



## **Solicitation of Developer Qualifications & Request for Proposals: Town of Middlebury for 109 Grand Street**

**Issued:** February 1, 2024

**Responses Due:** Monday, May 6, 2024, by 6:00p.m. (local time)

**Respond to:**

Mary Cripe P.E., Town Manager  
Town of Middlebury  
418 North Main St.  
Middlebury Indiana 46540  
Phone: 574-825-1499  
Email: [townmanager@middleburyin.com](mailto:townmanager@middleburyin.com)

This document and all supporting materials are posted on the Town of Middlebury website: <http://www.middleburyin.com>

### **Solicitation of Developer Qualifications and Request for Proposals for the 109 Grand Street Property.**



## **Purpose**

The Town of Middlebury, Indiana is seeking proposals from a developer or development company for the redevelopment of this 1.02-acre parcel into a thriving residential or mixed-use development. It is the intent of the Town of Middlebury to enter into a redevelopment agreement with the selected developer.

The purpose of this Solicitation of Developer Qualifications and Request for Proposals is to identify experienced developers and invite proposals that shall include design concepts and development plans. The Town will accept proposals for this site in accordance with this document. The Town will review each development submission received to select a developer that the Town determines to be the best suited for this project based on the objectives of this request and existing Town plans.

## **Community Description**

The Town of Middlebury is a small town in northern Indiana bursting with economic opportunity for entrepreneurs and industry alike, with quality schools and parks, and like-minded, community-oriented citizens. Middlebury's geographic position is ideal with quick access to an extensive transportation network leading to larger cities such as South Bend, Goshen, Fort Wayne, Chicago, Detroit, Kalamazoo, Portage, and Indianapolis. Middlebury offers pedestrian and cyclist-friendly neighborhoods that connect to the Pumpkinvine Nature Trail. Shops and eateries, the library, schools, Town Hall, and post office are just moments away. This "grown from tradition" community provides high quality municipal services to a well-educated and very involved citizenry.

## **Community Vision**

The Town of Middlebury is a safe, clean, and diverse community with a mixture of recreational, cultural, and educational opportunities with a rich historic hometown appeal along with a suburban country charm and surrounded by picturesque farming areas. The natural landscape garners opportunities for all to experience, enjoy and appreciate the natural beauty of Middlebury. There is also easy access to Pumpkinvine Nature Trail, which is directly connected to other nearby communities. Middlebury is also known for its large Amish Community, which adds to the charm.

Middlebury envisions the creation of a hospitable environment for this development of residential and/or new businesses and as well as for existing businesses within the Town which will offer and expand employment opportunities for residents and increase its commercial tax base.

## **Community Profile**

### **Retail Industry**

The Town Center District has average daily traffic counts more than 13,000 vehicles per day and is centered less than 4 miles south of the Indiana Toll Road, which boasts traffic counts of over 154,000 vehicles per day. Retail interests along or near Main Street/SR13

include Joyfully Said, Living In Yellow, Legacy Furniture, Clothesline Creation LLC., Old Hoosier Meats, Pumpkinvine Cyclery, Essenhaus Village, and Flower Basket.

**Personal Care and Recreational Industry**

The Town of Middlebury boasts several local personal care businesses such as Body on Cue and Fit Stop fitness clubs, Getaway Tanning and Salon, Infuse Salon, Intrigue Salon and Spa and Triple ‘A’ Barber. Recreational opportunities include Krider Gardens, Riverbend Park, Memorial Park, and Meadow Valley Golf Course along with a host of Hometown Festivals.

**Manufacturing Industries**

Middlebury is home to the country's largest concentration of RV Manufacturers including Jayco Inc., Coachmen/Forest River Industries, ShowHauler Motorhome Conversions as well as Winnebago Industries. Middlebury also has expanded industries such as Lozier Store Fixtures, Egg Processing Plants, Meijer Food Productions, Middlebury Hardwood Products, Firefly Integrations, and Culver Duck Farm.

**Demographics and Labor**

POPULATION		
	2000	2956
	2023	3,466
MEDIAN AGE		
	2000	36.8
	2023	44.5
HOUSEHOLDS		
	Total Households	1252
	Average Household Size	3
HOUSING		
	Total Housing Units	1406
	% Occupied Housing Units	89.04%
	Median Home Value	\$279,000
INCOME		
	Median Household Income	\$73,813
MAJOR EMPLOYERS		
	Jayco Inc	Middlebury Community Schools
	Forest River Industries	Beacon Health Care
	Essenhaus	Grand Design RV
	Lozier Store Fixtures	Lippert Components
	Winnebago of Indiana	Atlas IT
	Clayton/Crest Homes	Dutch Country Egg Processing
	Culver Duck Farm	Jomar Machining
	Showhauler Motorhome	
	EPCO Sales	
	L & W Engineering	
	Ziggity Systems	
	Meijer Food Production	

SOURCE: US Census Bureau, 2023 unless otherwise stated.

**Site Context**

The project site is located west of the Middlebury downtown area. The project site is bordered by the Pumpkinvine Nature Trail on the East, the Hilltop Restaurant on the South, Chiphone Credit Union on the North and residential homes on the west. The residential uses can be grouped into five neighborhoods: Spring Valley, Westlake Estates, Highland Hills, Villas at Riverpark, and Rolling Meadows.



## Development Objectives

The Town is committed to redeveloping the Grand Street area as a vibrant, well used, addition to the current Town amenities. Development of this site is intended to enhance the existing mixed-use, walkable character of the entry to our town.

## Planning Guidance

In 2020, the Town of Middlebury adopted the Middlebury 2030 Comprehensive Plan. The plan is summarized with the following goals:

The Town of Middlebury, grown from tradition, is a welcoming, thriving community for all ages. A place committed to an entrepreneurship zest while maintaining a safe, family-oriented environment with quality education, innovation, and community involvement. The Middlebury vision strives to incorporate sustainable practices as a vital component to maintaining their small-town identity while allowing future growth. Such practices relate to preserving their natural features while enhancing their quality of life and vibrancy. The Town envisions the Town Center as a mixed-use urban environment with denser residential units, an increase in local businesses, unique gathering spaces, and a vibrant Main Street.



1 The Middlebury Comprehensive Plan can be downloaded on the project webpage located here: <https://www.middleburyin.com/index.php>

## **Zoning Context**

The project site will need to be re-zoned from M-1 Limited Manufacturing Zone to a new zoning that is more reflective of the proposed development, and the Town will assist the developer with re-zoning matters. The purpose of the existing M-1 Manufacturing Zone was to allow light industrial expansion to provide goods and services to the community. The district provides for a mix of commercial, residential and entertainment uses and can be rezoned pending proposal approval. The standards are designed to maintain the pedestrian-oriented environment while accommodating larger scale uses.



## **Other Considerations**

### **Public Rights-of-Way**

The Town will consider the vacation of the public right-of-way for Berry Street to accommodate a development project. However, any proposal requesting a vacation of public right-of-way must state the terms by which such vacation would be made and demonstrate that unimpeded access will be maintained for all other properties currently served by the right-of-way.

### **Zoning Flexibility**

The Town of Middlebury recognizes that regulatory zoning flexibility may be required to improve the economic feasibility of a project and anticipates that proposals may include variations from the underlying zoning, such as maximum building height. The proposal should list all such variations.

