



Mayor
Andy Cook

City Council

Jim Ake
John Dippel
Steve Hoover
Robert L. Horkay
Robert J. Smith
Cindy L. Spoljaric
Rob Stokes

Clerk Treasurer
Cindy J. Gossard

Parks and Recreation

(317) 804-3184 admin office
(317) 804-3190 fax

2728 East 171st Street
Westfield, IN 46074
westfield.in.gov

TO: Westfield Board of Works and Safety

From: Melody Jones

CC: Todd Burtron

Date: August 22, 2012

RE: Midland Trace Trail Land Donation

Board of Works and Safety

In an effort to extend the trails in Westfield the City has been working with local developers for years to gain right of way to construct our trail system. The Westfield Parks and Recreation Department is pleased to have received a Quit Claim from Maple Knoll Investors, LLC for the Midland Trace Trail right of way on the old Central Indiana Rail Road west of Springmill Road. As part of the zoning commitments Maple Knoll will also construct the Midland Trace Trail. In order to do so, upon gifting the land to the City they are requesting a Right of Entry to allow them to do the trail construction. Both documents are being presented for your acceptance today.

Earlier, we received an easement from Buckeye Pipeline to encroach on their pipeline easement that runs along the south side of the old rail road.

We are asking the Board of Works to approve the gift of the trail right of way and grant Maple Knoll a right of entry to construct the Midland Trace Trail to our standards. Work on the trail should proceed as soon as we provided them with signed copies. Other than filing fees, there is no cost to the City.

QUITCLAIM DEED

THIS INDENTURE WITNESSETH that MAPLE KNOLL INVESTORS, LLC, a Delaware limited liability company ("Grantor"), **QUITCLAIMS AND DEDICATES** to the CITY OF WESTFIELD, Hamilton County, Indiana ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the real estate, which is a part of the Maple Knoll Apartments in the City of Westfield, Hamilton County, Indiana and more specifically described in Exhibit 1A and shown in Exhibit 1B (the "Real Estate"). This conveyance is made subject to all existing easements and right-of-ways.

[The remainder of this page is intentionally left blank.]

EXHIBIT 1A

LAND DESCRIPTION

A part of the Northeast Quarter of Section 3, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

