

TOWN OF GREENVILLE
ORDINANCE NO. 2010-T-028

**ORDINANCE CONCERNING REQUESTED SPECIAL VARIANCE BY
DONALD PERKINS OWNER OF VACANT LOT AT WEST SECOND STREET
AND US HIGHWAY 150 LOCATED WITHIN THE TOWN OF GREENVILLE.
INDIANA**

WHEREAS, the Town Council for the Town of Greenville, Indiana, in considering a request for a variance to construct a 40 foot by 65 foot storage building to be located adjacent to West Second Street and US 150 within the Corporate limits of the Town of Greenville and;

WHEREAS, the Town Council for the Town of Greenville, Indiana reached an agreement with Mr Perkins {Reference Cause No 22D02-1007-OV-07373 Court Floyd County Superior Court No.2, Judge Hancock on 11-16-2010} as follows;

IN THE SUPERIOR COURT II FOR FLOYD COUNTY STATE OF INDIANA

CITY OF NEW ALBANY,

Plaintiff, Cause No. 22D02-1007-OV-07373

v.

DON PERKINS,

Defendant.

AGREED ENTRY

On November 16, 2010, The Town of Greenville appeared in person by its representative, Randal Johnes, and its attorney, Rick Fox, and Don Perkins appeared in person and by his attorneys, Justin Endres and Jason Lopp, for a Review Hearing in front of Judge Hancock. After a discussion of the issues, the parties have reached an agreement to resolve the issues before the Court. All parties agree as follows:

1. That under Cause No. 22D02-1007-OV-07373 the parties held a trial regarding all issues related to Cause Nos. 22D02-1007-OV-07317, 22D02-1007-OV-07318, 22D02-1007-OV-07319, 22D02-1007-OV-07373, 22D02-1007-OV-07372, 22D02-1007-OV-07374 and

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22D02-1007-OV-07475. All of these matters were consolidated for purposes of trial on the record held under Cause No. 22D02-1007-OV-07373.

2. That the Plaintiff agrees to dismiss Cause Nos. 22D02-1007-OV-07372, 22D02-1007-OV-07373, 22D02-1007-OV-07374 and 22D02-1007-OV-07475 and only Cause Nos.

22D02-1007-OV-07317, 22D02-1007-OV-07318 and 22D02-1007-OV-07319 remain pending.

3. That related to those open Cause Numbers, the parties further agree as follows below:

a. The Town of Greenville has already proposed and passed on a first reading Ordinance No.

2010-T-028 which would allow for a variance for

Don Perkins to construct a 40'x ^{65' 10"}60' storage building on his property located adjacent to West Second Street and US 150 within the corporate limits of the Town of Greenville;

b. The Town of Greenville will place said ordinance on their next agenda, being in their December meeting, for its second and third reading;

c. Upon passage of the ordinance, Don Perkins will be permitted to construct his building so long as he complies with all state building codes, regulations and inspections as would be normal for the construction of such building;

d. It is further agreed that Mr Perkins will clean any remaining brush, trash and junk from the property (with the exception of any materials necessary for the construction of said building) within thirty (30) days from November 16, 2010;

e. The Court will schedule a Review Hearing for the 20th day of December, 2010 at 1:30p.m. to determine whether the ordinance was passed and/or whether the Defendant has properly removed any additional brush, trash or junk from the property;

f. If it is determined at the Review Hearing that the Defendant has not complied, Mr Perkins may, at the Court's discretion, be held in contempt of Court;

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g. Mr Perkins further agrees that all vehicles located on the property shall be in compliance with the Town ordinance related to abandoned vehicles; and

h. Mr Perkins agrees to pay \$1,000.00 to the Town of Greenville for repayment of their attorney fees related to this matter. Said payment to be made to the Town within sixty (60) days from the passage of the ordinance discussed herein.

Date:

JUDGE, FLOYD SUPERIOR COURT II

Prepared and tendered by: Jason A. Lopp, #21351-29 EXAMINED AND AGREED TO BY:

JASON A. LOPP Young, Lind, Endres & Kraft, 126 West Spring Street, New Albany, Indiana 47150
Counsel for Defendant

RICK FOX County Attorney, 409 Bank Street, New Albany, IN 47150-Counsel for Plaintiff

Distribution:

Jason A. Lopp, 126 West Spring Street, New Albany, IN 47150
Rick Fox, 409 Bank Street, New Albany, IN 47150

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS:

In consideration of a request before the Town of Greenville Council by Donald Perkins owner of 66 foot by 132 foot vacant lot located at West Second Street and US 150 for a special variance to allow the construction of a 40 foot by 65 foot storage building to be located nine feet {9 ft.} from the edge of a unimproved alleyway.

