23-7-31 and without payment of fee, record the transfer of the above-described real estate to the State of Indiana; and that *the Recorder shall submit evidence of the recorded transfer*, by United States mail, to the undersigned Deputy Attorney General at the Office of the Attorney General of Indiana, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204-2770.

AGREED TO AND APPROVED BY:

STEVE CARTER, Attorney General of Indiana
Attorney Reg. No. 4150-64

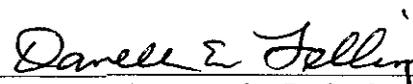


Terry R. Modesitt, *Attorney for Defendant,*
Freddie L. Ladika
Attorney No. 10118-84

By: 

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49
Attorneys for Plaintiff

Plaintiff State of Indiana:

✓ 

Darrell E. Felling, *Attorney for Defendant,*
Freddie L. Ladika
Attorney No. 6805-84

By: 

Kevan L. McClure, Chief
Division of Land Acquisition
Indiana Department of Transportation

Freddie L. Ladika

Defendant, Freddie L Ladika

151

Donald J. Bonomo, *Attorney for Defendant,*
Terre Haute First National Bank
Attorney No. 22279-49

Defendant, Terre Haute First National Bank:

By: _____

Name: _____

Title: _____

Robert L. Wright

Robert L. Wright, *Attorney for Defendant,*
Vigo County, Indiana
Attorney No. 1387-84

Date: _____

JUDGE, VIGO SUPERIOR COURT, DIV. 4

CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)

I hereby certify that the foregoing or attached Court Record or document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G).

151

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

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.

151

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.

✓ Freddie L. Ladika
Defendant, Freddie L Ladika

151
Donald J. Bonomo, *Attorney for Defendant,*
Terre Haute First National Bank
Attorney No. _____

Defendant, Terre Haute First National Bank:

By: _____

Name: _____

Title: _____

151
Robert L. Wright, *Attorney for Defendant,*
Vigo County, Indiana
Attorney No. _____

Date: _____

JUDGE, VIGO SUPERIOR COURT, DIV. 4

CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)

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151
Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

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151
Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.

Freddie L. Ladika

Defendant, Freddie L Ladika

Donald J. Bonomo

Donald J. Bonomo, Attorney for Defendant,
Terre Haute First National Bank
Attorney No. 22279-49

Defendant, Terre Haute First National Bank:

By: _____

Name: _____

Title: _____

RS

Robert L. Wright, Attorney for Defendant,
Vigo County, Indiana
Attorney No. 1387-84

Date: _____

JUDGE, VIGO SUPERIOR COURT, DIV. 4

Sign Here

CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)

I hereby certify that the foregoing or attached Court Record or document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G).

Gerry L. Burton

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

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.

Gerry L. Burton

Gerry L. Burton, Deputy Attorney General
Attorney No. 3031-49

This instrument was prepared by Gerry L. Burton, Deputy Attorney General, Attorney No. 3031-49.

Distribution:

Gerry L. Burton
Deputy Attorney General
Office of the Attorney General
402 W. Washington Street, Fifth Floor
Indianapolis, IN 46204
Attorney for Plaintiff

Terry R. Modesitt
MODESITT LAW OFFICES, PC
321 Ohio St.
Terre Haute, IN 47807
Attorney for Defendant, Freddie L. Ladika

Darrell E. Felling
FELLING LAW OFFICES
106 S. Indiana St.
P. O. Box 612
Greencastle, IN 46135
Attorney for Defendant, Freddie L. Ladika

Donald J. Bonomo
COX, ZWERNER, GAMBILL & SULLIVAN
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In the
Indiana Supreme Court

No. 49S02-0411-CV-476

BURD MANAGEMENT, LLC,

Appellant (Defendant below),

v.

STATE OF INDIANA,

Appellee (Plaintiff below).

Appeal from the Marion Superior Court, No. 49D12-210-PL-1827
The Honorable Robyn Moberly, Judge

On Petition To Transfer from the Indiana Court of Appeals, No. 49A02-307-CV-572

June 28, 2005

Sullivan, Justice.

A property owner whose land is being taken for a highway project argues that the state transportation department must, to prevail in condemnation proceedings, prove that it made a good-faith offer to purchase the property prior to filing suit. We hold that Indiana Code Section

32-24-1-13(a) exempts the transportation department from any such requirement, thereby overruling Decker v. State, 426 N.E.2d 151 (Ind. Ct. App. 1981).