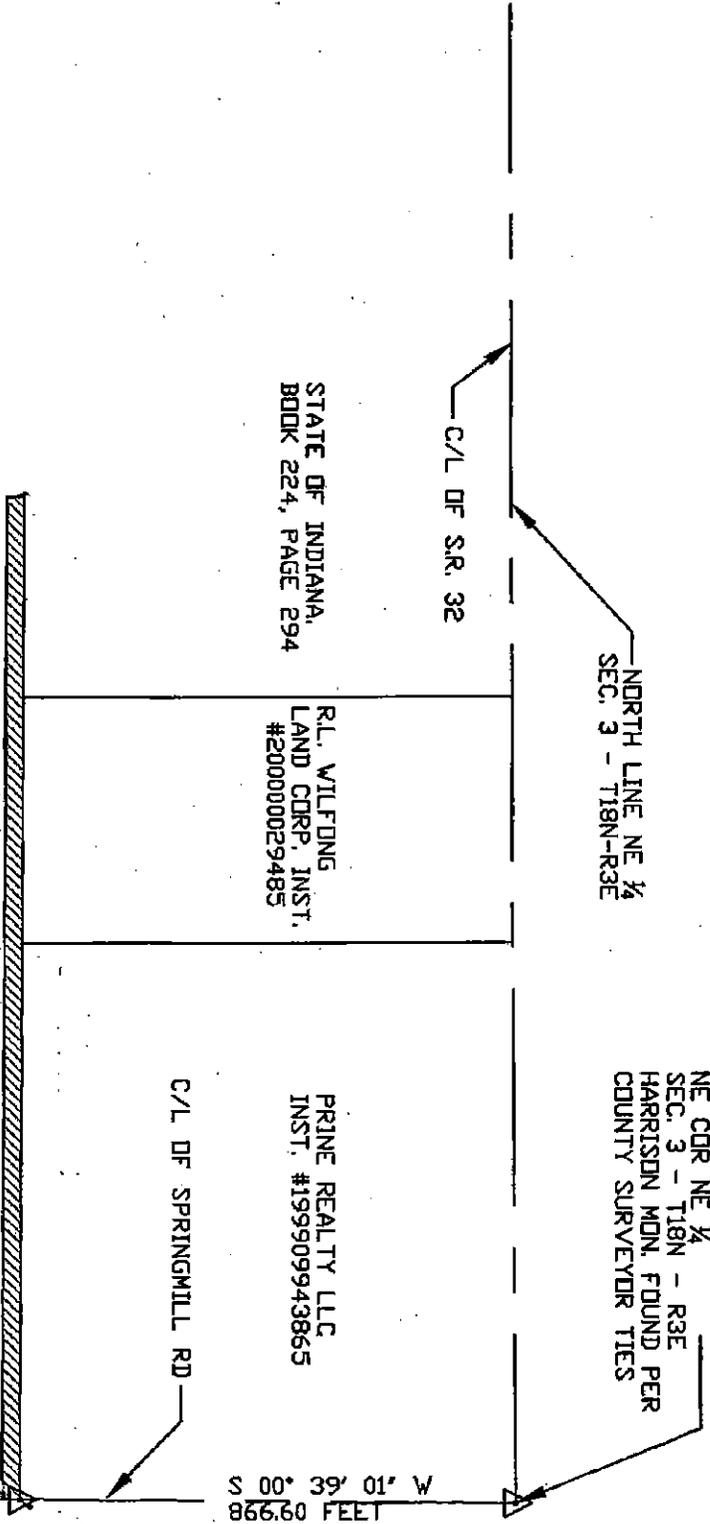
Commencing at the Northeast corner of said Quarter Section, said corner being marked by a Harrison Monument; thence South 00 degrees 14 minutes 46 seconds West along the East line of said Quarter Section distance of 866.60 feet to the centerline of the right-of-way of the Central Indiana Railway; thence North 89 degrees 56 minutes 26 seconds West along said centerline 60.00 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 14 minutes 46 seconds West parallel with the East line of said Quarter Section a distance of 30.00 feet to a point 30.00 feet South of and measured perpendicular to said centerline; thence North 89 degrees 56 minutes 26 seconds West 1295.82 feet to the west line of the Real Estate described in Instrument # 2007-55640 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 06 minutes 16 seconds East (this and the next course are on the perimeter of said Real Estate) a distance of 30.00 feet to the centerline of the right-of-way of the Central Indiana Railway; thence South 89 degrees 56 minutes 26 seconds East along said centerline 1,295.82 feet to the POINT OF BEGINNING, containing 0.892 acre, more or less.



CITY OF WESTFIELD, INDIANA
 MIDLAND TRAIL RIGHT-OF-WAY

EXHIBIT 1B

MAPLE KNOLL INVESTORS LLC
 29-09-03-000-012, 411-015



RIGHT OF ENTRY AGREEMENT

This Agreement is made as of ____ day of October, 2010, by and between **City of Westfield, Hamilton County, Indiana ("Grantor")**, and **Maple Knoll Investors, LLC**, an Indiana limited liability company ("**Grantee**").

For and in consideration of the mutual covenants herein set forth, Grantor does hereby grant to Grantee a temporary right of entry to enter upon those certain premises located in the City of Westfield, Hamilton County, Indiana, which are more particularly described on Exhibit A attached hereto (the "**Premises**"); and Grantor and Grantee agree as follows:

1. The right to enter the Premises shall commence on the date hereof and shall terminate on the earlier of (a) completion of the Work (as herein defined), or (b) December 31, 2011.

