GROUND LEASE WITH OPTION TO PURCHASE REAL ESTATE

THIS GROUND LEASE AGREEMENT made this January 10, 2011, between James Craig Wood and his wife, Sandra Malott Wood, ("Landlord"), both residing at 167 191st Street, Westfield, Indiana and City of Westfield, Indiana ("Tenant"), a municipality, whose principal office is 130 Penn Street, Westfield, Indiana, agree to the following written terms and conditions:

1. **Background.** Landlord owns real estate located in Hamilton County, State of Indiana which is described on the attached Exhibit A (the "Leased Premises").

2. **Grant of Leasehold**. Landlord hereby grants a leasehold interest to Tenant and Tenant hereby agrees to accept the grant of the leasehold interest and hereby agrees to pay rent and to perform the other obligations specified in this Lease.

3. **Effective Date**. The Effective Date of the Lease shall be one hundred twenty (120) days after the execution of this Lease by all parties and subject to satisfaction of the following conditions within such one hundred twenty (120) day period:

   (a) Tenant obtains adequate appraisals at the Tenant's expense to support purchase of the Optioned Real Estate as defined in Paragraph 7(d) of this Lease accordance with Indiana law regulating public acquisition of real property; and

   (b) Westfield City Council authorizing the purchase of the "Optioned Real Estate" as defined in Paragraph 7(d) and adopting an amendment to the Westfield-Washington Township Comprehensive Plan that would substantially accommodate the Family Sports Capital of America Plan as shown in Exhibit D attached to this Lease.

   (c) If conditions 3(a) and (b) are not met within the one hundred twenty day period (120), this Lease will not be effective and any and all rights to the Leased Premises shall revert to the Landlord.

4. **Lease Term and Holdover**. The term of this Lease shall be for a period from the Effective Date and seven (7) years thereafter (the "Lease Term"). Any holding over after the term of this Lease, with the consent of the Landlord, shall be considered to be a tenancy from month to month, at the same monthly rental as required to be paid by Tenant for the period immediately prior to the expiration of the term of this Lease and shall be otherwise on the terms and conditions specified in this Lease.

5. **Rent.** The rental to be paid by Tenant is described as follows:

   (a) For a period of three (3) years commencing from the Effective Date of this Lease, Tenant shall pay Landlord annual rent in the amount of one hundred and fifty 00/100 dollars ($150.00) per acre for the Leased Premises payable in two (2) equal installments on each May 1st and each November 1st.

(b) Upon the expiration of the three (3) year period, Tenant shall pay Landlord annual rent equal to the fair market value of farm rent for each acre of the Leased Premises payable in two (2) equal installments on each May 1st and each November 1st Landlord and Tenant shall mutually determine and agree upon in good faith the fair market value of farm rent. The fair market value of farm rent shall be established each year on or before the May 1st payment becomes due. In the event that Tenant and Landlord cannot reach agreement on the fair market value of farm rent after good faith efforts have been exhausted, Tenant and Landlord hereby consent to arbitration to establish the fair market value of farm rent. Arbitration under this Lease shall be conducted in accordance with the United States Arbitration Act (Title 9, United States Code), notwithstanding any choice of law in this Lease, and the Commercial Rules of the American Arbitration Association ("AAA").

(c) The cash rent shall be due and payable without the necessity of any notice being given by Landlord to Tenant, and if any installment of rent is late by more than five (5) days, Landlord shall be entitled to exercise the remedies provided for in Paragraph 24 or, if Landlord chooses to accept a late rent payment, it shall be entitled to charge an additional Fifty Dollars ($50.00) for each day the rent is past due beginning the 6th day after the installment was due.

6. **Construction of Improvements**. Tenant shall cause to have erected and/or constructed to or on the Leased Premises the improvements described in the attached Exhibit B (the "Improvements"). The term "Improvements" also includes any structures, fixtures, additions, parking areas, landscape or any other building or site improvement located on the Leased Premises, including, without limitation, any alterations or improvements made pursuant to Paragraph 14 below. Tenant shall diligently and reasonably commence construction of the Improvements. Commencement of construction shall mean, at a minimum, all of the following: (a) approval by the City of Westfield or Hamilton County (as appropriate) of detailed plans, (b) receipt of a Building Permit and any other required licenses, (c) execution of a contract with qualified contractors for construction of the Improvements, and (d) actual physical commencements by the said qualified contractors of construction work on the Improvements. The Improvements shall, at a minimum, comply with the requirements of the City of Westfield, the Indiana Uniform Building Code and the Uniform Development Ordinance of the City of Westfield or Hamilton County (as appropriate), and any other requirements as set forth in Exhibit B. Upon installation of the Improvements, Tenant shall not remove such Improvements, or any other structures, fixtures or additions to the Improvements or Leased Premises without the express written permission of Landlord prior to the end of the Lease Term.

7. **Surrender and Restoration of Leased Premises; Conditions for the Granting of New Lease Agreement; Option to Purchase the Lease Premises**.

(a) ***Surrender and Restoration of Leased Premises***. At the expiration of the Lease Term, Tenant shall peacefully surrender the Leased Premises in a fully restored

condition, including the removal of all Improvements, unless Landlord grants a new lease agreement under the conditions of Paragraph 7(c). All components of the Improvements must be removed from the Leased Premises and disposed of at the sole cost of Tenant. Complete removal of Improvements and restoration of the Leased Premises shall be complete no later than thirty (30) calendar days after the expiration date of Lease Term or termination of this Lease Agreement, which ever is the first to occur.