Background

The Indiana Department of Transportation (“INDOT”) is in the process of improving public highway U.S. 36 in Marion County, also known as Pendleton Pike. Burd Management, LLC (“Burd”), owns real estate in Marion County adjacent to Pendleton Pike. INDOT determined that it needed to appropriate part of Burd’s real estate for the public purpose of improving the highway. The State obtained two appraisals for the real estate. Based on those appraisals, the State, through INDOT, presented a Uniform Land Acquisition Offer to purchase Burd’s real estate for \$57,950. Burd rejected the offer, and the State initiated a condemnation action. Burd filed objections to the appropriation proceedings, claiming that: (1) the State failed to comply with the procedures for appropriating Burd’s real estate; (2) the State failed to make a good-faith offer or effort to purchase Burd’s property; and (3) the State improperly alleged in its Complaint that its highway improvement project benefits Burd’s remaining property after the condemnation. Burd also served the State with discovery requests. The State objected to all requests, except one interrogatory and one admission, and filed a motion for summary judgment on the issue of a good-faith offer requirement. Burd then filed a motion to compel responses to its discovery requests.

The trial court granted the State’s motion for summary judgment, determining that the State was not required to prove that an offer to purchase was made prior to filing the condemnation action. The trial court also denied Burd’s motion to compel discovery requests and issued a *protective order shielding the State’s appraisals from discovery*.

The Court of Appeals, finding that the State was required to make a good-faith offer, reversed the trial court’s order granting summary judgment in favor of the State and remanded this case to the trial court with instructions to determine whether a good-faith offer had been made by the State for all of the land appropriated from Burd. The State petitioned to, and we granted, transfer. Burd Management v. State, 822 N.E.2d 981 (2004) (mem.).

Discussion

I

The central issue before this Court is whether there is a conflict between two statutes governing the condemnation of property in Indiana. The first statute, which Burd argues is controlling, provides:

As a condition precedent to filing a complaint in condemnation, . . . a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c).

Ind. Code § 32-24-1-5(a) (2004) (emphasis added) (“Section 5”). A “condemnor” for the purposes of this statute is defined as “any person authorized by Indiana law to exercise the power of eminent domain.” Ind. Code § 32-24-1-1.

The second statute, relied on by the State, provides:

The Indiana department of transportation or any state board, agency, or commission that succeeds the department in respect to the duties to locate, relocate, construct, reconstruct, repair, or maintain the public highways of Indiana, having the right to exercise the power of eminent domain for the public use, in its action for condemnation is not required to prove that an offer of purchase was made to the property owner in an action under this article.

Ind. Code § 32-24-1-13(a) (emphasis added) (“Section 13”).

Here is the history of these two statutes. In 1905, the Indiana Legislature enacted a provision as part of the general statute governing condemnation (the “Condemnation Act”) that provided in part, “[A]ny person, corporation, or other body having the right to exercise the power of eminent domain” must, “[b]efore proceeding to condemn, . . . make an effort to purchase” the land. 1905 Ind. Acts 48, § 1 at 59. This Court, in State v. Pollitt, held that the language of this

statute was broad enough to include the State and any of its administrative agencies. 220 Ind. 593, 600, 45 N.E.2d 480, 482 (1942).

In 1961, without expressly amending the 1905 Condemnation Act, the Legislature added a provision to the Indiana Code, which provided that the State Highway Department “shall not be required to prove that an offer to purchase was made to the land owner.” 1961 Ind. Acts 317, § 2 at 887; Ind. Code § 32-11-1-9 (1961) (now codified as Section 13). This Court in Sadlier v. State interpreted this language to mean that the State, as legal representative for the Highway Department, is exempted from the requirement that condemnors make an offer to purchase land before proceeding to condemn. 252 Ind. 525, 529, 251 N.E.2d 27, 29 (1969).

In 1977, the Condemnation Act was amended by the addition of a new code section, which provided, “As a condition precedent to filing a complaint in condemnation, . . . a condemnor may enter upon the property or interest therein as provided in this chapter, and shall at least thirty (30) days prior to filing such complaint make an offer to purchase the property” Ind. Code § 32-11-1-2.1(b) (1977) (now codified as Section 5). The Legislature defined “condemnor” as “any person or entity authorized by this state to exercise the power of eminent domain.” Ind. Code § 32-11-1-2.1(a)(2) (1977) (now codified as Ind. Code § 32-24-1-1 (2004)).

In 1981, the Indiana Court of Appeals in Decker v. State found that the statutes were “repugnant in . . . their provisions,” and interpreted them together to mandate that the State make, as a condition precedent to filing a condemnation action, a good-faith offer to purchase. 426 N.E.2d 151, 153 (Ind. Ct. App. 1981). The court reasoned that the obligation to make a good-faith offer “necessarily requires the State not only to allege an offer was made, but also when a timely objection is interposed, to prove such offer was tendered in the manner anticipated by the statute.” Id. at 154 (emphasis in original). The court went on to say that “[i]t may not be presumed the Legislature intended the illogical or absurd result of requiring the State to ‘make’ an offer to purchase, while relieving it of the obligation of establishing such offer as a condition precedent to condemnation.” Id. Transfer was not sought in Decker, and we have never had occasion to visit its holding.