1. In consideration of examination of said property by Greenville Council Members a variance will be required to construct said garage.
2. The Town Council of the Town of Greenville waves the following Ordinance requirements 2009-T-039 Sidewalks and Curves and 2009-T-050 Section 3. Storage Building, Pool House. Gazebo: Twenty feet {20 ft.} from the right of way of any highway, street, alleyway, or other public right of way.
3. This Special Variance runs with the land

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4. Requirements:

- The Town Council of the Town of Greenville authorizes this variance for construction in accordance with plot plan attached submitted to the Greenville Town Council by Donald Perkins with the following stipulations.
- Donald Perkins his successors or assigns agrees to use said building to clean up his lot and residence to comply with the Town of Greenville Ordinance 2010-T-046 and 2008-T-086.
- Donald Perkins his successors or assigns shall not to use storage building for a commercial or retail business.
- Donald Perkins agrees not to place upon this property or his residential property at 9907 US 150 additional vehicles or accumulation of items such are currently present.

5. Construction approval is contingent upon receiving a letter of approval from the Floyd County Health Department for location of new structure.

6. This approval document shall be submitted to the Greenville Town Clerk's office before construction may begin.

7. A signed copy of this Ordinance shall be given to Donald Perkins by the Greenville Town Clerk after signing.

ENFORCEMENT

Enforcement of this ordinance shall be pursuant to IC 36-1-6-3 or IC 36-1-6-4, or a successor statute if said statute is repealed.

PENALTIES:

- If Donald Perkins fails to comply with the terms of this special variance and it is determined by the Greenville Town Council, the Greenville Town Council shall impose fines of One Hundred U.S. Dollars {\$100.00} per day fine while in non-compliance, plus Attorney Fees and Court Cost
- If levied fines are not paid within 30 days, a lien will be sought against person or person's responsible personal property in accordance with IC 36-1-6-2.
- The Town of Greenville may pursue any and all penalties described in IC 36-1-6-4 in addition to the penalties described in IC 36-1-6-2, or a successor statute if said statute is repealed.


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ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 13th DAY
OF DECEMBER 2010.

I, DONALD PERKINS, AGREES TO AND
WILL ABIDE BY THE TERMS OF THIS
SPECIAL VARIANCE PASSED BY THE
GREENVILLE TOWN COUNCIL ON
DECEMBER 13TH, 2010.