## **Economic Incentives**

The Town of Middlebury will entertain reasonable requests to provide financial assistance. This property is situated in a tax increment financing district. The Town of Middlebury is willing to consider other means of assistance to successfully accomplish development project goals and objectives, based on the potential overall benefits to the community.

Such benefits include but are not limited to outstanding architectural/urban design, desired retail uses, additional parking, improved traffic flow, and the potential for long term stability and increased value of the project area.

## **Role of the Town of Middlebury**

The town of Middlebury is committed to the redevelopment of this site as described in this document. The Town is prepared to assist in the development of a partnering relationship with the selected developer that maximizes the vision of the Grand Street Redevelopment. The Town anticipates working closely and cooperatively with the chosen developer. Pending review of proposals, potential roles of the Town could include, but are not limited to conveyance of land; waiver of permit and other fees; flexible zoning and density considerations; additional infrastructure improvements in the surrounding area. These potential roles will be defined during the final negotiation process based upon the quality and impact of the proposed development.

## **Developer Selection Process**

The first step in the selection process is a Request for Qualifications (RFQ). Based on the qualifications submitted, the Town Council along with the Redevelopment Commission, will identify the most qualified developer team. The Town will review the selection in a timely manner. The team offering the most desirable proposal within the objectives outlined in this document will be designated the "Developer of Record" and will be asked to negotiate a final development agreement with the Town of Middlebury.

The Town of Middlebury fully reserves the right to reject any and all submittals of the RFQ if the Town, in its sole discretion, determines that the submittals do not meet its goals and objectives for the development of this site.

## **Request for Qualifications**

Prospective development teams should submit a statement of interest and qualifications. The information submitted should be explicit and informative. Five (5) copies of each should be submitted. Submissions should be limited to thirty (30) pages.

Letters of interest should be submitted to the Town Manager. The deadline for submissions is noted in the cover letter enclosed with this document and below. The Town of Middlebury staff will review qualifications and select development teams to interview with the Town according to the following timeline:

- Deadline for RFQ/RFP submittal: May 6, 2024
- Interviews with selected teams: June 12, 2024

After review by the Town staff and the related interviews, if the credentials and experience of one team far exceeds those of all other teams, the Town Manager acting on the recommendation of staff, may choose that developer.



## **RFQ Submittal Requirements (limited to 30 pages)**

### **1. Submission Quantity and Format**

- A. Five (5) collated sets of Qualifications shall be submitted and organized generally as follows:
  - i. Cover letter;
  - ii. Understanding of Request;
  - iii. Developer's Relevant Qualifications and Experience;
  - iv. Developer Description, Organizational Structure, and Capacity;
  - v. Summary Statement (optional); and
  - vi. Financial Information (under sealed cover).
- B. Required financial information and shall be included in a separate but attached sealed envelope clearly identifying the prospective Developer.

### **2. Understanding of Request**

This section shall summarize the prospective Developer's understanding of the request and requirements, including site analysis and understanding of the community and neighborhood. The Developer may add any additional information to help the Town determine that a Developer is qualified.

### **3. Developer's Relevant Qualifications**

The prospective Developer must demonstrate experience in facilitating successful projects of similar contemplated scope and quality. The relevant qualifications submissions must be a part of and fit into the response but outside of this requirement the prospective Developer can determine the format. A short project synopsis addressing the scope, budget schedule and reference contact may be provided. The Town of Middlebury will look for a minimum level of experience to be demonstrated including but not limited to the following:

- A. Demonstrated experience in, preferably, at least two (2) completed projects of similar size and quality as envisioned for the project.
- B. Demonstrated financial resources and commitments to both acquire and develop the property as provided in financial statements, evidence of equity and debt financing, or other similar documentation.

- C. A list of projects as Developer over the past five (5) years prior to the due date of this Request, including project overall size and by type of use (e.g., for-sale or rental multifamily, row homes, residential apartments), overall construction cost, major tenants, absorption, current photos of site, and the current occupancy and ownership of these projects.
- D. Description, location, and summary of the past projects. The Town would consider it a positive factor if the projects presented in this section were accomplished with the currently proposed Developer Team.

#### **4. Developer Description**

- A. Legal Name of the proposed development entity.
- B. Proposed form/structure of the proposed development entity (e.g., Corporation, Partnership, Limited Liability Corporation (LLC), Individual, Joint Venture, Not-for-Profit, etc.)
- C. Date Established to include constituent firms/partners/team members if a joint venture (JV) is proposed.
- D. Subsidiary status or affiliation with any other/parent entity including the name and address of and relationship to the parent or partner as well identification of its key officers.
- E. Names, addresses, title of position, and nature and extent of the interest of the officers:
  - i. For corporations, the officers, directors or trustees, and each stockholder owning any class of stock and each person's percentage ownership.
  - ii. For not-for-profit organizations, the members who constitute the board of trustees or board of directors, or similar governing body.
  - iii. For partnerships or limited liability corporations, each partner or member, whether a general or limited partner or member, and either the percent of interest or a description of the character and extent of interest.
  - iv. For joint ventures, each participant and either the percentage of interest or a description of the character and extent of interest. If the joint venture partners are corporations or partnerships, then the information for such firms each should be provided.
  - v. For any other type of entity, each officer, owner and members of governing body, and each person's percentage ownership.

#### **5. Developer Organization and Capacity**

- A. Proposed organizational chart identifying the Developer functions, roles, and responsibilities.

- B. Developer team partners, and/or consultants proposed to deliver the project including their relevant experience and a clear description of their roles and responsibilities (e.g., Architect/Engineer, Economic/ Financial consultant, Counsel, Construction, leasing/management, etc.); key staff and roles with individual résumés not exceeding one page, if included.
- C. The Town would consider it a positive factor if the key Developer team members/partners/consultants and/or staff presented in this section also have contributed to the successful past projects presented by the prospective Developer.
- D. Anticipated general and tentative development/construction schedule, if selected.
- E. It is recognized that several factors that impact any expected schedule may be outside of the prospective Developer's direct control and that a mutually agreed upon schedule would be part of a redevelopment agreement with the Town. However, this information will assist the town in assessing a prospective Developer's experience with a project of this type and insight into how the prospective Developer proposes to manage the Project process to successful completion.
- F. The number, location, and magnitude of projects currently on the prospective Developer's work plan for the next two calendar years.

## **6. Summary Statement**

A summary statement is optional but can be included with information the prospective Developer feels would help the Town to select the best overall qualified Developer. For example, a discussion or list of the type and quality of Commercial or mixed-use projects with which the Developer has a successful relationship and that are envisioned to be brought to this Project including any that may already have expressed interest would be appropriate here.

## **7. Separate Financial Information Required from the Prospective Developer**

- A. Five (5) sets of the following information should be submitted at the same time as the related qualifications in a separate sealed envelope marked "confidential" relative to each person with an ownership interest in the development entity and the development entity itself:
  - i. Audited financial statement or federal income tax forms for the last three years.
  - ii. References from financial institutions with whom the Developer has dealt as a borrower or as a joint venture partner.
  - iii. Proposed sources of financing and preliminary evidence of interest from financial institutions or partners if available.

- iv. List of pending litigation or other disputes including court case numbers, status, potential of a financial settlement, and impact on your ability to execute this Project.
- v. Filings for bankruptcy including dates and circumstances, or foreclosures or returns to lenders via deed-in-lieu of foreclosure.

### **RFQ Basis for Evaluation**

- Developer Expertise---Priority will be given to the development team that has a history of successful real estate development and demonstrates the interdisciplinary expertise required for this type of project. Also of prime consideration is a track record of high-quality development sensitive to the client and the setting, design expertise, innovative packaging, and the ability to attract and retain quality buyers/tenants.
- Expertise on Similar Projects---Experience on similar Commercial or mixed-use redevelopment projects is considered essential. Comparable projects that are relevant and transferable must be described.
- Financial Capability---Financial capability of the development team will be a major factor.
- Creativity, appropriateness, and catalytic potential of the narrative concept plan.

### **Developer of Record**

The development team(s) selected as “Developer(s) of Record” must be prepared to promptly enter into a development agreement with the Town. The agreement will specify each party’s specific roles and obligations in the implementation of the redevelopment project. The timeframe for negotiations will be subsequently determined.

### **Middlebury's Selection of a Developer**

The Town of Middlebury reserves the right to consider in part or in whole, waive selection criteria in part or in whole, or waive any inconsistencies or irregularities in part or in whole in responses to determine and select the best overall qualified Developer(s), in the Town's opinion, to execute the Project. Final selection, based on the RFQ, to attempt to negotiate a redevelopment agreement with the Town will be based on a combination of Developer qualifications and proposal and shall be made by the Town in its sole discretion. The Town is not obligated or required to select any Developer, or to negotiate any redevelopment agreement. The resulting redevelopment agreement will, at a minimum, include key provisions from this solicitation and the successful Developer’s proposal.

Project qualifications may be subject to staff, consultant, as well as public review after which the Town Council along with the Redevelopment Commission, may approve a final selection for negotiation. Final negotiations are subject to approval of the Town Council.

## **Proprietary Information**

All responses shall become property of the Town of Middlebury upon receipt. Any restrictions on the use of information contained within a proposal shall be clearly stated as such within the proposal. The Town will only be able to comply with a request for confidentiality to the extent allowed by law.

## **Response Deadline**

Complete responses, including all required documentation identified in this solicitation, shall be sealed, and clearly marked Solicitation of Developer Qualifications, Request for Proposals: Middlebury town Hall and shall be submitted no later than 6:00 PM on **May 6, 2024**.

## **Questions**

A non-mandatory pre-proposal conference will be held on Wednesday, February 21, 2024, at 9:00am at Middlebury Town Hall located at 418 North Main Street. Any questions can be submitted in writing prior to the pre-proposal conference.

Questions must be submitted via mail or email to:

Mary Cripe P. E.

Town Manager

Town of Middlebury

418 North Main Street

Middlebury Indiana 46540

574.825.1499

townmanager@middleburyin.com

The Town will not respond to questions after the pre-proposal conference.

## **RFQ Timeline**

February 1, 2024 - Solicitation released.

February 21, 2024 – Non-mandatory meeting at 9:00 a.m. Middlebury Town Hall

May 6, 2024 – RESPONSES DUE BY 6:00 PM (local time)

May 29, 2024 – Developer Team Reviews Complete

June 12, 2024 – Developer Team Interviews

Date TBD – Zoning Board Review and Recommendation

Date TBD– Plan Commission Review & Recommendation

Date TBD - Redevelopment Committee review and recommendation

Date TBD – Town Council Review & Approval

Any deviation from this schedule shall be provided to all developers in writing.

## Attachments

- 2020 Middlebury 10 Year Comprehensive Plan (Sent separately)
- Maps of Utility Locations
- Zoning Map of the Surrounding Area
- Lease Agreement with Hilltop Restaurant for the Temporary Parking Lot



Water

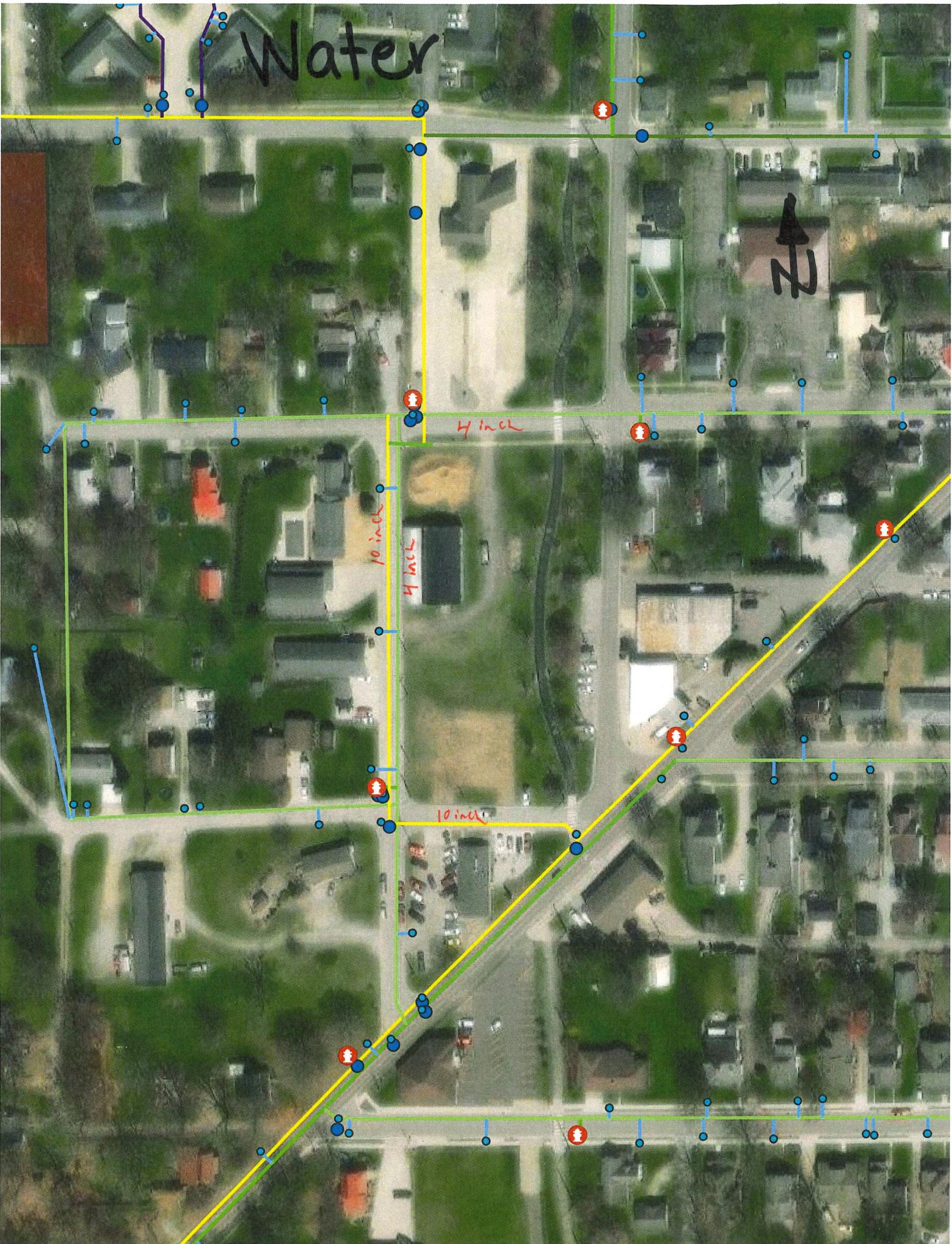


4 inch

10 inch

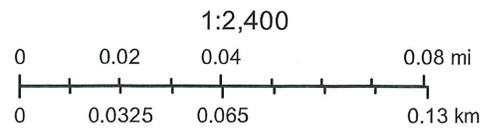
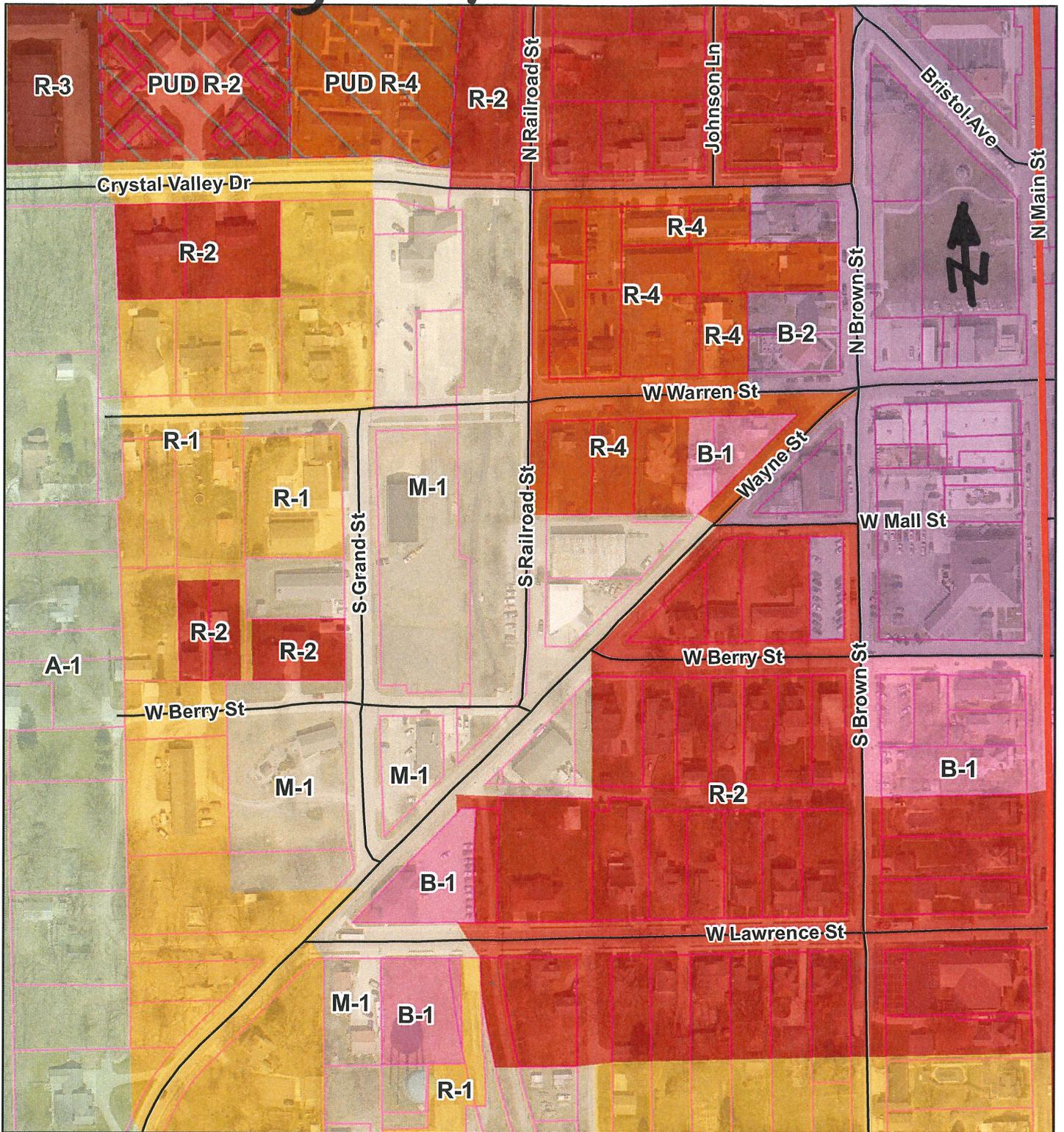
4 inch

10 inch





# Zoning Map



**2022-18937**

**ELKHART COUNTY RECORDER  
JENNIFER L. DORIOT  
FILED FOR RECORD ON  
09/02/2022 09:20 AM  
AS PRESENTED**

**TRIPLE NET LEASE AGREEMENT**

THIS AGREEMENT ("Lease"), made and entered into effective this 15<sup>th</sup> day of August 2022, by and between the Town of Middlebury, Indiana, for and on behalf of its Department of Redevelopment, (hereinafter referred to as "Landlord"), and Esther's Hilltop Restaurant, Inc., an Indiana corporation (hereinafter referred to as "Tenant").

**WITNESSETH:**

WHEREAS, Landlord owns real estate situated in Elkhart County, State of Indiana, to-wit: the real estate described and depicted in Exhibit A, attached hereto and made a part hereof (The said real estate and improvements are referred to collectively herein as the "Tract 1"); and

WHEREAS, Landlord also owns real estate situated in Elkhart County, State of Indiana, to-wit: the real estate described and depicted in Exhibit B, attached hereto and made a part hereof (The said real estate and improvements are referred to collectively herein as the "Tract 2") (Tract 1 and Tract 2 are referred to collectively herein as the "Premises"); and

WHEREAS, Landlord has advertised for bids to lease Tract 1 and desires to lease said tract pursuant to Indiana Code Section 36-1-11-10; and

WHEREAS, Tenant was the only responsive bidder and the agreed upon rental amount was \$50 per month; and

WHEREAS, Because the agree upon rental amount is less than 90% of the assessed fair market value, an additional notice was published in accordance with I.C. 36-1-11-10 and I.C. 5-3-1; and

WHEREAS, Tract 2 fronts and abuts real property assessed as commercial land under the real property assessment rules and guidelines of the department of local government finance; and

WHEREAS, Tract 2 consists of land that that extends from the curb or edge of a public street or sidewalk to the front of commercial property owned by Tenant; and

WHEREAS, Landlord desires to lease Tract 2 pursuant to Indiana Code Section 36-1-11-10.5; and

WHEREAS, Landlord desires that Tenant lease the Premises subject to the terms and conditions herein set out; and

WHEREAS, Tenant desires to lease the Premises based on the terms and conditions herein set out;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, do agree as follows:

1. Leased Premises and Term of Lease. Landlord hereby demises and leases upon Tenant the Premises.

The initial term of this Lease shall be for a period of three (3) years, commencing on the 15<sup>th</sup> day of August, 2022, and ending at midnight on the 14<sup>th</sup> day of August, 2025 ("Term"). Tenant shall have the right to renew the lease for successive one (1) year periods (each a "Renewal Term"), upon the same terms and conditions provided under this Lease. This Lease will automatically renew for each successive Renewal Term unless otherwise terminated. Either party will have the right to terminate this Lease upon providing written notice of termination at least sixty (60) days prior to the expiration of the Term or any Renewal Term.

2. Rent. Tenant agrees to pay, and Landlord agrees to accept, as the Base Monthly Rental for the Premises for Term or any Renewal Term, the sum of Fifty Dollars (\$50.00).

Tenant will be responsible for real estate taxes, insurance, and maintenance in accordance with the terms and provisions of this Lease. Tenant will assume the liability of the

Town of Middlebury for personal injuries and property damage to third parties occurring on the Premises during the Term or any Renewal Term. Tenant agrees and acknowledges that this Lease is expressly conditioned upon the Tenant procuring and maintaining such insurance coverage throughout the Term and any Renewal Term of this Lease, or any other additional period during which Tenant is in possession of the Premises, on the Premises for public liability and property damage and otherwise in accordance with this Lease. All such insurance policies must provide coverage in amounts determined sufficient by the Town of Middlebury. All payments required of Tenant for real estate taxes, insurance, and maintenance shall hereinafter collectively be referred and considered "Rent."

All payments owing by Tenant pursuant to this Lease shall be made at such place or places as Landlord may hereafter designate, and shall be made without set-off or deductions and with reasonable attorneys' fees and full costs of collection. In the event Tenant fails to pay any Rent, expenses, charges or other payments to be paid by it pursuant to this Lease within ten (10) days after the due date thereof, then any unpaid amounts shall be subject to a late charge of Fifty Dollars (\$50) for each such delinquency; further, any unpaid amount owed by Tenant to Landlord shall run with interest at the rate of eighteen percent (18%) per annum from and after the due date thereof until paid in full with all accrued interest. Notwithstanding the late fee or the interest charge, nonpayment of any amounts due under this Lease shall constitute a default by Tenant per paragraph 14 hereof.

It is the intention of Landlord and Tenant that this shall be a true net lease (also known as "triple net lease"); that the Rent herein specified shall be net to Landlord at all times during

the term of this Lease; and that all costs, expenses, and obligations of every kind relating to the Premises shall be the obligation of Tenant.

3. Covenants of Landlord. Landlord agrees as follows:

(a) That so long as Tenant is not in default in the performance of any of the conditions or provisions hereof, Tenant may peaceably hold and enjoy possession of the Premises during the term of this Lease without any interruption from Landlord or any person, firm, or corporation lawfully claiming through Landlord.

(b) Landlord will permit Tenant to review, prior to commencement date of this Lease, the environmental reports as and to the Premises obtained by the Landlord, for Tenant to satisfy itself that the Premises are free from known or reasonably ascertainable Environmental Matters based upon the all appropriate inquiry environmental standard.

4. Covenants of Tenant. Tenant agrees as follows:

(a) That Tenant will pay the Rent for the Premises as herein stated and all other payments and charges owing to Landlord pursuant to this Lease at the time and in the manner herein stated, without relief from Valuation and Appraisement Laws and with reasonable attorneys' fees and all other expenses and costs occasioned by the nonpayment thereof and occasioned by the default by Tenant in the performance of any of the terms of this Lease to be performed by Tenant.

(b) That Tenant shall pay as and when the same become due and payable the entire costs of electricity, gas, water, sewage, and other utilities and services used in or about the Premises, and Tenant will not permit the charges therefore to become delinquent.

(c) That Tenant will pay all real estate taxes assessed against the Premises, whenever due and payable, for the time frame reflected by the initial or any extended term of this Lease, such real estate taxes to be consistent with the provisions of paragraph 2 above.

(d) That Tenant shall procure, maintain, and deliver to Landlord in companies to be approved by Landlord policies of fire, tornado, hazard, and extended risk insurance in an amount of not less than the full replacement value of the buildings and improvements, now or hereafter situated upon the real estate, which insurance shall insure the buildings and improvements now or hereafter erected upon the real estate against damage by fire, tornado, and other hazards generally covered by comprehensive policies of extended risk insurance. Tenant shall pay all premiums on said policies as and when the same become due and payable and said policies shall contain a loss payable clause making such insurance payable to Landlord, to Tenant, and to any mortgagee of Landlord as their respective interests may appear. All of such policies of insurance shall be issued by insurers authorized to do business in the State of Indiana and shall provide that the coverage not be cancelled without at least ten (10) days prior written notice to Landlord, Tenant, and Landlord's mortgagee, and that any losses shall be payable notwithstanding any act or negligence of Tenant or Landlord which might otherwise result in forfeiture of the insurance. Copies of such insurance policies shall be delivered to Landlord and Landlord's mortgagee, together with satisfactory evidence of payment of all required premiums, prior to the commencement of any coverage period.

(e) That Landlord shall not be liable for any injuries or damage to the property of Tenant or for any loss or damage of any kind sustained by Tenant by reason of any defective condition of the Premises or by reason of any occurrence in or about the Premises.

(f) That Tenant shall procure and maintain at Tenant's expense throughout the term of this Lease, or any additional period during which Tenant is in possession of the Premises, policies of insurance with a responsible company or companies approved by Landlord indemnifying and protecting Landlord and Tenant (and if required of Landlord, Landlord's mortgagee) against loss, claims, actions, suits for damage or damages, including exemplary or punitive damages, claimed to be directly or indirectly, in whole or in part, due to the condition of the Premises or any part thereof or any appurtenances thereto or equipment thereon or due to the happening of any occurrence in or about the Premises or due to any act, omission, or negligence of Tenant or any agent, employee, or tenant of Tenant. Such insurance shall have maximum coverage limits as may be mutually agreed upon between Landlord and Tenant; but, in no event shall the limits thereof be less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000.00) aggregate, whether such losses, claims, or damages result from bodily injury or damage to property.

(g) That at Tenant's cost and expense, (1) Tenant will construct a parking lot on Tract 1 in compliance with state and local law; and (2) Tenant will make all repairs or replacements and will take all action necessary for the proper maintenance of the Premises, and Tenant's improvements thereto, the same to include the repair and/or replacement of heating, cooling, air conditioning, plumbing, roof, parking lot, sidewalk, electrical, structural, and all other components or improvements, of any type or character, of the Premises.

(h) That Tenant will, upon the termination of this Lease by lapse of time or otherwise, peaceably yield up possession of the Premises in the same condition and repair as of the date of this Lease, loss by fire, lightning, windstorm, and ordinary wear and tear excepted.

(i) That Tenant will not assign this Lease or any option or right granted to Tenant by this Lease nor shall Tenant sublet the Premises or any portion thereof without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Any such assignment or subletting permitted by Landlord shall not relieve or release Tenant from any of Tenant's obligations, covenants, undertakings, representations, warranties, and indemnifications set forth in this Lease.

(j) That Tenant will use the Premises for the following purpose(s): parking, and such additional purposes normally ancillary and related thereto, but for no other purposes than those herein stated. Tenant will use the Premises in such a manner that the reputation of the buildings and adjoining areas shall not be injured and in accordance with all ordinances of Elkhart County, all laws of the State of Indiana, and all other lawful rules and regulations which are now or may hereafter be in effect. Tenant will maintain the Premises in a safe, clean, and presentable condition and shall not commit waste. Tenant will store all materials, trash, and waste within the building and shall not permit any outside storage on the Premises except for trash service container. Tenant will be responsible for any and all building repairs or renovations or changes required that are deemed necessary by codes for Tenant to operate Tenant's business and Tenant shall be responsible for any and all building repairs or renovations or changes required to restore the Premises to the same condition and state of repair the Premises were in at date of commencement of this Lease.

(k) That Tenant will not make any changes, alterations, or additions to the Premises without first having obtained the written consent of Landlord, which consent shall not be unreasonably withheld. If any such alterations, changes, or additions are permitted by

Landlord to be made, then the same shall forthwith be and become a part of the Premises and belong absolutely to Landlord and not subject to removal, change, or destruction by Tenant; provided, however, that upon the termination or expiration of this Lease, Tenant shall have the right to remove from the Premises any and all items of its personal property which can be removed without material damage to the Premises. The cost of repairing any damage caused by such removal shall be paid by Tenant.

If said changes, alterations, or additions are permitted to be made, the cost thereof shall be paid by Tenant whenever the same shall become due and payable and Tenant shall not permit any mechanic's lien or other lien to be filed against or attached to the Premises or any part thereof for any purpose whatsoever. In the event any such lien is filed against or attached to the Premises or any part thereof as a result of such changes, alterations, or additions, Tenant shall forthwith take any and all action and make such payments as may be required to fully discharge such lien.

(l) That Landlord by and through Landlord's designated representative shall have the right at all reasonable times to enter upon the Premises for the purpose of examining, exhibiting, repairing, altering, or making additions to the Premises, provided that such actions by Landlord shall not unduly interfere with the use of the Premises by Tenant.

(m) Landlord will not be liable for damage caused by hidden defects or failure to keep the Premises in repair and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes or sewage, or the bursting or leaking of pipes or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Premises, nor for damage occasioned by water, snow or ice being upon sidewalks or coming

through the roof, or otherwise, nor for any damages arising from negligence of co-tenants or other occupants of the Premises, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

(n) Landlord will not be liable for any personal injury, death or property damage or destruction or consequential damages suffered by Tenant or any other person, occurring on or in front of the Premises, irrespective of whether such injury, death, damage or destruction is caused by a defect in the Premises or by reason of the Premises becoming out of repair or arising from any other cause whatsoever, and Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon the Premises and Tenant agrees to indemnify and save harmless Landlord from any and all claims and damages (whether compensatory, consequential or punitive), and whether determined through adjudication or settlement, and all expenses, including all attorneys' fees and costs of litigation arising out of personal injuries, death, property damage or destruction, or any other legal injury to persons or property occurring on or about the Premises.

(o) As a material inducement for Landlord to enter into this Lease, Tenant represents and warrants that Tenant will not cause contamination to the Premises by or from any "hazardous substances" or "hazardous wastes" (as such terms are defined and/or used in applicable state or federal law or the regulations issued under them) including, without limitation, the federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), and the Resource Conservation and Recovery Act ("RCRA"). Tenant shall not engage in or permit any tenant or subtenant of Tenant under any lease or sublease affecting the Premises to engage in operations at or upon the Premises which involve the generation,

manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances or hazardous wastes except in strict compliance with all applicable federal, state, and local laws, regulations, orders, and permits. Tenant further covenants that Tenant will not cause or permit to exist as a result of an intentional or unintentional action or omission on its part or on the part of any tenant or subtenant of Tenant under any lease affecting the Premises, the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping from, on or about the Premises of any such hazardous substances or hazardous wastes.

Tenant agrees to indemnify and hold harmless Landlord, Landlord's affiliates, and an officer, director, shareholder, employee, or any agent of Landlord or Landlord's affiliates, successors or assigns, and Landlord's mortgagee (collectively, the "Indemnified Parties"), from any and all liability, damages, costs, claims, suits, actions, legal or administrative proceedings, interest, losses, expenses, and reasonable attorneys' fees and appellate attorneys' fees (including any such fees and expenses incurred in enforcing this indemnity) resulting from, arising out of, or in any way connected with breach of the provisions of this subparagraph (n), including but not limited to monetary damages, expenses, injury to or the death of any person (including that of any Indemnified Party) or physical damage to property of any kind wherever located and by whomever owned (including that of any Indemnified Party) arising out of or in any way connected with the presence on, in or under the Premises of any asbestos, polychlorinated biphenyls (PCB's) or the generation, handling, storage and/or disposal of any hazardous substances or hazardous wastes or medical or biological wastes in violation of the provisions of the preceding paragraph. This indemnification is an independent covenant and shall survive the termination of this Lease.

(p) That Tenant has examined and inspected the Premises and accepts the same in the condition it is now in and without warranty, express or implied; Tenant is not in any way relying upon any statements, representations, or warranties by Landlord or Landlord's agents with regard to the condition of the Premises; and Tenant acknowledges and confirms that Tenant has heretofore been in possession and control of the Premises, that Tenant is fully familiar with the condition of the Premises and the fitness of the same for the needs and purposes of Tenant, and that Tenant has heretofore been responsible for the maintenance and repairs to the Premises.

(q) That Tenant will not prevent, prohibit, impede, or otherwise interfere with the public's right to use any sidewalk or any other public right of way on the Premises.

5. Destruction of Premises. In the event the Premises are damaged or destroyed by fire, lightning, windstorm, or other hazard, and the Premises become untenable, dangerous, or unfit for occupancy or use by Tenant, Landlord shall have a period of sixty (60) days from the date of such damage or destruction to notify Tenant of Landlord's intention to make the Premises fit for occupancy or to terminate the Lease. In the event Landlord does not give Tenant such notice of intention within sixty (60) days from the date of such damage or destruction or in the event Landlord gives such notice but fails to have the Premises made fit for occupancy within one hundred eighty (180) days after the date of such damage or destruction, Tenant shall have the option to terminate this Lease by serving upon Landlord Tenant's written notice of termination; provided, however, Tenant shall continue to be responsible for Rent until notice of termination is given.

6. Subrogation. Landlord and Tenant and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the Premises, or covered by insurance in connection with the property on or activities conducted on the Premises, regardless of the cause of the damage or loss.

7. Landlord's Right to Show the Premises. Tenant also agrees to permit Landlord or Landlord's agents to show the Premises to persons wishing to purchase the same, or lease the same; provided, however, that Landlord and Landlord's agents assume all liability for injury to such persons and agree to save Tenant harmless, except for acts of Tenant, Tenant's agents and employees.

Tenant shall also permit Landlord and Landlord's agents to place on the Premises any usual or ordinary "for sale" signs, without any rebate of Rent to Tenant or damages for any loss of occupation or quiet enjoyment of the Premises. Landlord may, at any time within ninety (90) days prior to the expiration of this Lease, place on the windows and doors of the Premises any usual or ordinary "to lease" or "for sale" signs.

8. Signs of Tenant. Tenant shall have the right and privilege to erect an identifying sign or signs on the building on the Premises, and/or shall have the right to erect an identifying sign or signs on the Premises, provided such signs shall comply with the laws of all applicable governmental units or jurisdictions.

9. Holdover by Tenant. Landlord and Tenant agree that if Tenant holds over or occupies the Premises beyond the term of this Lease with or without the consent of Landlord (it being agreed that there shall be no such holding over or occupancy without Landlord's written

consent), Tenant shall occupy the Premises as a tenant from month to month and all other terms and provisions of this Lease pertaining to Tenant's obligations shall be applicable, except for the Base Monthly Rental previously required of Tenant by paragraph 2 above which would then be increased to One Hundred Dollars (\$100.00) per month, in addition to Tenant's obligations for real estate taxes, insurance, maintenance, and other expenses. Nothing herein contained shall limit or prohibit the right of Landlord to obtain a judgment of immediate possession and damages in the event Tenant shall hold over or occupy the Premises beyond the term of this Lease without Landlord's written consent.

10. Landlord's Right to Cure Defaults. Landlord may, but shall not be obligated to, cure at any time after thirty (30) days notice, any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing such default, including without limitation, reasonable attorneys' fees, together with interest on the amount of costs and expenses so incurred at the rate of eighteen percent (18%) per annum, shall be paid by Tenant to Landlord on demand, and shall be recoverable as additional Rent.

11. Condemnation. In the event the Premises or any portion thereof are condemned for any public use or purpose by any legally constituted authority and by reason thereof the Premises are rendered untenable and unsuitable for use by Tenant, then this Lease shall terminate from the time when possession is taken by such public authority and the rental and other payments shall be accounted for between Landlord and Tenant as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either Landlord or Tenant to recover compensation from the condemning authority for any loss or

damage caused by such condemnation. Neither Landlord nor Tenant shall have any rights in or to any award made to the other by the condemning authority.

12. Default of Tenant on Lease. The occurrence of any one or more of the following events shall be considered a default by Tenant on the lease provisions herein stated:

(a) Failure of Tenant to perform any covenant or obligation under this Lease (including specifically payment of Rent when due) within thirty (30) days after written notice of default is received from Landlord, except Tenant's failure to make Rent payments for which no written notice of default is required from Landlord.

(b) The assignment by Tenant of any of Tenant's assets for the benefit of creditors.

(c) The levying of a Writ of Execution or Attachment against Tenant's property if not released or discharged within ninety (90) days thereafter.

(d) The commencement in a court of competent jurisdiction of proceedings for Tenant's: reorganization, liquidation, involuntary dissolution, adjudication as a bankrupt, insolvency, or for the appointment of a receiver of Tenant's assets, if such proceedings are not dismissed and any receiver, trustee, or liquidator appointed therein discharged within thirty (30) days after the institution of the proceedings.

(e) The placement of a mechanic's lien or claim against the Premises, if the lien or claim is not released or Landlord is not indemnified to Landlord's satisfaction within thirty (30) days after written notice of lien or claim is first given to Tenant.

13. Remedies of Landlord Under Lease. If Tenant defaults in payment of Rent or expenses required by this Lease, or if Tenant shall be in default in the performance of any other

covenant, agreement, or condition of this Lease, Tenant shall at once deliver peaceable possession of the Premises to Landlord upon oral or written demand. If Tenant fails to do so, Landlord may declare the lease term ended and may re-enter and take possession of the Premises. In the event Landlord elects to re-enter the Premises, Landlord may either declare the Lease term ended for all or any part of the Premises, or, without terminating this Lease, may from time to time make such alterations or repairs as may be necessary to relet the Premises. Landlord may then without terminating the Lease relet all or any part of the Premises for such Rent and upon such other conditions as Landlord in Landlord's sole discretion determines advisable. All Rent received by Landlord from such reletting shall be applied first to the payment of any indebtedness other than Rent due from Tenant to Landlord, next to the payment of any costs or expenses of such reletting (including brokerage fees and attorney fees and the costs of such alterations or repairs or acquiring of possession), and finally to the payment of Rent and additional charges due and unpaid under this Lease, to include interest at the rate of eighteen percent (18%) per year and late charges per paragraph 2 hereof. The residue, if any, shall be held by Landlord and applied to the payment of future Rent as it may become due and payable under this Lease. Upon such re-entry, Landlord either with or without due process of law may remove Tenant or any persons occupying the Premises using such force as may be reasonably necessary to do so and may then relet without waiving any remedies which otherwise might be used for rental arrearage or breach of the Lease provisions.

All provisions hereof to the contrary notwithstanding, Tenant shall not be relieved of Tenant's Rent or other obligations under this Lease irrespective of any repossession or reletting of all or part of the Premises by Landlord. Tenant shall remain responsible for all Rent

payments and all other obligations of Tenant under this Lease through the entire term of this Lease, or any renewals or extensions thereof, unless Landlord shall expressly waive the right to collect such Rent or enforce such obligations, in writing. Landlord shall be entitled to bring such actions or proceedings for the recovery of any unpaid Rent or other sums due or owing by Tenant to Landlord as Landlord may deem advisable from time to time, without being obligated to await the end of the term hereof for a final determination of Tenant's account and the commencement or maintenance of one or more actions shall not bar Landlord from bringing other or subsequent actions for further accruals pursuant to the provisions of this paragraph. Any balance remaining, however, after full payment and liquidation of Landlord's account as aforesaid, and hence the full payment and satisfaction of all Rent and other obligations of Tenant to Landlord, shall be paid to Tenant from time to time with the rights reserved to Landlord at any time to give notice in writing to Tenant of Landlord's election to cancel and terminate this Lease and all Tenant obligations hereunder, and upon the giving of such notice and the simultaneous payment by Landlord to Tenant of any credit balance in Tenant's favor that may at the time be owing to Tenant shall constitute a final and effective cancellation and termination of this Lease and the obligations thereunder on the part of either party to the other.

Tenant shall pay and be responsible for all costs of collection and enforcement, including reasonable attorney fees, incurred by Landlord, the same to include an action for possession of the Premises, an action for termination of this Lease, and/or an action for collection of Rent or other sums due or owing by Tenant to Landlord.

14. Waiver. The acceptance of Rent by Landlord, whether in a single instance or repeatedly, or after any knowledge of Tenant's breach of payment or other default, shall not be

construed as a waiver of any of Landlord's rights to proceed under the remedies provided by this Lease or provided by applicable law. No waiver by Landlord or Tenant of any breach of any term, covenant or condition hereof shall be deemed a waiver of the same or any subsequent breach of the same or any other term, covenant, or condition hereof, regardless of Landlord's knowledge of such breach. No covenant, term or condition of this Lease shall be deemed waived by Landlord unless waived in writing.

15. Notices. In the event any party hereto desires or is required to give notice pursuant to the terms of this Lease, such notices shall be sufficient if delivered in person or if mailed by certified mail or registered mail, postage prepaid and requesting a return receipt, to the following addresses:

TO LANDLORD:                      Town of Middlebury  
   Attn: Town Manager  
   418 N. Main St.  
   Middlebury, IN 46540

TO TENANT:                              Esther's Hilltop Restaurant, Inc.  
   Attn: Esther Rogers  
   812 Heritage  
   Middlebury, IN 46540

16. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to person or circumstances other than those as to

which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17. Paragraph Headings, Number and Gender. This Lease shall be construed without reference to paragraph headings which are inserted only for convenience of reference. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others.

18. Entire Agreement; Successors. This Lease constitutes the entire agreement of the parties with respect to each and all of the terms of the lease of the Premises and shall not be altered or amended except by written agreement of the parties. This Lease shall be construed and interpreted in accordance with the laws of the State of Indiana and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, successors, and assigns.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties have executed this Lease effective the day and year first above written.

LANDLORD:

TOWN OF MIDDLEBURY, INDIANA

By: Miranda Cripe  
Miranda Cripe, Town Council President

ATTEST:

By: Peggy A. Hutchinson  
Peggy A. Hutchinson, Middlebury Clerk-Treasurer

TENANT:

ESTHER'S HILLTOP RESTAURANT, INC.

By: Esther Rogers  
Esther Rogers, President and Authorized Signatory

Prepared by Jackson W. Beck, Yoder, Ainlay, Ulmer & Buckingham, LLP  
130 N. Main St., Goshen, IN 46526

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. Jackson W. Beck,  
130 N. Main Street, Goshen, IN 46526

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ELKHART )

Before me, a Notary Public in and for said County and State, this 15<sup>th</sup> day of August, 2022, personally appeared Miranda Cripe, the President of the Town Council of the Town of Middlebury, Indiana, and Peggy A. Hutchison, the Clerk-Treasurer of the Town of Middlebury, and acknowledged that as said officers they executed the foregoing Triple Net Lease Agreement for and on behalf and in the name of the Town of Middlebury, for the uses and purposes therein mentioned, and that they were authorized so to do.

WITNESS my hand and notarial seal.

Mary M. Cripe  
Mary M. Cripe, Notary Public  
Residing in Elkhart County, Indiana  
Commission No. NP0 708646

My Commission Expires: Jan. 11, 2026



\*STATE OF INDIANA )  
 ) SS:  
COUNTY OF ELKHART )

Before me, a Notary Public in and for said County and State, this 30<sup>th</sup> day of August, 2022, personally appeared Esther Rogers, President and Authorized Signatory of Esther's Hilltop Restaurant, Inc. and acknowledged that as said officer she executed the foregoing Triple Net Lease Agreement for the uses and purposes therein mentioned, and that she was authorized so to do.

WITNESS my hand and notarial seal.

Mary M. Cripe  
Mary M. Cripe, Notary Public  
Residing in Elkhart County, Indiana  
Commission No. NP0 708646

My Commission Expires: Jan. 11, 2026



EXHIBIT A  
TRACT 1

The southernmost 120 feet of the below described real estate:

A part of the Southwest Quarter of Section 10, Township 37 North, Range 7 East, Middlebury Township, Elkhart County, Indiana, more particularly described as follows:

Beginning at an iron pipe on the South right-of-way line of Warren Street, Middlebury, Indiana, that is 49.5 feet East of the Northeast corner of Lot Number 28 in C.S. Mather's Addition to Middlebury, Indiana, recorded in Deed Record 78, page 1, and running thence East 112 feet to an iron pipe; thence South 185 feet to an iron pipe; thence East 16.5 feet to an iron pipe; thence South 187 feet to a point; thence West 10 feet; thence South 11 feet to a cross cut in the concrete walk; thence West 82 feet to an iron pipe; thence North 11 feet to an iron pipe; thence West 36.5 feet to an iron pipe; thence North 372 feet to the point of beginning.

Subject to current taxes, public right-of-way, and easements and restrictions of record.

Being part of tax code number: 20-08-10-330-001.000-035.

Commonly known as 109 Grand Street, Middlebury, IN 46540.

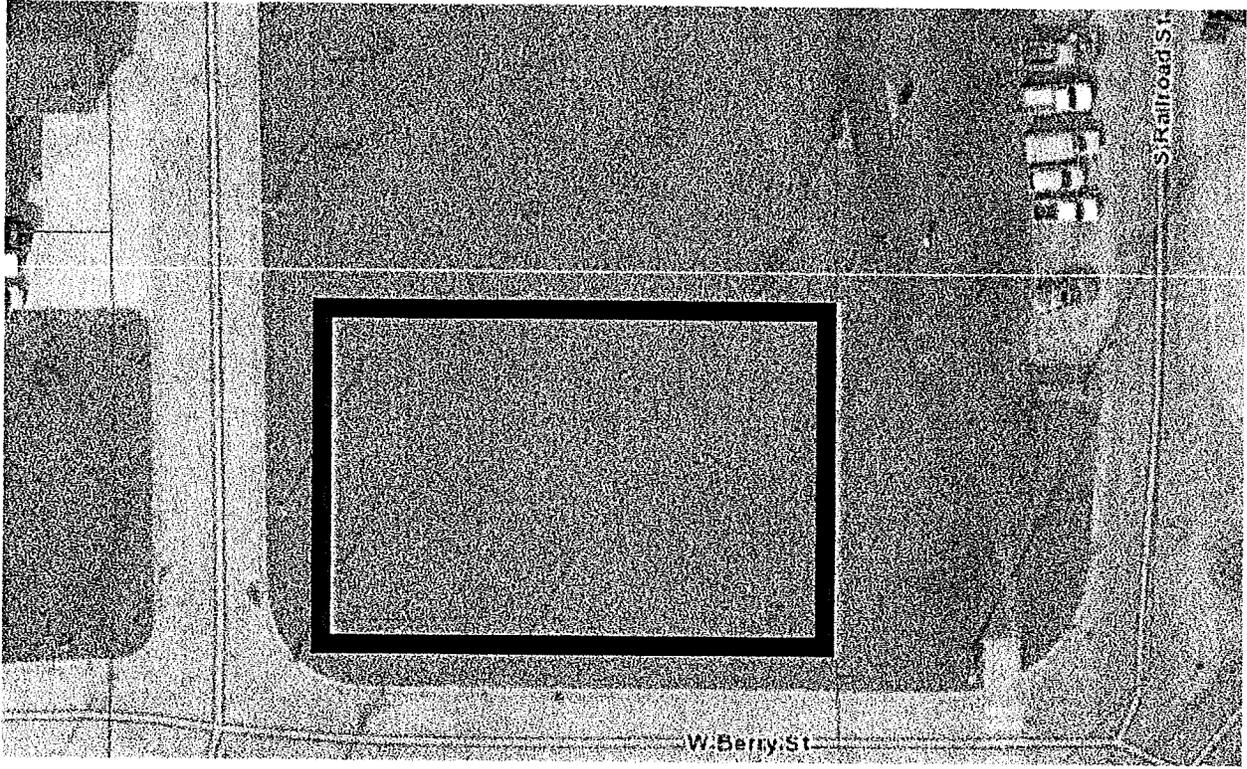


EXHIBIT B  
TRACT 2

The real property described in a Warranty Deed dated September 8, 2003 and recorded September 9, 2003 as Instrument No. 2003-38278 in the Office of the Recorder of Elkhart County, Indiana, to wit:

A part of the Pumpkinvine Corridor that lies between Wayne Avenue and York Street in the Town of Middlebury, being in the North half of Section 10, Township 37 North, Range 7 East, Elkhart County, Indiana.

LESS AND EXCEPTING THEREFROM all lands of the above-described real estate which lies north of West Berry Street and all portions of the real estate over which the Pumpkinvine Nature Trail is constructed.

Being part of tax parcel no. 20-08-10-330-002.000-035.