In the present case, the Court of Appeals, following Decker, held that INDOT must prove that it made a good-faith offer before condemning Burd Management's real estate. The State argues that the Court of Appeals erred in following Decker because recodifications made subsequent to Decker revitalize Section 5 and repeal Section 13, thus eliminating the requirement for the State to prove that it made a good-faith offer. We will address each argument in turn.

II

A

Burd argues that "[t]he Legislative preference for the expeditious resolution of State eminent domain actions does not—and cannot—trump Burd's right to object to the taking of its property." Br. in Response to Pet. for Reh'g at 4. Burd goes on to argue that "Burd's procedural due process rights require an opportunity to contest the legality of the State's action to take its property." *Id.* (citing Cemetary Co. v. Warren Sch. Twp. of Marion County, 236 Ind. 171, 178, 139 N.E.2d 538, 541 (Ind. 1957)).

Burd cites Cemetary Co. to support this proposition. There this Court said:

At some place in the proceedings, and by some method the landowner is entitled to contest the legality of the condemnation proceedings, and question the authority under which the attempt is being made to take his property including the issue of whether or not it is a private or public purpose.

Cemetary Co., 236 Ind. at 178, 139 N.E.2d at 541 (emphasis added). However, the Court in Cemetary Co. was discussing the right to challenge the legality of the condemnation proceedings in the context of whether the condemnor had the legislative authority to condemn the property in dispute. Burd is not challenging INDOT's authority to condemn its property for the improvement of Pendleton Pike.¹ Instead, Burd is contesting whether the State has to prove that it made a good-faith offer for the property. Therefore, Burd's reliance upon Cemetary Co. is misplaced.

¹ Section 13, supra, confirms INDOT's legislative authority to condemn land for public use.

B

The State contended that because the Legislature recodified the Indiana Eminent Domain Act after the Decker decision was handed down,² the court's holding in Decker should no longer apply. The State argued, "[T]he Indiana General Assembly's amendment of a statute that an appellate court decided was implicitly repealed must be construed as a response to that appellate decision. Further, it is simply absurd that the Indiana General Assembly would amend a statute that it intended to repeal." Br. of Appellee at 14.

We disagree with the State's explanation of the effect of the General Assembly's recodification. According to the Legislature, the recodification of the statutes did not act as a response to an appellate decision.

The purpose of the recodification act of the 2002 regular session of the general assembly is to recodify prior property law in a style that is clear, concise, and easy to interpret and apply. Except to the extent that:

- (1) the recodification act of the 2002 regular session of the general assembly is amended to reflect the changes made in a provision of another bill that adds to, amends, or repeals a provision in the recodification act of the 2002 regular session of the general assembly; or

² In 1990, the Indiana General Assembly amended Indiana Code Section 32-11-1-9(a). The amendments are as follows:

In all proceedings by the state Indiana department of highways transportation, or any state board, agency, or commission which has succeeded said the department in respect to the duties duly charged by law to locate, relocate, construct, reconstruct, repair, or maintain the public highways of ~~the state of~~ Indiana, having the right to exercise the power of eminent domain for ~~such the~~ public use, the said department in its action for condemnation ~~shall is~~ not be required to prove that an offer of purchase was made to the landowner.

1990 Ind. Acts, Pub. L. No. 18, § 287 at 916-17. Then in 2002, the General Assembly recodified the Indiana Domain Act, including Indiana Code Section 32-11-1-9 and its 1990 amendments, at Indiana Code Sections 32-24-1-1 through 32-24-6-2. The relevant recodified statute continues to provide that "[t]he Indiana department of transportation . . . is not required to prove that an offer of purchase was made to the property owner in an action under this article." Ind. Code § 32-24-1-13(a) (2004).

(2) the minutes of meetings of the code revision commission during 2001 expressly indicate a different purpose; the substantive operation and effect of the prior property law continue uninterrupted as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

Ind. Code § 32-16-1-2 (2004) (emphasis added). Therefore, absent an amendment or express indication of the code revision committee, the recodification had no effect on the statutes at issue here.

C

Though we disagree with the State's view on the effects of the post-Decker recodifications, we nonetheless find that the Decker court erred in holding that the two statutes at issue were repugnant in their provisions. Sections 5 and 13 can, and should, be read in harmony with one another.³

As already discussed, the Legislature has given the State authority to condemn the land; the State need only give just compensation. And the Legislature has an interest in expediting the process of determining how much compensation is "just." So, as the State suggests in its brief, it would be sound policy for the Legislature—in an effort to divert parties from resorting to timely and costly litigation—to require the State to make a good-faith offer. If the State makes an offer that the landowner finds acceptable, the time and resources that would otherwise be consumed in litigation would be saved. Such policy encourages the State to present an offer that might well be acceptable to a landowner.