(b) ***Other Personal Property***. Any personal property left on the Leased Premises shall, at the option of Landlord, become the exclusive property of Landlord, without liability for payment, if said personal property remains on the Leased Premises thirty (30) days after termination of this Lease for any reason.

(c) ***Conditions for the Granting of a New Lease Agreement.*** This Lease shall expire on the last day of the Lease Term as defined in Paragraph 4 herein. In the event that Tenant desires to continue occupying the Leased Premises, it may request a new Lease Agreement from the Landlord. Tenant shall be eligible for a new lease agreement on the Leased Premises provided the following conditions are met by Tenant:

i. Good Repair. The Leased Premises and all Improvements are in a state of good repair, including, without limitation, landscaping, equipment, equipment storage, and any other items including those which are structural and/or aesthetic in nature. Landlord reserves the right in its sole discretion to determinate what constitutes a state of "good repair".

ii. Compliance with all other Provisions. Tenant shall be in compliance with all other provisions of this Lease.

(d) ***Option to Purchase Real Estate.*** During the Lease Term, Landlord hereby gives and grants to Tenant the exclusive and irrevocable right and option to purchase from Landlord a part of the Leased Premises more specifically described and identified as Real Estate on Exhibit C attached herein ("Optioned Real Estate") subject to the following terms and conditions:

i. Purchase is subject to Tenant obtaining adequate appraisals at the Tenant's expense to support purchase of the Optioned Real Estate in accordance with Indiana law regulating public acquisition of real property within one hundred and twenty (120) days from the execution of the Purchase Agreement.

ii. Purchase is subject to the Westfield City Council authorizing the purchase of the "Optioned Real Estate" and adopting an amendment to the Westfield-Washington Township Comprehensive Plan that would substantially accommodate the Family Sports Capital of America Plan as

shown in Exhibit D within one hundred and twenty (120) days from the execution of the Purchase Agreement.

iii. Purchase Price. The total purchase price for the Optioned Real Estate shall be determined as follows:

a. Twenty-Seven Thousand Five Hundred and 00/100 Dollars ($27,500.00) per acre if the sale of the Optioned Real Estate is closed in the first, second or third year of the Lease Term;
b. Thirty Thousand and 00/100 Dollars ($30,000.00) per acre if the sale of the Optioned Real Estate is closed in the fourth year of the Lease Term;
c. Thirty-Two Thousand Five Hundred and 00/100 Dollars ($32,500.00) per acre if the sale of the Optioned Real Estate is closed in the fifth year of the Lease Term;
d. Thirty-Five Thousand and 00/100 Dollars ($35,000.00) per acre if the sale of the Optioned Real Estate is closed in the sixth year of the Lease Term; and
e. Thirty-Seven Thousand Five Hundred and 00/100 Dollars ($37,500.00) per acre if the sale of the Optioned Real Estate is closed in the seventh year of the Lease Term.

iv. Exercise. This option shall be exercised by Tenant's written notice to Landlord of its election to purchase (a) actually served upon the Landlord; or (b) placed in an envelope directed to the Landlord at the address of the Landlord and deposited in the United States Mail by certified or registered mail, postage prepaid, prior to the expiration of the Lease Term. Concurrently with the execution of this option, Tenant shall deliver to Landlord a certified resolution from its appropriate governing body authorizing Tenant and its agents to execute an agreement to purchase the Optioned Real Estate. Upon its exercise of this option in accordance herein, Tenant shall be deemed to have agreed to purchase the Optioned Real Estate on the terms and conditions in the attached Purchase Agreement attached as Exhibit E, which is made a part of this Agreement (the "Purchase Agreement"). After Tenant's exercise of this option and prior to the closing on the sale of the Optioned Real Estate, this Lease shall remain in effect and the Tenant shall perform its obligations under this Lease, including but not limited to, the obligations regarding rent, taxes, insurance and maintenance.

v. **Excluded Acres**. The Landlord does not give the Tenant the right to option to purchase those acres identified on Exhibit C as Exception Acres ("Excluded Acres"). Tenant consents to Landlord taking the necessary steps to making the Excluded Acres into separate parcels, including but not limited to, surveying the Excluded Acres and recording the same with the Hamilton County Recorder's Office.

8. **Use; Outside Storage.** The Leased Premises shall be used for those activities authorized in the City of Westfield's Comprehensive Plan, rules and regulations, and no other purpose without Landlord's consent, which may be withheld for any reason. Tenant shall have no right to conduct any hazardous activity. Tenant agrees to conduct its business on the Leased Premises so as to comply with all statutes, ordinances and other governmental regulations. Landlord has made no representations concerning the ability or right of Tenant to use the Leased Premises under any statute, ordinances, and regulations of the City of Westfield and/or Hamilton County. Tenant agrees to accept the Leased Premises in its present condition, as is, and agrees to accept all risk with regard to its right to use the Leased Premises. Tenant shall comply with all rules and regulations concerning environmental laws and hazardous waste and agrees to indemnify and hold Landlord harmless from all claims for liability, including attorney's fees, premise on Tenant's failure to comply with such laws, rules and regulations.

9. **Real Estate Taxes.** Landlord agrees to pay all of the municipal assessments and real estate taxes on the Leased Premises, as assessed at the time of the execution of the Lease. Tenant shall be responsible for any increase in property taxes or additional municipal assessments resulting from the change in use of the Leased Premises (specifically, from agricultural to commercial use, planned unit development or other non-agricultural land use) and the Improvements. In addition, Tenant shall pay all personal property taxes during the term of this Lease.