2. In consideration for this grant, Grantee has or will convey the Premises to Grantor by Quitclaim Deed.

3. Subject to all of the terms, covenants and conditions of this Agreement, Grantor hereby authorizes Grantee and its contractors, subcontractors, suppliers, materialmen, suppliers, consultants and representatives to enter upon and use the Premises for the purposes of cleaning, grading and improving the Premises with a path (the "**Path**") and performing certain other work related thereto (the "**Work**"). The Work shall be done at Grantee's sole cost and expense. The route and location of the Path shall be in substantial compliance with the Multi-Use Path Plan prepared by DeBoy Land Development Services and last revised on January 9, 2009, which is attached hereto as Exhibit B; and the Work shall include the installation of underground pipes that comply with the specifications attached hereto as Exhibit C at the locations identified on the attached Exhibit D. The Work shall not include the installation of any drainage facilities (other than the underground pipes referenced above) or the cleaning, clearing, alteration or creation of any existing or new drainage culverts or basins.

4. To the fullest extent permitted under applicable law, Grantor agrees to indemnify, defend and hold harmless Grantee and its officers, agents, employees and representatives against any and all claims, demands, actions or causes of action that may arise from the flooding, overtopping, pooling or presence of storm water or other runoff from, across or on the Premises or any properties located adjacent to the Premises, including, but not limited to, those involving death, injury or damages to persons or property. To the fullest extent permitted under applicable law, Grantor covenants not to sue Grantee or its officers, agents, employees or representatives for, and expressly releases Grantee from, any and all claims, demands, actions and causes of action arising out of the flooding, overtopping, pooling or presence of storm water or other runoff from, across or on the Premises or any properties located adjacent to the Premises.

5. Any mechanic's lien filed against the Premises for work done or performed or materials or equipment furnished to or contracted for or by Grantee shall be discharged within ninety (90) days after the date Grantee receives notice of the lien, or, if required by Grantor, bonded or insured over within ninety (90) days after Grantor's notification that such bonding or insurance is required. If Grantee fails to so discharge or bond or insure over any such lien,

Grantor may do so at Grantee's expense, and the amount reasonably expended by Grantor in so doing, together with all reasonable expenses, including attorneys' fees, incurred by Grantor in connection therewith, shall be paid by Grantee within ten (10) days after receipt of Grantor's invoice therefor.

6. Grantor covenants, represents and warrants to Grantee that: (a) Grantor has executed a Right of Entry with Westfield Steel in the form and content as Exhibit E attached hereto (the "ROE"); (b) Grantor has executed a Pipeline Easement Encroachment Agreement with Buckeye Pipeline Company, L.P., in the form and content as Exhibit F attached hereto (the "Encroachment"); and (c) Grantee shall have the rights and benefits of Grantor under the ROE and Encroachment in connection with and during the performance of the Work.

7. This Agreement shall set forth all the agreements, conditions and understanding of the parties concerning the Premises. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Grantor or Grantee unless reduced to writing and signed by them. This Agreement shall be subject to the laws of the State of Indiana. The parties hereby acknowledge and agree that delivery of this Agreement may be accomplished by electronic facsimile reproduction or by electronic mail (collectively "FAX"). If FAX delivery is utilized, the original Agreement shall nonetheless be promptly executed and/or delivered by both parties at the request of either although the effectiveness of the execution shall not be conditioned on the same. All Exhibits attached hereto are incorporated herein by this reference. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first appearing above.

GRANTOR:

CITY OF WESTFIELD, HAMILTON COUNTY,
INDIANA, by its Board of Public Works and Safety

By: _____
Andy Cook, Presiding Officer

By: _____
Jack Hart, Member

By: _____
Mark Heirbrandt, Member

ATTEST:

City J. Gossard, Clerk-Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Andy Cook, Jack Hart, and Mark Heirbrandt, by me known to be the members of the City of Westfield Board of Public Works and Safety, and Cindy J. Gossard, Clerk-Treasurer of the City of Westfield, who having been duly sworn upon his/her oath acknowledged the execution of the foregoing Right of Entry Agreement for and on behalf of the City of Westfield, Indiana

Witness my hand and Notarial Seal this _____ day of _____, 2010

(Signature) _____

(Printed Name) _____

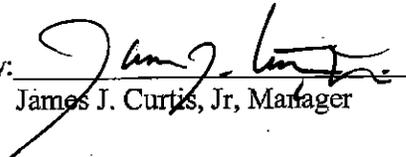
Notary Public residing in _____ County

My Commission Expires: _____

GRANTEE:

MAPLE KNOLL INVESTORS, LLC,
a Delaware limited liability company

By: SDG Funding, LLC, its sole member
By: Maple Knoll Partners, LLC, its Manager

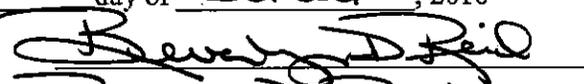
By: 
James J. Curtis, Jr, Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared James J. Curtis, Jr., the Manager of Maple Knoll Partners, LLC, the Manager of SDG Funding, LLC, the sole Member of Maple Knoll Investors, LLC, a Delaware limited liability company, who having been duly sworn upon his oath acknowledged his execution of the foregoing Right of Entry Agreement in such capacity.

Witness my hand and Notarial Seal this 18th day of October, 2010

(Signature)



(Printed Name)

Beverly D. Reid

Notary Public residing in MARION County

My Commission Expires: 9/19/17

Please return recorded instrument to: Joseph M. Scimia, Baker & Daniels LLP, 600 East 96th Street, Suite 600, Indianapolis, IN 46240.

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: Joseph M. Scimia

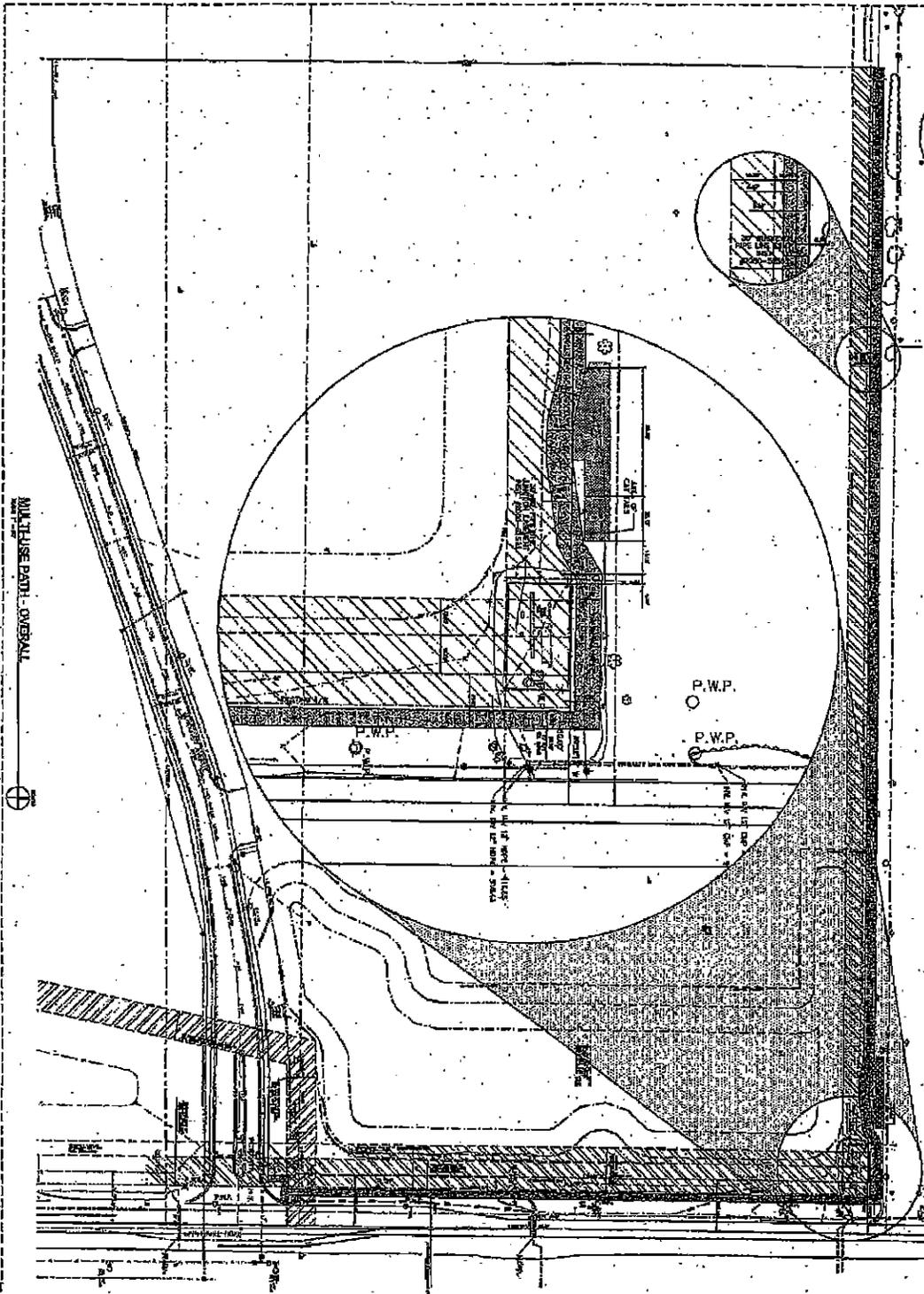
This instrument was prepared by: Joseph M. Scimia, Baker & Daniels LLP , 600 East 96th Street, Suite 600, Indianapolis, IN 46240, (317) 569-4680.

EXHIBIT A

LAND DESCRIPTION

A part of the Northeast Quarter of Section 3, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section, said corner being marked by a Harrison Monument; thence South 00 degrees 14 minutes 46 seconds West along the East line of said Quarter Section distance of 866.60 feet to the centerline of the right-of-way of the Central Indiana Railway; thence North 89 degrees 56 minutes 26 seconds West along said centerline 60.00 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 14 minutes 46 seconds West parallel with the East line of said Quarter Section a distance of 30.00 feet to a point 30.00 feet South of and measured perpendicular to said centerline; thence North 89 degrees 56 minutes 26 seconds West 1295.82 feet to the west line of the Real Estate described in Instrument # 2007-55640 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 06 minutes 16 seconds East (this and the next course are on the perimeter of said Real Estate) a distance of 30.00 feet to the centerline of the right-of-way of the Central Indiana Railway; thence South 89 degrees 56 minutes 26 seconds East along said centerline 1,295.82 feet to the POINT OF BEGINNING, containing 0.892 acre, more or less.



MULTI-USE PATH - OVERALL



C1.0
OF 48

MAPLE KNOLL APARTMENT HOMES

SPRINGHILL ROAD & STATE ROAD 82, WESTFIELD, IN

MULTI-USE PATH - OVERALL

NO.	REVISION	DATE



EXHIBIT B

Pipe requirement at two trail locations.

2 -15" Round RCP Class III, IV, or V

Or

2-14"X23" elliptical RCP Class III, IV, or V

For either pipe

1' minimum cover

Proper bedding and backfill with compaction required.

End section required with rip rap or #2 for erosion control

20' minimum length

Proper sloping to tie in end section is required

EXHIBIT C

Right of Entry

WHEREAS, the City of Westfield of the State of Indiana is contemplating the installation of the Midland Trail improvements at the southern property line across certain lands of the undersigned in Hamilton County, Indiana.

AND WHEREAS, it is desirable that such construction be commenced as rapidly as possible and negotiations between the City of Westfield and the undersigned have not been completed and will require the completion and execution of all requisite securing documents prior to the City of Westfield possessing such right-of-way.

NOW THEREFORE, be it agreed by and between the undersigned and the City of Westfield that further benefits that may be derived by both parties by an extended period in which to accomplish the necessary processes to negotiate a transaction, that the undersigned does hereby grant a right of entry on and across its lands affected by the above project which are more particularly described in the deed attached hereto as Exhibit "A: hereby incorporated by reference and made a part hereof. Said deed designates the required right-of-way."

That this right of entry shall permit the City of Westfield through its employees, agents and contractors to proceed with the construction and installation of the Midland Trail and do such acts thereon as would be permitted if the right of way had actually been obtained. The City agrees any such work shall be done in a manner to avoid any disruption to Westfield Steel's business or access to its property by its customers. That the undersigned waives no right to make claim for any damages for any acts which are outside the right of way limits and which would normally be the basis for an action for damages.

Restoration: In exercising any of the rights granted herein, the City of Westfield will not unreasonably interfere with the normal use of the premises and will, at its sole cost and expense and with due diligence, restore the Westfield Steel property to its condition immediately prior to the exercise of such rights contained herein.

Indemnity: The City of Westfield hereby agrees to indemnify and hold the undersigned harmless from and against any claims, costs, causes of action, losses, damages, expenses or liabilities (including, without limitation, attorney's fees and expenses) which may be suffered or incurred by Westfield Steel and arising out of, related to, caused by, resulting from or involving the entry onto, or the presence on or activities on the premises by the City of Westfield or any of the City of Westfield's employees, officers or directors, contractors and agents, including, without limitation, any claim for labor or materials or injury or death to persons or damage to property, while exercising its rights hereunder.

Neither party hereto waives any of the rights in the event negotiations fails, and it is necessary that the property be condemned. Upon failure to complete negotiations, this right of entry shall become void.

IN WITNESS THEREOF the undersigned has hereto set his hand and seal this

2nd day of July, 2014.

Signature

Printed

Title

Signature

Printed

Title

EXHIBIT E

EXHIBIT F

Document Cross Reference No. Instrument No. 2007055640

Pipeline Easement Encroachment Agreement

This Pipeline Easement Encroachment Agreement ("Agreement") is made and entered into on this 25TH day of JUNE, 2012, by and between BUCKEYE PIPE LINE COMPANY, L.P., a Delaware limited partnership, having an office at 940 Buckeye Road, Lima, OH 45802-0090, ("Buckeye"), and THE CITY OF WESTFIELD INDIANA, having an office at 2728 E. 171ST Street, Westfield, IN 46074 (the "City")

RECITALS

WHEREAS, by instrument dated November 17, 1962, as recorded in Book 177, Page 221, Hamilton County, Indiana records, The Buckeye Pipe Line Company was granted an easement and right of way 33-feet (33') in width to construct, operate, maintain, alter, repair, and remove one line of pipe over and across the lands described therein, with the right of ingress and egress to and from the same; and,

WHEREAS, by instrument dated November 18, 1986, as recorded in Book 4, Page 734, Instrument No. 8629495, the aforesaid 1962 easement grant was assigned to Buckeye; and,

WHEREAS, by instrument dated July 28, 1999, as recorded as Instrument No. 199909948524, as amended September 19, 2000, by Instrument No. 200000052585, Hamilton County, Indiana records, Buckeye was granted rights to locate, construct, operate, maintain, inspect, alter, repair, change size, replace, and remove pipelines and a pipeline junction, with ingress and egress to and from the same; and,

WHEREAS, the City is now or will become the owner of the fee title to all or a portion of the lands described in said easements, including, but not limited to, Parcel Number 08-09-03-00-00-012.411, 24.86 acres (the "Premises") subject to the terms and conditions of said easements and rights of way; and,

WHEREAS, the City proposes to develop all or a portion of the Premises including the former Central Indiana Railway railroad right of way into a multi-use path on, over, and across said easements and rights of way and the pipelines as now located thereon, hereinafter call the "Rights of Way" and "Pipelines," respectively, which said multi-use path, hereinafter "Path," is a violation of the terms and conditions as set forth in said grants providing for the Rights of Way and Pipelines; and,

WHEREAS, Buckeye is willing to permit the City the right to locate, construct, maintain, and remove the Path within the bounds of its Rights of Way as shown and described on a plan sheet of DeBoy Land Development Services, "Maple Knoll Apartment Homes, Springmill Road &

State Road 32, Westfield, IN, Multi-Use Path - Overall" dated July 17, 2008, latest revision January 9, 2009, Page C1.0 of 45, a copy of which is in possession of both parties herein.

NOW, THEREFORE, in consideration of the promises and covenants contained herein,

Buckeye and the City agree as follows:

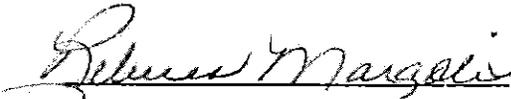
1. The City shall indemnify, defend and hold harmless Buckeye from and against all claims, costs, losses, suits or judgments, including attorneys' fees, for damages, injuries to or death of persons, or damage to or destruction of property, except to the extent caused by Buckeye's intentional conduct, negligence, or willful misconduct, arising from or related to the construction, installation, maintenance, and/or removal of the Path including, but not limited to, any removal required by Buckeye to access its Pipelines or to perform maintenance and/or to fulfill other operations or maintenance needs within its Rights of Way.
2. This consent by Buckeye is not intended as a waiver of rights nor as a release of the City from any obligation, restriction or encumbrance to which Buckeye's interest in the Premises is subject by virtue of any document, including a deed, easement, lease, or plat, or by virtue of any governmental action including a statute, regulation, ordinance, permit, code or the statute of limitations with respect to adverse possession of the encroachment, which shall not begin until after this Agreement is terminated. This Agreement in no way grants consent for future encroachments.
3. The encroachment shall not restrict or impair Buckeye's access to its Pipelines and pipeline junction, weaken the integrity of Buckeye's Pipelines nor otherwise interfere with Buckeye's use of the Rights of Way and pipeline junction.
4. This Agreement shall be binding upon, enforceable by and inure to the benefit of the City, Buckeye, and their respective personal representatives, successors, and assigns.
5. Should Buckeye need to access its Pipelines or pipeline junction for emergency maintenance, improvement, or otherwise, the City shall hold Buckeye harmless from any resulting damage or injury to the City's encroachment, including all costs and expenses, with the exception of any damages or injuries to third parties which result from the sole negligence or willful misconduct of Buckeye.
6. The City understands and agrees that should the actual encroachment fail to conform to the approved proposed encroachment Path, Buckeye has the right to require the City to modify or remove all or a portion of the encroachment at the City's sole expense. The City further agrees to coordinate any work within the Rights

of Way by calling the local Buckeye's Huntington, Indiana Maintenance Office at (260) 356-5802 at least forty-eight (48) hours prior to commencing any work or by contacting Indiana's call-before-you-dig number at 8-1-1.

7. In the event of the necessary removal of said Path by Buckeye due to the operational need to conduct maintenance or repair work on said Pipelines, said restoration of the Path shall be at the expense of the City and shall be subject to this Agreement.
8. The City agrees that any future changes to the Path, including additions, expansions, replacement and/or rebuilding, will not be done without Buckeye's prior written consent, which consent shall not be unreasonably withheld.
9. Buckeye reserves the right to deny any modification or continuation of the Path that will hamper its ability to safely and effectively maintain and operate its Pipelines and pipeline junction, which request for modification or continuation shall not be unreasonably withheld.
10. The City agrees that the proposed Path shall not be located over the Pipelines but at an offset of varying width on the north side of and parallel with the east-west pipeline as more particularly shown on said DeBoy plan sheet of July, 2008, last revision January, 2009, marked Exhibit 'A' attached hereto and made a part hereof.
11. The City hereby grants permission, to the degree it has the authority to grant such permission, for Buckeye to park vehicles or to stage equipment in the vacant area between the east side of the pipeline junction site and proposed north-south path for purposes of pipeline/pipeline junction maintenance work.

The parties hereby indicate their understanding and acknowledgement of the terms and conditions contained herein by executing this Agreement where indicated below.

WITNESS


Rebecca Margolis

BUCKEYE PIPE LINE COMPANY, L.P.

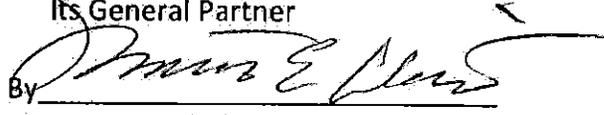
By MainLine L.P.

Its General Partner

By MainLine GP, LLC

Its General Partner

By


Martin E. White, Manager

Right of Way, Permits & One Call

This Instrument Prepared By:
Matthew R. Strzynski, Attorney-at-Law
Krieg DeVault LLP
12800 N. Meridian Street, Suite 300
Carmel, Indiana 46032

CERTIFICATION:

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.

Matthew R. Strzynski, Esq.

KD_3564663_3.DOCX