And it would also be sound policy for the Legislature to spare the State the burden of proving that it made a good-faith offer. Proving that an offer was made in good faith might well be costly and time consuming. In any event, by the time that proof would be required, the parties

³ "In construing a statute our main objective is to determine, give effect, and implement the intent of the legislature." Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 284 (Ind. 2003) (citing Melrose v. Capitol City Motor Lodge, Inc., 705 N.E.2d 985, 989 (Ind. 1998)). Also, "[w]here two or more statutes contradict each other or are in apparent conflict, we attempt to construe them in harmony." Id. (citing Purcell v. State, 721 N.E.2d 220, 223 (Ind. 1999)).

will already be before a court whose main purpose is to decide what compensation is “just.” At that stage, the amount and character of the initial offer is irrelevant.

So long as two statutes can be read in harmony with one another, we presume that the Legislature intended for them both to have effect.⁴ See Poehlman v. Feferman, 717 N.E.2d 578, 582 (Ind. 1999) (“[W]e recognize a strong presumption that when the legislature enacted a particular piece of legislation, it was aware of existing statutes relating to the same subject.”) (citing Glick v. Dep’t of Commerce, 180 Ind. Ct. App. 12, 18, 387 N.E.2d 74, 78 (1979)). We therefore disapprove the Court of Appeals’s decision in Decker, give effect to both Sections 5 and 13, and hold that the State need not prove that it made a good-faith offer.

Conclusion

Though Section 5 required INDOT to make a good-faith offer to Burd Management, Section 13 dictates that INDOT was not required to prove in subsequent condemnation litigation that it made such an offer. The trial court was correct to deny Burd’s motion to compel responses to its discovery requests and to grant summary judgment in favor of the State. We affirm the trial court.

Shepard, C.J., and Boehm and Rucker, JJ., concur. Dickson, J., dissents, believing Decker v. State, 426 N.E.2d 151 (Ind. Ct. App. 1981), to have been correctly decided.

⁴ We see little basis for finding legislative acquiescence to the Decker decision. No appellate court has subsequently cited Decker for the proposition that the State must prove that it made a good-faith offer before condemning property. There is no evidence that either landowners or condemners have relied on Decker. And, Burd does not make this argument.

Listing Broker (Co.) Realty () By Ros Meakin ()

Selling Broker (Co.) Coldwell Banker () By Terry P. Nelson ()

**PURCHASE AGREEMENT
(IMPROVED PROPERTY)**

258,025.26

1 Date: Jan 5, 2006

2
3 1. **BUYER:** Billy Lee Brown ("Buyer") agrees
4 to buy the following property from the owner ("Seller") for the consideration and subject to the following terms, provisions, and
5 conditions:

6
7 2. **PROPERTY:** The property ("Property") is known as 1530 2nd Ave
8 in Warren Township, Warren County,
9 Indiana, (zip code) legally described as: PARCEL # 18-06-15-476-023

312

10 together with any existing permanent improvements and fixtures attached (unless leased), such as, but not limited to,
11 electrical and/or gas fixtures, heating and central air-conditioning equipment and all attachments thereto, built-in kitchen
12 equipment, sump pump, water softener, gas grills, fireplace inserts, gas logs and grates, central vacuum equipment, window shades/blinds,
13 curtain rods, drapery poles and fixtures, ceiling fans and light fixtures, towel racks and bars, storm doors, windows, awnings, TV antennas,
14 satellite dishes and controls, storage barns, all landscaping, mailbox, garage door opener with control(s) AND THE FOLLOWING:
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22 The terms of this Agreement will determine what items are included/excluded. All items sold shall be fully paid for by Seller at
23 time of closing the transaction. Buyer should verify total square footage, land, room dimensions or community amenities if
24 material.

25
26 3. **PRICE:** Buyer will pay the total purchase price of \$ 31,000.00 for the Property. If Buyer obtains an appraisal of the
27 Property, this Agreement is contingent upon the Property appraising at no less than the agreed upon purchase price.

28
29 4. **EARNEST MONEY:** Buyer submits \$ 1,000.00 as earnest money which shall be applied to the purchase
30 price. The listing broker shall deposit earnest money received into its escrow account within two (2) banking days of acceptance of
31 this Agreement and hold it until time of closing the transaction or termination of this Agreement. If Buyer fails for any reason to
32 submit earnest money, Seller may terminate this Agreement. Earnest money shall be returned promptly in the event this offer
33 is not accepted. If this offer is accepted and Buyer fails or refuses to close the transaction, without legal cause, the earnest
34 money shall be retained by Seller for damages the Seller has or will incur, and Seller retains all rights to seek other legal and equitable
35 remedies. The Broker holding any earnest money is absolved from any responsibility to make payment to the Seller or Buyer
36 unless the parties enter into a Mutual Release or a Court issues an Order for payment, except as permitted in 876 IAC 1-1-23
37 (release of earnest money). Upon notification that Buyer or Seller intends not to perform, Broker holding the earnest money may release
38 the earnest money as provided in this Agreement. If no provision is made in this Agreement, Broker may send to Buyer and Seller notice
39 of the disbursement by certified mail. If neither Buyer nor Seller enters into a mutual release or initiates litigation within sixty (60) days of
40 the mailing date of the certified letter, Broker may release the earnest money to the party identified in the certified letter.
41 Buyer and Seller agree to hold the Broker harmless from any liability, including attorney's fees and costs, for good faith
42 disbursement of earnest money in accordance with this Agreement and licensing regulations.