DONALD PERKINS



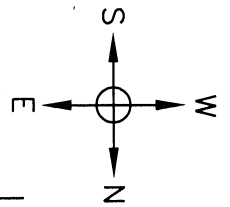
JACK TRAVILLIAN,
CLERK/TREASURER

PRESIDENT OF THE TOWN
COUNCIL OF GREENVILLE,
INDIANA



TALBOTTE RICHARDSON

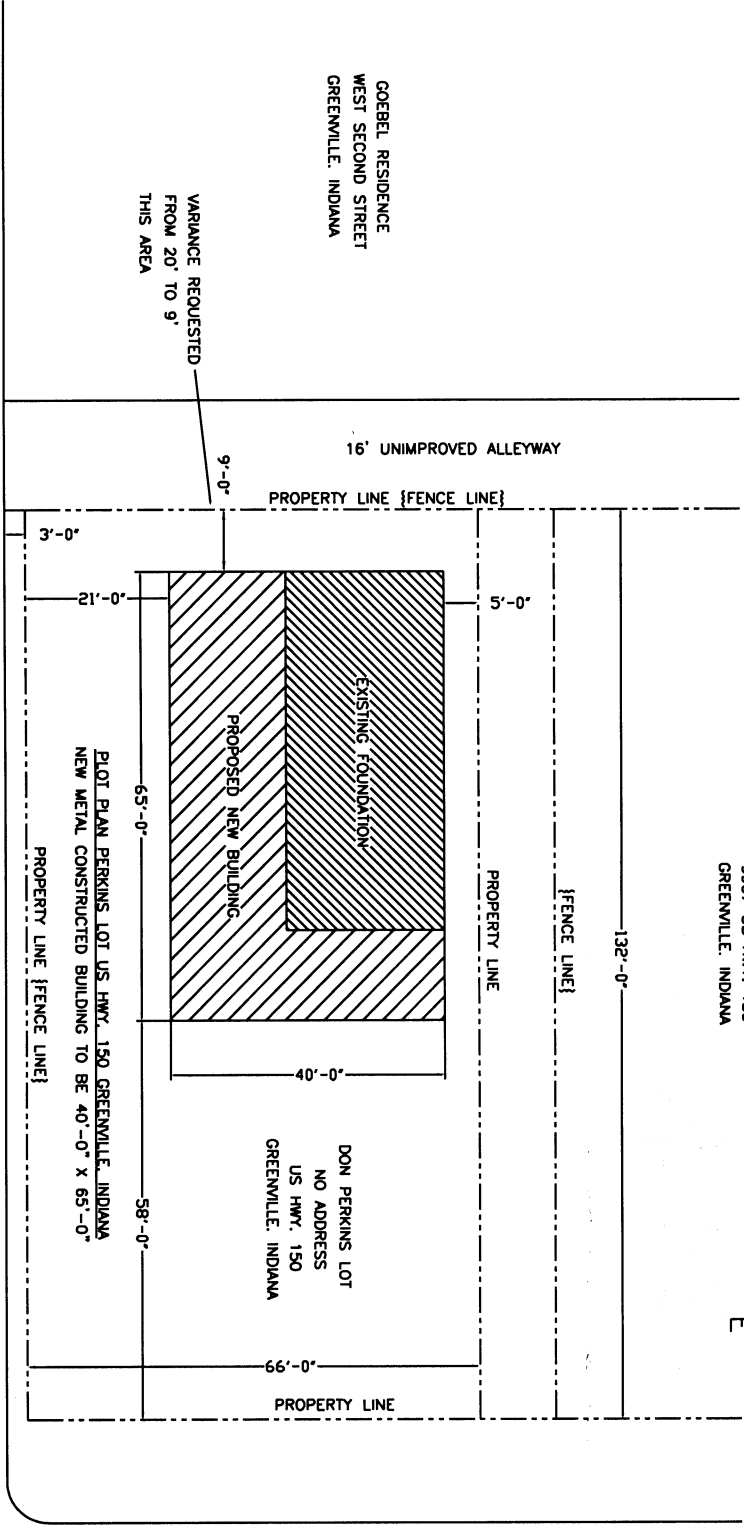
PREPARED BY: RANDAL JOHNES



DON PERKINS RESIDENCE
9907 US HWY. 150
GREENVILLE, INDIANA

GOEBEL RESIDENCE
WEST SECOND STREET
GREENVILLE, INDIANA

16' UNIMPROVED ALLEYWAY



VARIANCE REQUESTED
FROM 20' TO 9'
THIS AREA

US HWY 150

WEST SECOND STREET 20' WIDE

FIRST HARRISON BANK
9849 US HWY. 150
GREENVILLE, INDIANA

IC 36-1-6

Chapter 6. Enforcement of Ordinances

IC 36-1-6-1

Application of chapter

Sec. 1. This chapter applies to all municipal corporations having the power to adopt ordinances. *As added by Acts 1980, P.L.211, SEC.1.*

IC 36-1-6-2

Action to bring compliance with ordinance conditions; expense as lien against property; enforcement of delinquent fees and penalties

Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

- (1) ten thousand dollars (\$10,000) for real property that:
 - (A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or
 - (B) is unimproved; or
- (2) twenty thousand dollars (\$20,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

- (1) a list of delinquent fees and penalties that are enforceable under this section, including:
 - (A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;
 - (B) a description of the premises, as shown on the records of

the county auditor; and

- (C) the amount of the delinquent fees and the penalty; or
- (2) an instalment for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

As added by Acts 1980, P.L.211, SEC.1 Amended by P.L.50-2002, SEC.1; P.L.144-2003, SEC.1; P.L.177-2003, SEC.2; P.L.131-2005, SEC.5; P.L.88-2006, SEC.7; P.L.194-2007, SEC.8; P.L.88-2009, SEC. 5.

IC 36-1-6-3

Proceeding to enforce ordinance; law applicable

Sec. 3. (a) Certain ordinances may be enforced by a municipal corporation without proceeding in court through:

- (1) an admission of violation before the violations clerk under IC 33-36; or
- (2) administrative enforcement under section 9 of this chapter,

(b) Except as provided in subsection (a), a proceeding to enforce an ordinance must be brought in accordance with IC 34-28-5, section 4 of this chapter, or both.

(c) An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.108, SEC.39; P.L.177-1988, SEC.8; P.L.130-1991, SEC.35; P.L.1-1998, SEC.202; P.L.98-2004, SEC.159.

IC 36-1-6-4

Civil action by municipal corporation; action by court

Sec. 4. (a) A municipal corporation may bring a civil action as provided in IC 34-28-5-1 if a person:

- (1) violates an ordinance regulating or prohibiting a condition or use of property; or
- (2) engages in conduct without a license or permit if an ordinance requires a license or permit to engage in the conduct.

(b) A court may take any appropriate action in a proceeding under this section, including any of the following actions:

- (1) Issuing an injunction.
- (2) Entering a judgment.
- (3) Issuing a continuous enforcement order (as defined in IC 36-7-9-2).
- (4) Ordering the suspension or revocation of a license.
- (5) Ordering an inspection.
- (6) Ordering a property vacated.
- (7) Ordering a structure demolished.
- (8) Imposing a penalty not to exceed an amount set forth in IC36-1-3-8(a)(10).
- (9) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.
- (10) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.
- (11) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L. 194-2007, SEC. 9; P.L. 88-2009, SEC. 6.

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TOWN OF GREENVILLE

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ORDINANCE CONCERNING REQUESTED SPECIAL VARIANCE BY DONALD PERKINS OWNER OF VACANT LOT AT WEST SECOND STREET AND US HIGHWAY 150 LOCATED WITHIN THE TOWN OF GREENVILLE. INDIANA

WHEREAS, the Town Council for the Town of Greenville, Indiana, in considering a request

for a variance to construct a 40 foot by 65 foot storage building to be located adjacent to West Second Street and US 150 within the Corporate limits of the Town of Greenville and; WHEREAS, the Town Council for the Town of Greenville, Indiana reached an agreement with Mr Perkins {Reference Cause No 22D02-1007-OV-07373 Court Floyd County Superior Court No.2, Judge Hancock on 11-16-2010} as follows; IN THE SUPERIOR COURT II FOR FLOYD COUNTY STATE OF INDIANA CITY OF NEW ALBANY, Plaintiff, Cause No. 22D02-1007-OV-07373 v. DON PERKINS, Defendant.

AGREED ENTRY

On November 16, 2010, The Town of Greenville appeared in person by its representative, Randal Johnes, and its attorney, Rick Fox, and Don Perkins appeared in person and by his attorneys, Justin Endres and Jason Lopp, for a Review Hearing in front of Judge Hancock. After a discussion of the issues, the parties have reached an agreement to resolve the issues before the Court. All parties agree as follows:

1. That under Cause No. 22D02-1007-OV-07373 the parties held a trial regarding all issues related to Cause Nos. 22D02-1007-OV-07317, 22D02-1007-OV-07318, 22D02-1007-0-OV-07319, 22D02-1007-OV-07373, 22D02-1007-OV-07372, 22D02-1007-OV-07374 and 22D02-1007-OV-07475. All of these matters were consolidated for purposes of trial on the record held under Cause No. 22D02-1007-OV-07373.
2. That the Plaintiff agrees to dismiss Cause Nos. 22D02-1007-OV-07372, 22D02-1007-OV-07373, 22D02-1007-OV-07374 and 22D02-1007-OV-07475 and only Cause Nos. 22D02-1007-OV-07317, 22D02-1007-OV-07318 and 22D02-1007-OV-07319 remain pending.
3. That related to those open Cause Numbers, the parties further agree as follows below: a. The Town of Greenville has already proposed and passed on a first reading Ordinance No. 2010-T-028 which would allow for a variance for Don Perkins to construct a 40'x 60' storage building on his property located adjacent to West Second Street and US 150 within the corporate limits of the Town of Greenville; b. The Town of Greenville will place said ordinance on their next agenda, being in their December meeting, for its second and third reading; c. Upon passage of the ordinance, Don Perkins will be permitted to construct his building so long as he complies with all state building codes, regulations and inspections as would be normal for the construction of such building; d. It is further agreed that Mr Perkins will clean any remaining brush, trash and junk from the property (with the exception of any materials necessary for the construction of said building) within thirty (30) days from November 16, 2010; e. The Court will schedule a Review Hearing for the 20th day of December, 2010 at 1:30 p.m. to determine whether the ordinance was passed and/or whether the Defendant has properly removed any additional brush, trash or junk from the property; f. If it is determined at the Review Hearing that the Defendant has not complied, Mr Perkins may, at the Court's discretion, be held in contempt of Court; g. Mr Perkins further agrees that all vehicles located on the property shall be in compliance with the Town ordinance related to abandoned vehicles; and h. Mr Perkins agrees to pay \$1,000.00 to the Town of Greenville for repayment of their attorney fees related to this matter. Said payment to be made to the Town within sixty (60) days from the passage of the ordinance discussed herein. JUDGE, FLOYD SUPERIOR COURT II Prepared and tendered by: Jason A. Lopp, #21351-29 EXAMINED AND AGREED TO BY: JASON A. LOPP Young, Lind, Endres & Kraft, 126 West Spring Street, New Albany, Indiana 47150 Counsel for Defendant RICK FOX County Attorney, 409 Bank Street, New Albany, IN 47150- Counsel for Plaintiff Distribution: Jason A. Lopp, 126 West Spring Street, New Albany, IN 47150 Rick Fox, 409 Bank Street, New Albany, IN 47150 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS: In consideration of a request before the Town of Greenville Council by Donald Perkins owner of 66 foot by 132 foot vacant lot located at West Second Street and US 150 for a special variance to allow the construction of a 40 foot by 65 foot storage building to be located nine feet {9 ft.} from the edge of a unimproved alleyway.1. In consideration of examination of

said property by Greenville Council Members a variance will be required to construct said garage. 2. The Town Council of the Town of Greenville waves the following Ordinance requirements 2009-T-039 Sidewalks and Curves and 2009-T-050 Section 3. Storage Building, Pool House. Gazebo: Twenty feet {20 ft.} from the right of way of any highway, street, alleyway, or other public right of way. 3. This Special Variance runs with the land 4. Requirements: °The Town Council of the Town of Greenville authorizes this variance for construction in accordance with plot plan attached submitted to the Greenville Town Council by Donald Perkins with the following stipulations. ° Donald Perkins his successors or assigns agrees to use said building to clean up his lot and residence to comply with the Town of Greenville Ordinance 2010-T-046 and 2008-T-086. ° Donald Perkins his successors or assigns shall not to use storage building for a commercial or retail business. ° Donald Perkins agrees not to place upon this property or his residential property at 9907 US 150 additional vehicles or accumulation of items such are currently present. 5. Construction approval is contingent upon receiving a letter of approval from the Floyd County Health Department for location of new structure. 6. This approval document shall be submitted to the Greenville Town Clerk's office before construction may begin. 7. A signed copy of this Ordinance shall be given to Donald Perkins by the Greenville Town Clerk after signing.

ENFORCEMENT

Enforcement of this ordinance shall be pursuant to IC 36-1-6-3 or IC 36-1-6-4, or a successor statute if said statute is repealed.

PENALTIES:

°If Donald Perkins fails to comply with the terms of this special variance and it is determined by the Greenville Town Council, the Greenville Town Council shall impose fines of One Hundred U.S. Dollars {\$100.00} per day fine while in non-compliance, plus Attorney Fees and Court Cost ° If levied fines are not paid within 30 days, a lien will be sought against person or person's responsible personal property in accordance with IC 36-1-6-2. °The Town of Greenville may pursue any and all penalties described in IC 36-1-6-4 in addition to the penalties described in IC 36-1-6-2, or a successor statute if said statute is repealed. ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 13th DAY OF DECEMBER 2010. I, DONALD PERKINS, AGREES TO AND WILL ABIDE BY THE TERMS OF THIS SPECIAL VARIANCE PASSED BY THE GREENVILLE TOWN COUNCIL ON DECEMBER 13TH, 2010. PRESIDENT OF THE TOWN COUNCIL OF GREENVILLE, INDIANA TALBOTTE RICHARDSON JACK TRAVILLIAN, CLERK/TREASURER PREPARED BY: RANDAL JOHNES

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