10. **Insurance on Structures.** Tenant agrees to provide an insurance policy on any Improvement at its full replacement cost, protecting against fire and other hazards including an extended coverage rider. Landlord shall not be obligated to provide any insurance coverage nor shall Landlord be liable for any of Tenant's personal property, contents or fixtures located on the Leased Premises. Tenant has been advised to seek its own insurance for such items.

11. **Liability Insurance**. Tenant shall keep in full force and effect, throughout the term of this Lease, at its sole expense, a liability insurance policy providing protection against claims for injuries, death or property damage occurring on the Leased Premises. All insurance premiums for the coverage shall be paid by Tenant.

12. **Additional Requirements Regarding Liability Insurance Policies**. As to all policies of insurance issued in compliance with paragraph 11 above: (a) Landlord shall be listed as an additional insured, (b) the policies shall require thirty (30) days notification to the Landlord in the event of intended cancellation by the insurer, (c) if requested by Landlord, Tenant shall provide evidence of payment of premiums and (d) Tenant shall provide Landlord with a true copy of all such polices.

13. **Repair and Maintenance of Leased Premises**. Tenant has inspected and accepts the Leased Premises in its present condition and acknowledges that the Leased Premises to

be tenantable and in good condition. Tenant shall be responsible for all repairs on the Leased Premises, including the Improvements, if any. In the event Tenant shall fail to commence necessary repairs for which it is responsible, including any repairs to the Improvements or fails to diligently pursue the completion of such repairs, Landlord in addition to all other remedies available under this Lease (and without waiving any other remedies), may make such repairs, the cost of which shall become due and payable as additional rent ten (10) calendar days after notice of such to Tenant. Tenant shall not commit or suffer waste, impairment or deterioration of the Leased Premises or the Improvements thereon or any part thereof, reasonable wear and tear accepted.

14. **Alterations.** Tenant shall have the right to make improvements or alterations to the Leased Premises or to the Improvements or to construct any buildings, structures, improvements, and additions, or make any alterations thereto, or to any other part of the Leased Premises or to the Improvements as shown on its approved site plan without the consent of the Landlord. Tenant does not have the right to make improvements or alterations to the Leased Premises or the Improvements or to construct any buildings, structures, improvements and additions not shown on the Tenant's approved site plan without the consent of the Landlord. Landlord shall not unreasonably withhold its consent and may condition its consent on Tenant furnishing a bond, under terms and conditions that are satisfactory to Landlord, protecting against mechanics', suppliers' or any other lien claims. Construction of improvements or alterations to the Leased Premises shall be made in a safe and workmanlike manner, shall be paid for promptly by Tenant and shall not give rise to any and all mechanics', suppliers' and any other liens for or arising out of or in connection with work or labor done.

15. **Signs.** Tenant shall have the right to install signs on the Leased Premises, either free standing or attached to the Improvements, without the written consent of the Landlord; provided that the signs are in compliance with the standards of the applicable Westfield –Washington Township Zoning Ordinance, as amended.

16. **Utilities.** Tenant shall be responsible for directly paying all charges for services to any Improvements on the Leased Premises including, but not limited to, water, sewer, electricity, natural gas, telephone and trash removal.

17. **Landlord Not Liable for Damage; Indemnification.** Tenant expressly waives and releases any right it might otherwise have to make any claim against Landlord by reason of damage to any of the property of Tenant or by reason of injury or damage to the person or property of Tenant's invitees, agents, customers or employees even though such injury or damage occurs by reason of the condition of the Improvements or any other part of the Leased Premises. Moreover, Tenant hereby waives any right it might otherwise have to recover from Landlord, by reason of damage to Tenant's property, or by reason of injury or damage to the persons or property of Landlord's invitees, agents, customers, or employees. However, nothing in this paragraph 17 shall relieve Landlord from any damage caused by the conduct of Landlord or the conduct of persons acting under its direction. If any invitee, employee or independent

contractor of Tenant makes a claim against the Landlord of the type referred to in this paragraph 17, Tenant shall be required to hold Landlord harmless from any such claim and shall indemnify Landlord from any liability which they incur by reason of the claim; this duty of indemnity shall include the duty to defend any such claim and to pay the cost of such defense, but Landlord shall be consulted with regard to the conduct of the defense insofar as the choice of attorneys and other related matters.

18. **Damages to Leased Premises.** If the Leased Premises are damaged by fire or other casualty, this Lease shall remain in effect and Tenant shall be obligated to replace any buildings or structures, using any insurance proceeds to fund such repairs or replacements.

19. **Covenant of Quiet Enjoyment.** Landlord hereby represents that they have the full right and power to enter into this Lease and hereby covenants that Tenant shall have quiet possession of the Leased Premises throughout the term of this Lease so long as Tenant complies with its obligation hereunder.

20. **Subordination.** Landlord shall have the right to encumber the real estate portion of (but exclusive of the Improvements) the Leased Premises either before or after the commencement of the Lease Term. If Landlord desires to encumber the real estate portion of the Leased Premises, Tenant agrees to promptly execute and deliver any instrument reasonably required by Landlord, or a lender to Landlord, to evidence the subordination of the Lease. However, Tenant shall have the right to condition delivery of any such instrument on the receipt from any lender requiring the subordination of a written confirmation, in a form suitable for recording, which provides that, notwithstanding any contrary provisions of the mortgage or deed of trust in favor of lender, lender and any person acquiring an interest in the Leased Premises through foreclosure of the mortgage or deed of trust, will not disturb the possession, use or enjoyment of the Leased Premises by Tenant, as long the Improvements will not be encumbered and all obligations of Tenant are fully performed in accordance with the terms of this Lease.

21. **Estoppel Certificate.** At the request of either party, the other party shall certify in writing: (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; and, (b) acknowledging that there are not, to the party's knowledge, any uncured defaults on the part of the other hereunder, or specifying such defaults if they are claimed. Any such statement may be exclusively relied upon by any prospective purchaser or encumbrance of the Leased Premises. If any party fails or refuses to deliver any such written certificate within ten (10) days after receiving a written request to do so, then the failure shall constitute the equivalent of a representation by the party failing or refusing: (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) that there are no uncured defaults in the other party's performance; and, (c) that not more than one (1) month's rent has been paid in advance.

22. **Landlord's Access.** Landlord reserves and retains for its agents, employees and authorized representatives, the full and unrestricted right to enter the real estate portion of the Leased Premises at any time and the Improvements within 24 hours prior notice to Tenant, except in the case of emergency, for purposes of inspecting or protecting such premises and of doing any and all activities which Landlord may deem necessary and proper. In case of emergency, no notice shall be required.

23. **Restriction on Assignment.** Tenant shall have no right to assign its rights under this Lease without the written consent of Landlord and Landlord may withhold the consent for any reason. Tenant shall have the right to sublease the Leased Premises with third parties without the prior consent of the Landlord provided that the Tenant shall not be relieved of any of its obligations and liabilities under this Lease for any actions taken by its subtenants or such subtenants' invites, agents, customers or employees.

24. **Defaults and Remedies.**

(a) Tenant shall be in default of this Lease if at any time after commencement of the Lease term:

- **i.** Tenant defaults in the payment of any installment of rent or payment of utilities;
- **ii.** Tenant ceases business activities for a period of thirty (30) consecutive days; or
- **iii.** Tenant defaults in the performance of any of its other obligations under this Lease including, but not limited to, the obligations regarding taxes, insurance and maintenance, and if any such other default is not corrected within sixty (60) days after Landlord has given Tenant written notice specifying the default.

Upon any such default, Landlord shall have the right to declare the term of this Lease ended, and to re-enter and take complete possession of the Improvements and Leased Premises, whereupon this Lease, and all of the rights of Tenant, shall terminate. If this Lease is so declared terminated, Landlord shall have the right to sue for and recover rents and other sums due Landlord under the terms hereof at the time of termination, including damages resulting from any breach on the part of Tenant and if Landlord elects to remove Improvements, the right to recover the cost of removal of the Improvements and to restore the Leased Premises pursuant to Paragraph 7(a) above.

(b) In addition to the rights specified in Paragraph 24(a) above, Landlord also has the right, without re-entering the Leased Premises and removing the Improvements or terminating this Lease, to sue for and recover any and all rents and other sums, including damages, at any time and from time to time during the term of this Lease.

(c) If any part of the rent or other obligations of Tenant remains unpaid or unsatisfied or any other default occurs for a period of sixty (60) consecutive days, Landlord may take possession of the Leased Premises or part hereof without thereby terminating this Lease. In such case, Tenant shall be liable for the balance of the rent and other obligations until the expiration of the term of this Lease. At the end of Lease Term, the Landlord may remove the Improvements and shall have the right to recover for the cost of removal of the Improvements and restoration of the Leased Premises pursuant to Paragraph 7(a).

(d) If Landlord proceeds under either subparagraph (a) or (c) above, Landlord shall have the right to remove Tenant's personal property from the Leased Premises and take it to a public storage facility or other safe facility as an agent for Tenant. Tenant shall be responsible for paying the cost of any such storage, as well as the cost of transportation, and Tenant hereby waives any right it might otherwise have to make any claim against Landlord for damage to such personal property; for the interruption of Tenant's business by reason of the removal; for reimbursements for the cost of transportation and storage; or for any other damage or injury which Tenant may suffer by reason of Landlord's actions under this Paragraph.

(e) If Tenant defaults with respect to any of its obligations under this Lease, other than the payment of rent, and if such default continues for thirty (30) days after notice thereof to Tenant, Landlord shall have the right to make any payments that are necessary to remove the cause of the default. Tenant shall be obligated to fully reimburse Landlord for any such payment together with interest at the rate of eighteen percent (18%) per annum from the date of payment by Landlord to the date of reimbursement by Tenant.

(f) In the event of default of Tenant, Landlord shall have the right to a Landlord's lien on the Improvements and personal property of Tenant.

(g) The above specifications of rights shall not preclude any other right or remedy which Landlord or Tenant may have by law or equity.

(h) No waiver by Landlord or by Tenant of any breach by the other of its obligations or covenants hereunder will be a waiver of any subsequent breach.

25. **Notices**. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or sent by registered or certified mail, postage prepaid, addressed as follows:

To Purchaser:	Mayor Andy Cook City of Westfield 130 Penn Street Westfield, IN 46074
To Vendor:	Craig and Sandy Wood 167 191st Street Westfield, IN 46074
With a copy to:	Ann M. O'Hara Church, Church, Hittle & Antrim 10765 Lantern Road, Suite 201 Fishers, IN 46038

26. Miscellaneous.

(a) Time is of the essence in all provision of this Lease.

(b) Indiana law will be referred to in the interpretation and construction of this Lease and the resolution of all disputes hereunder.

(c) This Lease is binding upon and will inure to the benefit of the parties hereto, their successors-in-interest, their personal representatives, heirs, devisees, and assigns.

(d) The provisions of this Lease may be amended only in writing signed by both parties.

(e) Paragraph headings are for convenience only and shall not be considered in any controversy involving their meaning and interest of the Lease;

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

LANDLORD:

James Craig Wood

Sandra Malott Wood

TENANT:

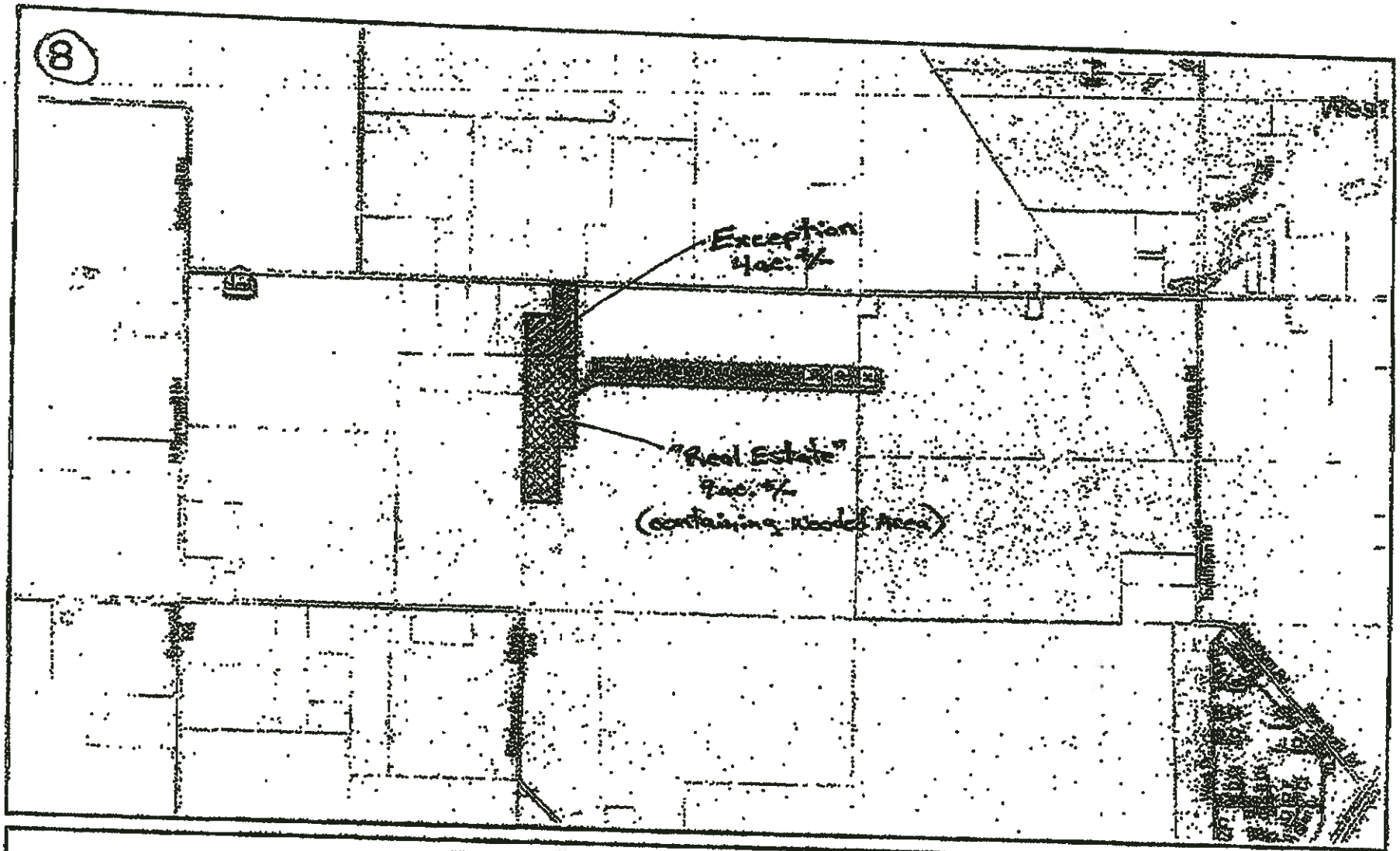
City of Westfield

By: _____

Exhibit A
Leased Premises

Exhibit B
Improvements

Exhibit C
"Optioned Real Estate" and "Excluded Acres"



Family Sports Campus

Wood Property IV

Printed: Oct 14, 2010

Exhibit F

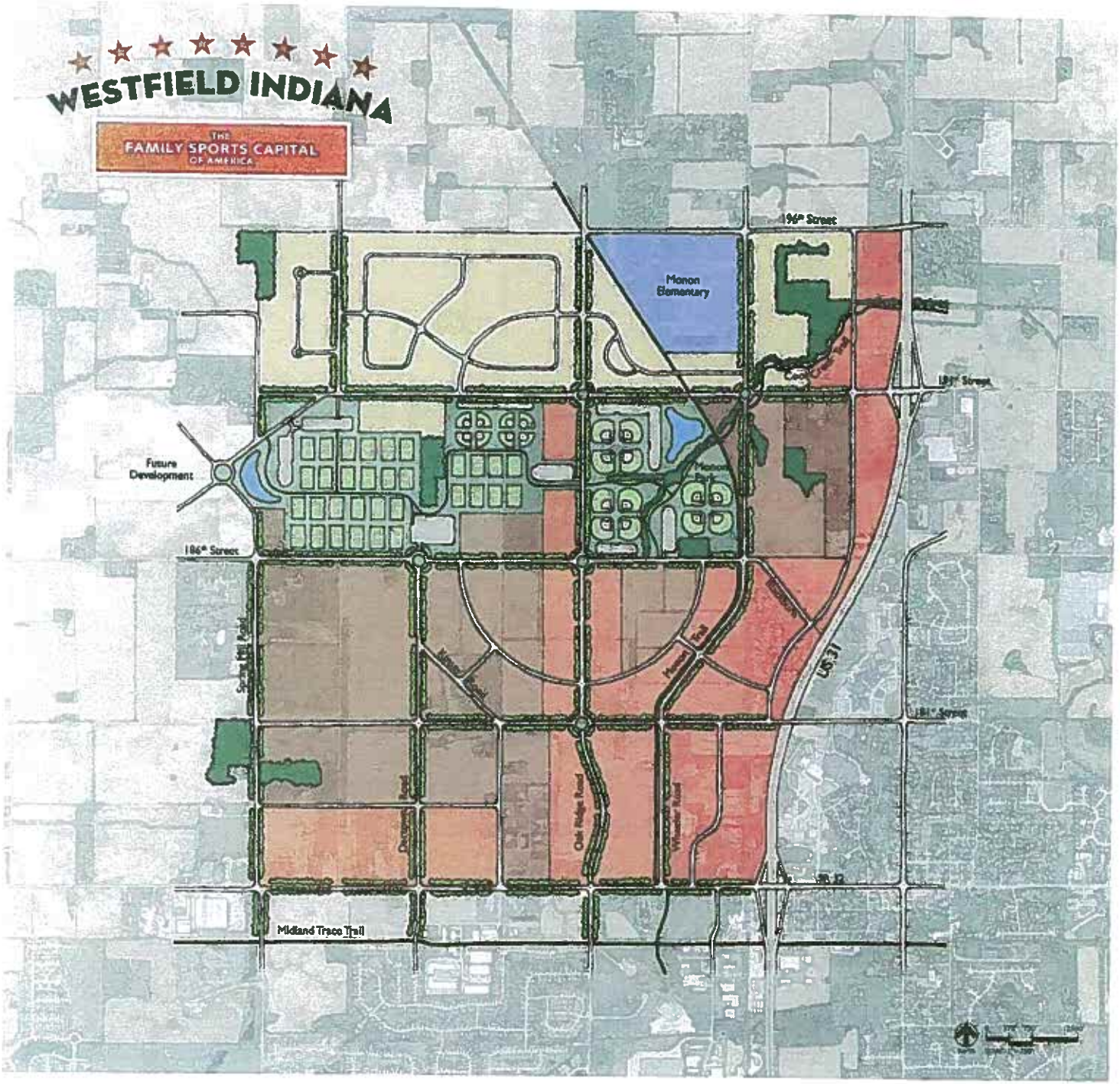
N
W E
S

0 1,000
Feet

The information on this web site is provided and hosted by Hamilton County, Indiana. Continued use of this web site is conditional upon your explicit acceptance of the terms and conditions set forth in this disclaimer document. The data provided herein may be inaccurate and/or out of date. Any person or entity who relies on this data for any purpose whatsoever does so solely at their own risk. Neither Hamilton County believe nor its employees or officers warrant the accuracy, reliability, or timeliness of any of the data provided herein. This data is provided as is without warranty of any kind. Hamilton County may elect to discontinue this service without notice at any point in the future.

County of Hamilton Indiana
www.hamiltoncounty.in.gov

Exhibit D
Family Sport Capital of America Plan



Proposed Land Use

- Residential
- School
- Park
- Low Intensity Mixed-Use
- High Intensity Commercial
- Roads
- Trail / Greenway
- Street Trees
- Regional Detention Areas
- Preserved Wood Lots
- Round-a-bout
- Athletic Fields
- Parking

Exhibit D

CONTEXT landscape architecture

Exhibit E
Purchase Agreement

EXHIBIT E

PURCHASE AGREEMENT

This Purchase Agreement (the "Agreement") is made this ___day of _____, 20____ (the "Effective Date"), by City of Westfield, a municipal corporation, ("Purchaser") and James Craig Wood and Sandra Malott Wood, husband and wife, ("Vendors"), upon and subject to the following terms and conditions:

1. **PROPERTY.** Purchaser shall purchase and Vendors shall sell (i) the tracts of Real Estate containing approximately _____ acres described on Exhibit A attached hereto and made a part hereof (ii) all improvements located on the Real Estate and (iii) all tenements, hereditaments, rights, privileges, easements and appurtenances belonging or in any way pertaining to the Real Estate or the improvements (all of which is referred to herein as the "Real Estate").

2. **PURCHASE PRICE.** The purchase price for the Real Estate (the "Purchase Price") shall be _____ Dollars ($_____) per acre of the Real Estate in the total amount of _____ ($_____). For purposes of the Purchase Price computation, the parties agree that the acreage of the Real Estate is specified on Exhibit A.

3. **CONDITIONS OF OFFER.** The Purchaser's obligations hereunder are subject to satisfaction of the following conditions:

(a) Purchase is subject to Purchaser obtaining adequate appraisals at Purchaser's expense to support purchase of the Property in accordance with Indiana law regulating public acquisition of real property within one hundred and twenty (120) days from the execution of this Purchase Agreement.

(b) Purchase is subject to the Westfield City Council authorizing the purchase of the "Real Estate" and adopting an amendment to the Westfield-Washington Township Comprehensive Plan that would substantially accommodate the Family Sports Capital of America Plan as shown in Exhibit B within one hundred and twenty (120) days from the execution of this Purchase Agreement.

(c) It is understood and acknowledged by Vendors that if Purchaser is unable to meet the above conditions of Paragraphs 3(a) and 3(b), the Purchaser may, at its election, notify Vendors in writing, at the place herein provided for notices, and that it thereby cancels and terminates the Purchase Agreement, neither party shall have any further liability to the other arising out of the Purchase Agreement.

4. **PAYMENT ON CLOSING.** Purchaser shall pay to Vendors at closing, the Purchase Price by wire transfer of funds or by title company, certified or bank cashier's check.

5. **TITLE TO PROPERTY**.

A. **TITLE INSURANCE**. Within thirty (30) days after the date of execution of this Purchase Agreement by Vendors, Vendors, at their expense, shall furnish Purchaser prior to Closing an endorsement to the commitment for an owner's policy of title insurance (the "Commitment") issued under date of

_____ (Commitment/Case No. _____) by Title Company in which Title Company agreed to insure for the full amount of the Purchase Price fee simple title to the Real Estate in the name of Purchaser after delivery of a Warranty Deed to Purchaser and recordation thereof in the Office of the Recorder of Hamilton County, Indiana: subject only to such easements, covenants, restrictions, agreements and other instruments affecting title to the Real Estate (other than any mortgage) (the "Permitted Exceptions") as were of record as of the effective date of the Commitment. The Real Estate shall be sold and conveyed to Purchaser free and clear of any and all liens and encumbrances of any kind or nature whatsoever except the Permitted Exceptions.

B. **SURVEY**. Prior to Closing, Vendors shall furnish Purchaser a current staked survey of the Real Estate prepared by a surveyor or engineer licensed in the State of Indiana in the form of the minimum standard detail requirements certificate for Real Estate title surveys as required by Purchaser. Such survey shall reflect all improvements, easements, highways, rights-of-way and other matters affecting or abutting the Real Estate and shall be in a form sufficient to induce the title insurance company to delete all standard and printed exceptions contained in the title insurance commitment described above. Said survey shall be recertified as of the date of closing, and shall show no adverse change.

6. **REPRESENTATIONS AND WARRANTIES OF VENDOR.** By execution of this Purchase Agreement, Vendors represent and warrant to Purchaser that the following statements are, and at the Closing will be, true statements of law and fact:

(a) Vendors have not made any contract to sell all or any part of the Real Estate to any person other than Purchaser, nor have Vendors given to any person an option which is presently exercisable to purchase all or any part of the Real Estate;

(b) Vendors have good and marketable title to the Real Estate, free and clear of all liens, leases, restrictions and encumbrances, except (i) current real estate taxes not delinquent, and (ii) easements, restrictions and encumbrances of record.

(c) There are no actions, suits, proceedings or investigations pending or threatened against the Vendors in connection with the Real Estate before any court, administrative agency or other body and no judgment, order, writ, injunction, decree or other similar command of any court or other governmental agency which is presently in effect, has been entered against the Real Estate or served on or entered against Vendors in connection with the Real Estate;

(d) Vendors are not involved in any proceedings by or against Vendors in any court under the Bankruptcy Act or any insolvency or debtor's relief act, whether state or federal, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official of a substantial part of Vendors' property, or, if so involved, the execution of this Purchase Agreement by Vendors and the performance thereof have been approved by the court in which such proceedings are pending;

(e) To the best knowledge of Vendors, there are no liens or claims which may ripen into liens against the Real estate other than those to be released at or before closing.

(f) To the best knowledge of Vendors, there are no violations of any laws, regulations, codes, ordinances, order or requirements affecting the Real Estate, including, but not limited to applicable laws, regulations, ordinances or requirements relating to ecology, the environment, pollution, health or safety.

(g) To the best knowledge of Vendors, (i) the Real Estate is free of any lien or encumbrance which may be created by any applicable state or federal law, statute or regulation pertaining to hazardous waste; (ii) no hazardous waste has been placed onto or into the Real Estate, and (iii) the Real Estate has not been used as a landfill or trash dump.

7. **CLOSING**.

(a) After satisfaction of the conditions contained herein, the purchase of the Real Estate shall be closed (the "Closing") at a location acceptable to the parties on a date (the "Closing Date") which shall be no later than one hundred twenty days (120) after the Effective Date. At the Closing, Vendors shall deliver to Purchaser the following documents with respect to the Real Estate, against simultaneous delivery of the consideration described in Paragraph 3:

(i) A properly executed general warranty deed in recordable form conveying the fee simple estate in the Real Estate to Purchaser free and clear of any and all liens, leases, encumbrances and restrictions of any kind or nature whatsoever except the Permitted Exceptions;

(ii) A vendor's affidavit in the form most recently published by the Indianapolis Bar Association;

(iii) A certification of non-foreign status with respect to Vendors as required by Section 1445 of the Internal Revenue Code;

(iv) A statutory sales disclosure form; and

(v) Such other documents as Purchaser or Purchaser's counsel may reasonably deem necessary to consummate the transaction contemplated hereby,

all of which documents shall be in form and substance reasonably satisfactory to Purchaser and Purchaser's counsel.

(b) All casualty insurance shall be cancelled as of the day following the Closing Date. All other liabilities, obligations, costs and expenses in connection with ownership, operation, use and/or occupancy of any Real Estate shall be paid by Vendors and cancelled as of the Closing Date. Vendors shall bear risk of loss until Closing. Except as provided herein, all rents, income, issues and profits of the Real Estate, if any,

shall be prorated between Vendors and Purchaser as of the Closing Date, with continuing rents, income, issues and profits from the Closing Date allocated to Purchaser.

7. **TAXES AND ASSESSMENTS.** Purchaser assumes and agrees to pay all assessments for municipal improvements made after the Closing Date, and so much of the real estate taxes assessed for and becoming a lien during the calendar year in which closing occurs as shall be allocable to Purchaser after closing (i.e., prorated to Closing Date). Any taxes not assumed by Purchaser and which are not due and payable at the time of closing shall be allowed to Purchaser as a credit on the cash payment required at closing, and Vendors shall not be further liable for such taxes.

8. **POSSESSION.** Vendors shall deliver possession of the Real Estate to Purchaser at the time of Closing in its present condition, ordinary wear and tear excepted, free and clear of any rights or claims of any other persons for possession.

9. **TERMINATION.** In the event that (i) Purchaser discovers that any representation or warranty made by Vendors in Paragraph 5 hereof was, on the Effective Date or at any time thereafter, inaccurate or untrue in any material respect, or (ii) Vendors fail to comply with or perform any one or more of the covenants, terms and conditions to be complied with or performed by Vendors under this Purchase Agreement (and same is not waived by Purchaser), then, and in any such event, Purchaser shall have the right, at its election and in addition to any other rights or remedies Purchaser may have at law or in equity (including the right of specific performance), to terminate this Purchase Agreement. In the event that such agreement is so terminated, Purchaser shall be released from all further obligations and liabilities hereunder and this Purchase Agreement shall be of no further force or effect. If Purchaser has not cured a default by Purchaser within thirty (30) days after written notice thereof from Vendors, Vendors' sole and exclusive remedy shall be to terminate this Purchase Agreement.

10. **INDEMNIFICATION.** Vendors and Purchaser shall each indemnify, defend and hold the other harmless from and against any claim, liability, obligation or expense asserted by any third party or required by federal, state or local laws, ordinances, orders, regulations or governmental authority (including, without limitation, reasonable attorneys' fees and other costs, interest and expenses incident to any suit, action, investigation or other proceeding) that the indemnified party shall incur or suffer which results from, relates to or arises out of the untruth or inaccuracy of any representation or warranty made by the indemnifying party.

11. **SUCCESSORS AND ASSIGNS.** The terms, provisions, covenants and conditions contained in this Purchase Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and assigns. Without limiting the foregoing, Purchaser may assign its rights and obligations under this Purchase Agreement to an entity which he forms to own the Real Estate.

12. **ENTIRE AGREEMENT; WRITTEN MODIFICATIONS; SURVIVAL OF REPRESENTATIONS, WARRANTIES AND AGREEMENTS.** This instrument contains the entire agreement between Vendor and Purchaser with respect to the subject matter hereof. All representations, promises and prior or contemporaneous understandings between the parties are merged into and expressed in this instrument, and any and all prior agreements between the

parties are hereby cancelled. The agreement contained in this instrument shall not be amended, modified or supplemented without the written agreement of Vendors and Purchaser at the time of such amendment, modification or supplement. All representations, warranties and agreements made herein shall survive the execution of this Purchase Agreement, the Closing and the consummation of the transaction contemplated hereunder, and shall not be merged by the delivery of the deed by Vendors to Purchaser.

13. **EXPENSES: SALES EXPENSES:** Vendors and Purchaser agree that all sales expenses are to be paid in cash prior to or at the closing.

A. **VENDORS' EXPENSES:** Vendors agree to pay one-half (1/2) of the cost of the survey; all costs of releasing existing loans and recording the releases; Owner's Title Policy; survey; tax statements; preparation of Deed and Vendor's Affidavit; and other expenses stipulated to be paid by Vendors under other provisions of this Agreement.

B. **PURCHASER'S EXPENSES:** Purchaser agrees to pay one-half (1/2) cost of the survey; all expenses incident to any loan (e.g. loan commitment fees, preparation of note, mortgage, and other loan documents, recording fees, Mortgagee's Title Policy, prepayable interest, credit reports); any closing fees; copies of documents pertaining to restrictions, easements, or conditions affecting the Property; and expenses stipulated to be paid by Purchaser under other provisions of this Contract.

14. **LIKE KIND EXCHANGE**. Venders, or any one of them, may hereafter decide to exchange for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder, fee title to the entire Real Estate or any portion thereof. Vendors expressly reserve the right to assign their rights, but not their obligations, hereunder to a Qualified Intermediary as provided in IRC Reg. 1.1031(k) – 1(g)(4) on or before the Closing. Purchaser agrees to cooperate with the Vendors to effectuate such an exchange.

15. **NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or sent by registered or certified mail, postage prepaid, addressed as follows:

To Purchaser:	Mayor Andy Cook City of Westfield 130 Penn Street Westfield, IN 46074
To Vendor:	Craig and Sandy Wood 167 191st Street Westfield, IN 46074
With a copy to:	Ann M. O'Hara Church, Church, Hittle & Antrim 10765 Lantern Road, Suite 201 Fishers, IN 46038

or to such other address as shall be furnished in writing by either party to the other.

16. **COUNTERPARTS.** This Purchase Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

17. **ATTORNEY'S FEES**. If any action is instituted in connection with any controversy arising out of this Purchase Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorneys' fees in such action, and on any appeal from any judgment or decree entered therein.

Executed as of the date first above written.

_____

James Craig Wood

_____

Sandra Malott Wood

By:

Exhibit A