43
44 5. **METHOD OF PAYMENT:** (Check appropriate paragraph letter)
45
46 A. CASH: The entire purchase price shall be paid in cash and no financing is required.

47 B. NEW MORTGAGE: Completion of this transaction shall be contingent upon the Buyer's ability to obtain a
48
49 Conventional Insured Conventional FHA VA Other: _____ first
50 mortgage loan for 50 % of purchase price, payable in not less than - years, with an original rate of
51 interest not to exceed 7.125% per annum and not to exceed _____ points. Buyer shall pay all costs of
52 obtaining financing, except

53 The sum will provide a personal loan with 5 days after
54 approval of this agreement

55
56 Notwithstanding any other provisions of this Agreement, any inspections and charges which are required to be made
57 and charged to Buyer or Seller by the lender, FHA, VA, mortgage insurer, or closing agent, shall be made and
58 charged in accordance with their prevailing rules or regulations and shall supersede any provisions of this
59 Agreement.

1530 2nd Ave Terre Haut (Property Address and/or Initials)

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- 60 C. ASSUMPTION: (Attach Financing Addendum)
- 61 D. CONDITIONAL SALES CONTRACT: (Attach Financing Addendum)
- 62 E. OTHER METHOD OF PAYMENT: (Attach Financing Addendum)

63
64 6. TIME FOR OBTAINING FINANCING: Buyer agrees to make written application for any financing necessary to complete this
65 transaction or for approval to assume the unpaid balance of the existing mortgage within 5 days after the acceptance
66 of this Agreement and to make a diligent effort to meet the lender's requirements and to obtain financing in cooperation with
67 the Broker and Seller. No more than 14 days after acceptance of the Agreement shall be allowed for obtaining
68 favorable written commitment(s) or mortgage assumption approval. If a commitment or approval is not obtained within the time
69 specified above, this Agreement shall terminate unless an extension of time for this purpose is mutually agreed to in writing.

70
71 7. CLOSING: The closing of the sale (the "Closing Date") shall be on or before Feb 1 2006, of
72 within 5 days after ALL THE POSSESSIONS HAVE BEEN MADE, whichever is later or this Agreement shall terminate unless an
73 extension of time is mutually agreed to in writing. The closing fee shall be paid by BUYER SELLER shared equally.

74
75 8. POSSESSION:

- 76 A. The possession of the Property shall be delivered to Buyer at closing within _____ days after closing or on or
77 before _____. For each day Seller is entitled to possession after closing, Seller shall pay to Buyer at
78 closing \$ _____ per day. If Seller does not deliver possession by the date required in the first sentence
79 of this paragraph, Seller shall pay Buyer \$ 150 per day as liquidated damages until possession
80 is delivered to Buyer; and Buyer shall have all other legal and equitable remedies available against the Seller.
- 81 B. Maintenance of Property: Seller shall maintain the Property in its present condition until its possession is delivered
82 to Buyer, subject to repairs in response to any inspection. Buyer may inspect the Property prior to closing to
83 determine whether Seller has complied with this paragraph.
- 84 C. Casualty Loss: Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller. In
85 the event any damage or destruction is not fully repaired prior to closing, Buyer, at Buyer's option, may either (a)
86 terminate this Agreement or (b) elect to close the transaction, in which event Seller's right to all insurance
87 proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer.
- 88 D. Utilities/Municipal Services: Seller shall pay for all municipal services and public utility charges through the day of possession.

89
90 9. SURVEY: Buyer shall receive a (check ONE) SURVEYOR LOCATION REPORT, which is a survey where corner markers are not set;
91 BOUNDARY SURVEY, which is a survey where corner markers of the Property are set prior to closing; WAIVED; no survey required
92 at (Check ONE) BUYER'S expense; SELLER'S expense. The survey shall (1) be received prior to closing and certified as of a
93 current date, (2) be reasonably satisfactory to Buyer, (3) show the location of all improvements and easements, and (4) show the flood
94 zone designation of the Property.

95
96
97 10. FLOOD AREA/OTHER: Buyer may may not terminate this Agreement if the Property requires flood insurance or Buyer may
98 may not terminate this Agreement if the Property is subject to building or use limitations by reason of the location.

99
100 11. HOMEOWNER'S INSURANCE: Buyer shall have 10 days after acceptance of this Agreement to obtain a favorable written
101 commitment for homeowner's insurance.

102
103 12. ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE: Buyer and Seller acknowledge that Listing Broker, Selling Broker and all
104 salespersons associated with Brokers are NOT experts and have NO special training, knowledge or experience with regard to the
105 evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants")
106 which might exist and affect the Property. Environmental Contaminants at harmful level may cause property damage and serious illness,
107 including but not limited to, allergic and/or respiratory problems, particularly in persons with immune system problems, young children
108 and/or the elderly.

109
110 Buyer is STRONGLY ADVISED to obtain inspections (see below) to fully determine the condition of the Property and its environmental
111 status. The ONLY way to determine if Environmental Contaminants are present at the Property at harmful levels is through inspections.

112
113 Buyer and Seller agree to consult with appropriate experts and accept all risks for Environmental Contaminants and release
114 and hold harmless all Brokers, their companies and sales associates from any and all liability, including attorney's fees and
115 costs, arising out of or related to any inspection, inspection result, repair, disclosed defect or deficiency affecting the
116 Property, including Environmental Contaminants. This release shall survive the closing.

117
118 13. INSPECTIONS: (Check paragraph letter A or B)
119 A. BUYER RESERVES THE RIGHT TO HAVE THE PROPERTY INSPECTED (including Lead-Based Paint) independent of and in
120 addition to any inspections required by FHA, VA, or Buyer's lender(s). All inspections are to be at Buyer's expense (unless
121 noted otherwise or required by lender) by qualified inspectors or contractors selected by Buyer within the following time periods.
122 Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's inspections.

123
124 INSPECTION/RESPONSE PERIOD: Buyer shall order all INDEPENDENT INSPECTIONS immediately after acceptance of the Purchase
125 Agreement. Buyer shall have 14 calendar days beginning the day following the date of acceptance of the Purchase
126 Agreement to respond to the inspection report(s) in writing to Seller (see "Buyer's Inspection Response").

15302 Ave Terre Haut In (Property Address and/or Initials)

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2 2006

Inspections may include but are not limited to the condition of the following systems and components: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, well/septic, water, wood-eating insects and organisms, lead-based paint (note: intact lead-based paint that is in good condition is not necessarily a hazard), radon (tested at lowest livable area either currently finished or unfinished), mold and other biological contaminants and/or the following:

If the initial inspection report reveals the presence of lead-based paint, radon or mold and other biological contaminants, then Buyer shall have 14 additional calendar days to order, receive and respond in writing to any additional reports.

If the Buyer does not comply with any Inspection/Response Period or make a written objection to any problem revealed in a report within the applicable Inspection/Response Period, the Property shall be deemed to be acceptable. If the Buyer reasonably believes that the Inspection Report reveals a MAJOR DEFECT with the Property and the Seller is unable or unwilling to remedy the defect to the Buyer's reasonable satisfaction before closing (or at a time otherwise agreed to by the parties), then this Agreement may be terminated by the Buyer or such defect shall be waived by the Buyer and the transaction shall proceed toward closing. Under Indiana law, "Defect" means a condition that would have a significant adverse effect on the value of the Property that would significantly impair the health or safety of future occupants of the Property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises. BUYER AGREES THAT ANY PROPERTY DEFECT PREVIOUSLY DISCLOSED BY SELLER, OR ROUTINE MAINTENANCE AND MINOR REPAIR ITEMS MENTIONED IN ANY REPORT SHALL NOT BE A BASIS FOR TERMINATION OF THIS AGREEMENT. ALL TIME PERIODS APPLICABLE TO INSPECTION RESPONSES SHALL BE REASONABLE.

B. BUYER HAS BEEN MADE AWARE THAT INDEPENDENT INSPECTIONS DISCLOSING THE CONDITION OF THE PROPERTY ARE AVAILABLE AND HAS BEEN AFFORDED THE OPPORTUNITY TO REQUIRE SUCH INSPECTIONS AS A CONDITION OF THE AGREEMENT. However, Buyer waives inspections and relies upon the condition of the Property based upon Buyer's own examination and releases the Seller, the Listing and Selling Brokers and all salespersons associated with Brokers from any and all liability relating to any defect or deficiency affecting the Property, which release shall survive the closing. Required FHA/VA or lender inspections are not included in this waiver.

Buyer acknowledges the availability of a LIMITED HOME WARRANTY PROGRAM with a deductible paid by Buyer which will will not be provided at a cost of \$ _____ charged to Buyer Seller. Buyer and Seller acknowledge this LIMITED HOME WARRANTY PROGRAM will not cover any pre-existing defects in the Property nor replace the need for an independent home inspection. Broker may receive a fee from the home warranty provider.

14. SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE: (check one)

- Buyer acknowledges receipt and execution of a Seller's Residential Real Estate Sales Disclosure Form.
- Buyer has not received an executed Seller's Residential Real Estate Disclosure Form.
- Seller's Residential Real Estate Sales Disclosure Form is not applicable to this transaction.

15. TITLE APPROVAL: Prior to closing, Buyer shall be furnished an ALTA 98 Title Insurance Commitment (if available) or an ALTA 92 Title Insurance Commitment in the amount of purchase price or an abstract of title continued to date showing marketable title to the Property in Seller's name. The cost shall be paid by Buyer Seller shared equally Seller to pay owner's policy and Buyer to pay mortgage policy. Any encumbrances or defects in title must be removed and Seller must convey title free and clear of any encumbrances and title defects, with the exception of any mortgage assumed by Buyer and any restrictions and easements of record which will not materially interfere with Buyer's intended use of the Property. Seller shall order the commitment immediately after mortgage approval other _____

Seller agrees to pay the cost of obtaining all other documents necessary to perfect title (including the cost of the deed and vendors affidavit), so that marketable title can be conveyed. A title company, at Buyer's request, can provide information about availability, desirability, coverage, and cost of various title insurance coverages and endorsements.

16. TAXES: (Check paragraph A, B or C)

- A. Buyer will assume and pay all taxes on the Property beginning with the taxes due and payable on _____, and all taxes due thereafter. At or before closing, Seller shall pay all taxes for the Property payable before that date.
- B. All taxes assessed for any prior calendar year and remaining unpaid shall be paid by Seller, and all taxes assessed for the current calendar year shall be prorated between Seller and Buyer on a calendar-year basis as of the day immediately prior to the Closing Date.

For purposes of paragraph A and B: if the tax rate and/or assessment for taxes assessed in the current year have not been determined at the closing of the transaction, the rate and/or assessment shall be assumed to be the same as the prior year for the purpose of such proration and credit for due but unpaid taxes, and this shall be a final settlement.

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Page 3 of 5 (Purchase Agreement)

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C. FOR RECENT CONSTRUCTION ONLY. If the tax rate and/or assessment for taxes is not available, Seller will give a tax credit of \$ _____ to Buyer at closing. If the tax rate and/or assessment for taxes is available prior to the Closing Date, then paragraph B shall apply.

WARNING: The succeeding year tax bill for recently constructed homes or following reassessment periods may greatly exceed the last tax bill available to the closing agent.

17. **PRORATIONS AND SPECIAL ASSESSMENTS:** Insurance, if assigned to Buyer, interest on any debt assumed or taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not limited to, public utility charges, shall be prorated as of the day prior to the Closing Date. Seller shall pay any special assessments applicable to the Property for municipal improvements previously made to benefit the Property. Seller warrants that Seller has no knowledge of any planned improvements which may result in assessments and that no governmental or private agency has served notice requiring repairs, alterations or corrections of any existing conditions. Public or municipal improvements which are not completed as of the date above but which will result in a lien or charge shall be paid by Buyer. Buyer will assume and pay all special assessments for municipal improvements completed after the date of this Agreement.

18. **TIME:** Time is of the essence. Time periods specified in this Agreement and any subsequent Addenda to the Purchase Agreement are calendar days and shall expire at midnight of the date stated unless the parties agree in writing to a different date and/or time.

19. **HOMEOWNERS ASSOCIATION/CONDOMINIUM ASSOCIATION:** Documents for a mandatory membership association shall be delivered by the Seller to Buyer within _____ days after acceptance of this Agreement. If the Buyer does not make a written response to the documents within _____ days after receipt, the documents shall be deemed acceptable. In the event the Buyer does not accept the provisions in the documents and such provisions cannot be waived, this Agreement may be terminated by the Buyer and the earnest money deposit shall be refunded to Buyer promptly. Any approval of sale required by the Association shall be obtained by the Seller, in writing, within _____ days after Buyer's approval of the documents.

Buyer acknowledges that in every neighborhood there are conditions which others may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off-site conditions that could affect the Property.

20. **ATTORNEY'S FEES:** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

21. **MISCELLANEOUS:**

A. Unless otherwise provided, any prorations for rent, taxes, insurance, damage deposits, association dues/assessments, or any other items shall be computed through the date of closing.

B. Underground mining has occurred in Indiana, and Buyers are advised of the availability of subsidence insurance.

C. The Indiana Sheriff's Sex Offender Registry (www.indiansheriffs.org) exists to inform the public about the identity, location and appearance of sex offenders residing within Indiana. Broker is not responsible for providing or verifying this information.

D. Conveyance of this Property shall be by general Warranty Deed, or by _____ subject to taxes, easements, restrictive covenants and encumbrances of record, unless otherwise agreed.

E. Seller represents and warrants that Seller is not a "foreign person" (individual entity) and, therefore, is not subject to the Foreign Investment in Real Property Tax Act.

F. Any notice required or permitted to be delivered shall be deemed received when personally delivered, transmitted electronically or digitally or sent by express courier or United States mail, postage prepaid, certified and return receipt requested, addressed to Seller or Buyer or the designated agent of either party.

G. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and is binding upon the parties' respective heirs, executors, administrators, legal representatives, successors, and assigns.

H. In case any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

I. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties' respecting the transaction and cannot be changed except by their written consent.

J. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.

K. Broker(s) may refer Buyer or Seller to other professionals, service providers or product vendors, including lenders, loan brokers, title insurers, escrow companies, inspectors, pest control companies, contractors and home warranty companies. Broker(s) does not guarantee the performance of any service provider. Buyer and Seller are free to select providers other than those referred or recommended to them by Broker(s).

1530 2nd Ave TH (Property Address and/or Initials)

BB

- 259 L. By signing below, the parties to this transaction acknowledge receipt of a copy of this Agreement and give their permission to a
- 260 Multiple Listing Service, Internet or other advertising media, if any, to publish information regarding this transaction.
- 261
- 262 M. Any amounts payable by one party to the other, or by one party on behalf of the other party, shall not be owed until this transaction
- 263 is closed.
- 264
- 265 N. Buyer and Seller consent to receive communications from Broker(s) via telephone, U.S. mail, email and facsimile at the
- 266 numbers/addresses provided to Broker(s) unless Buyer and Seller notify Broker(s) in writing to the contrary.
- 267
- 268 O. Buyer discloses to Seller that Buyer is licensed and holds License # _____
- 269
- 270 P. Where the word 'Broker' appears, it shall mean 'Licensee' as provided in I.C.25-34.1-10-6.8.
- 271

272 22. FURTHER CONDITIONS: _____

273 _____

274 _____

275 _____

276 _____

277 _____

278 _____

279 _____

280 _____

281 _____

282 _____

283 23. EXPIRATION OF OFFER: Unless accepted by Seller and delivered to Buyer by 5:00 A.M. P.M. Noon, the 6

284 day of Jan 2006, this Purchase Agreement shall be null and void and all parties shall be relieved of any and all

285 liability or obligations.

286

287 24. CONSULT YOUR ADVISORS: Buyer and Seller acknowledge they have been advised that, prior to signing this document, they may seek

288 the advice of an attorney for the legal or tax consequences of this document and the transaction to which it relates. In any real estate

289 transaction, it is recommended that you consult with a professional, such as a civil engineer, environmental engineer, or other person, with

290 experience in evaluating the condition of the Property.

291

292 25. ACKNOWLEDGEMENTS: Buyer and Seller acknowledge that each has received agency office policy disclosures, has had agency

293 explained, and now confirms all agency relationships. Buyer and Seller further acknowledge that they understand and accept agency

294 relationships involved in this transaction. By signature below, the parties verify that they understand and approve this Purchase

295 Agreement and acknowledge receipt of a signed copy.

296

This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Agreement may be transmitted between them by electronically or digitally. The parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the parties. The original document shall be promptly delivered, if requested.

301 Bill Brown 1-5-06

302 BUYER'S SIGNATURE DATE BUYER'S SIGNATURE DATE

303 _____

304 _____

305 _____

306 PRINTED PRINTED

- 307 (Check appropriate paragraph letter)
- 308 A. As the Seller(s) of the property described herein, the above terms and conditions are accepted this _____ day of
- 309 _____ at _____ A.M. P.M. Noon.
- 310
- 311 B. The above offer is Rejected.
- 312
- 313 C. The above offer is Countered this _____ day of _____, Seller should sign both the Purchase
- 314 Agreement and the Counter Offer.
- 315
- 316
- 317

318

319 SELLER'S SIGNATURE DATE SELLER'S SIGNATURE DATE

320 _____

321 _____

322 PRINTED PRINTED



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COUNTER OFFER # 1

11:00 A.M. P.M. January 6, 2006

The undersigned makes the following Counter Offer to the Purchase Agreement dated Jan 5, 2006 concerning property commonly known as 1530 2nd Ave in Harrison Township, Vigo County, Terre Haute Indiana between: KayJay LLC as Seller(s) and Billy Lee Brauer as Buyer(s).

① Price to be \$35,000. firm.

② Possession to be 30 days after closing since property is tenant occupied.

Note: Seller has the right to accept any other offer and buyer has the right to withdraw any offer prior to written acceptance and delivery of such offer/counter offer.

All other terms and conditions of the Purchase Agreement and all previous Counter Offers shall remain in effect except as modified by this Counter Offer.

This Counter Offer # 1 is void if not accepted in writing on or before 5:00 A.M. P.M. Noon on January 7, 2006

This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Agreement may be transmitted between them by facsimile machine. The parties intend that faxed signatures constitute original signatures and are binding on the parties. The original document shall be promptly delivered, if requested.

KayJay LLC by KayJay LLC 1/6/06
 SELLER BUYER SIGNATURE DATE SELLER BUYER SIGNATURE DATE

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ACCEPTANCE OF COUNTER OFFER # 1

The above Counter Offer # 1 is accepted at 5:00 A.M. P.M. Noon on January 7, 2006. Receipt of a signed copy of this Counter Offer is acknowledged.

Billy Brauer 1-7-06
 SELLER BUYER SIGNATURE DATE SELLER BUYER SIGNATURE DATE

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Phone:

Fax: