

## ROAD IMPACT FEE AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 between the City of Westfield, Indiana (“City”) a duly formed Indiana municipal corporation and Westfield Properties, LLC, an Indiana limited liability company or its assigns (“Developer”). This Agreement is based upon the exchange of adequate, valuable consideration, the receipt of which is hereby mutually acknowledged.

WHEREAS, City desires to promote economic development and cause the improvement of certain rights-of-way and storm drainage infrastructure in collaboration with the development community; and

WHEREAS, Developer desires to assist City in its efforts to improve the Westfield road and trail network and infrastructure and community storm drainage system within certain real estate owned by Developer generally located between Austrian Pine Way (to the west), Post Office (to the east), State Highway 32 (to the north) and the Midland Trace Trail 175<sup>th</sup> St (to the south), and more particularly identified in Exhibit A (the “Real Estate”), attached hereto and incorporated herein; and

WHEREAS, City has adopted the Westfield-Washington Township Comprehensive Plan which provides for the future development and expansion of certain roadways within the City’s planning and zoning jurisdiction (the “Thoroughfare Plan”); and

WHEREAS, Developer is required to dedicate right-of-way and provide connectivity of streets with existing or planned streets with adjacent properties pursuant to the Westfield Washington Township Unified Development Ordinance (the “Unified Development Ordinance”) and the Thoroughfare Plan; and

WHEREAS, the Real Estate is located within an economic development area; and

WHEREAS, Developer intends to develop the Real Estate in accordance with Austrian Pine Planned Unit Development City Ordinance No. 19-12, recorded as Instrument No. 2019026428 in the Office of the Recorder of Hamilton County Recorder, Indiana, (the “PUD Ordinance”) and the conceptual drawing included therein and attached hereto as Exhibit B (the “Concept Plan”); and

WHEREAS, at such time as various of the out lots located on the Real Estate are issued a building permit in the ordinary course of business of the Developer, the City will require that road impact fees are required to be paid to the City in accordance with City Ordinance 17-43 (sometimes referred to herein as “RIF”); and

WHEREAS, Developer desires to comply with the City’s plans for the development of the Real Estate and to construct, or cause to be constructed, certain road, trail, storm drainage and other related improvements consistent with the City’s Unified Development Ordinance and Thoroughfare Plan, as amended, and the City has committed to pay the RIF to Developer when collected in exchange for the dedication of the infrastructure constructed on the Real Estate by

Developer pursuant to the provisions hereof and to disburse such amounts to Developer upon acceptance of the portion of the Infrastructure Improvements completed by the Developer and accepted by the City as well as any tax increment generated by the Real Estate (“TIF Amounts”);

NOW THEREFORE, in consideration of the foregoing and of mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Developer (collectively, the “Parties”) now stipulate and agree as follows:

**Section 1. Mutual Duties and Obligation.** This Agreement shall be deemed a part of the zoning and land use restrictions and covenants on the property comprising the Real Estate.

**Section 2. Description of Improvements.** The economic development of the Real Estate will include, but not be limited to the following improvements (“Infrastructure Improvements”), serving or benefiting the community and as shown on Exhibit B (Concept Plan) attached hereto:

- A. The installation and construction of a storm sewer drainage system, including curb inlets, and sidewalks and a trail on and along the Trail Corridor.
- B. Dedication of the trail corridor described as Blocks B and C on the site plan attached hereto as Exhibit C (the “Trail Corridor”).
- C. Construction of retention facilities on the Real Estate as the City reasonably determines is necessary to discharge storm water from the road improvements constructed for the Real Estate and the Trail Corridor as described in B above.
- D. Construction and improvement of certain public amenities within or serving the Real Estate including, but not limited to trails, a pocket park with a minimum of 400 sq. ft. with hard scape with seating, benches, water fountains, and bike racks.
- E. Installation of landscaping on and along the Trail Corridor.

**Section 3. Duties and Obligation of Developer.**

- A. Developer shall design and construct trail improvements on and along the Trail Corridor in substantial compliance with the configuration indicated on the Concept Plan. Prior to construction of the Trail Corridor, Developer shall provide construction plans to the City for review and reasonable approval. Construction of the Trail Corridor shall be in accordance with City’s Construction Standards and shall be subject to any applicable permits, financial guarantees and inspections by the City. Developer shall construct and complete Trail Corridor prior to the issuance of a Certificate of Occupancy for any building on the Real Estate.
- B. Developer agrees to dedicate the Trail Corridor, at no cost to City as right of way. The dedication of the Trail Corridor shall occur at the time portions of the Real

Estate receive secondary plat approval. Developer shall bear the costs of preparing such dedication documentation as part of preparing such secondary plat(s).

- C. Developer has prepared and submitted an estimate of the Cost of the Infrastructure Improvements, attached hereto as Exhibit D and incorporated herein. The Cost of the Infrastructure Improvements shall include all expenses reasonably incurred in connection with the Infrastructure Improvements, including all reasonable and necessary architectural, engineering, construction, equipment, legal, and supervisory expenses related to the development of the Infrastructure Improvements.

**Section 4. Duties and Obligations of the City.**

- A. City agrees to work quickly during any reviews of the design plans for the Infrastructure Improvements.
- B. In consideration of the dedication and construction of the Infrastructure Improvements, City agrees to reimburse Developer for the Costs of the Infrastructure Improvements from the amounts received from RIF collected by the City from the time of the issuance of a building permit of Developer’s out lots, which shall be paid to Developer within thirty (30) days of the date any portion of the Infrastructure Improvements are accepted by the City. Failure to do so by the City shall require the City to pay interest on any outstanding amount at a rate of five percent (5%) per annum.
- C. It is expected that the RIF Amount will be equal to the amount necessary to credit or reimburse Developer for the Cost of the Infrastructure Improvements.

**Section 5. Notices.** Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

<p>If to City:  City of Westfield  Attn: Jeremy Lollar, Director of Public Works  2706 E. 171<sup>st</sup> St.  Westfield, IN 46074</p>	<p>With a copy to:  Kreig DeVault  Attn: Brian J. Zaiger  12800 N. Meridian St., Suite 300  Carmel, IN 46032</p>
<p>If to Developer:  Westfield Properties, LLC  Attn: Stanley Feldman  4705 Kessler Blvd. N. Dr.  Indianapolis, IN 46228</p>	<p>With a copy to:  Taft Stettinius &amp; Hollister LLP  Attn: Jeffrey A. Abrams  One Indiana Square, Suite 3500  Indianapolis, IN 46204-2023</p>

**Section 6. Conditions Precedent to Obligations.** The obligations of City and Developer contained in this Agreement are expressly conditioned upon the enactment and approval of the secondary plat(s) and construction plans of the Real Estate, and, absent the occurrence of all of the foregoing conditions, this Agreement shall be null and void and the parties shall have no further responsibility or obligation to each other under this Agreement.

**Section 7. Termination.** This Agreement shall be in effect from August 26, 2020 for a period of one hundred twenty (120) months (ten years) terminating on August 26, 2030, and shall be of no effect after that time. All previously executed agreements and addenda between the Parties shall also be null and void at that time. This Agreement as well as any and all previous understandings shall all be contingent on the approval of a road impact fee credit agreement by the Westfield Board of Public Works and Safety and other City bodies as required by Indiana law.

**Section 8. Amendment.** No alteration, modification, or amendment to this Agreement is permitted, except by written agreement signed by the Parties or their successors in interest as appropriate.

**Section 9. Dispute Resolution.** In the event that any dispute arising hereunder cannot be resolved by the Parties, each party waives its right to trial by jury, and stipulates that the Circuit or Superior Courts of Hamilton County, Indiana shall be the only proper court(s) of venue and jurisdiction.

**Section 10. Authority.** Each undersigned person attests, subject to the penalties for perjury, that he is the properly authorized representative, agent, member, that he has not, nor has any other member, employee, representative or agent, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**Section 11. Indemnification.** Each Party agrees to indemnify and hold harmless the other Party and the officers, agents, servants, and employees of such entity, in their official and personal capacities from and against any and all claims, demand, actions, causes of action, judgment, loss, costs, damages, injuries and expenses (including reasonable attorneys' fees) except for those arising out of or related to a Party's gross negligence or intentional wrongful conduct in its performance under this Agreement.

IN WITNESS WHEREOF, City and Developer have, through their duly-authorized representatives, entered into this Agreement. The Parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

City of Westfield, Hamilton County, Indiana,  
an Indiana municipal corporation ("City")

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

**SIGNATURE OF NOTARY PUBLIC**

State of Indiana, County of Hamilton, SS:  
County of Hamilton

Subscribed and Sworn before me this \_\_\_\_ day of \_\_\_\_\_ 2020

Printed Name of Notary Public \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the above named witness to the foregoing instrument, who, being duly sworn by me, did depose and say that he/she knows \_\_\_\_\_ to be the individual described herein and who executed the foregoing instrument; that said Witness was present and saw said \_\_\_\_\_ execute the same; and that said Witness at the same time subscribed his/her name as a witness thereto.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

My Commission Expires: (Printed)

\_\_\_\_\_  
My County of Residence is:  
\_\_\_\_\_

WESTFIELD PROPERTIES, LLC, an  
Indiana limited liability company  
("Developer")

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Stanley Feldman, Manager

Date: \_\_\_\_\_

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

**SIGNATURE OF NOTARY PUBLIC**

State of Indiana, County of Hamilton, SS:  
County of Hamilton

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 2020

Printed Name of Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

STATE OF INDIANA )

) SS:

COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the above named witness to the foregoing instrument, who, being duly sworn by me, did depose and say that he/she knows Stanley Feldman to be the individual described herein and who executed the foregoing instrument; that said Witness was present and

saw said Stanley Feldman execute the same; and that said Witness at the same time subscribed his/her name as a witness thereto.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of June, 2020

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

My Commission Expires:

(Printed)

\_\_\_\_\_

My County of Residence is:

\_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

PARCEL I

PART OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST THAT IS 1862.55 FEET SOUTH 88 DEGREES 40 MINUTES 35 SECONDS WEST (ASSUMED BEARING) MEASURED ON SAID NORTH LINE FROM THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 88 DEGREES 40 MINUTES 35 SECONDS WEST ON SAID NORTH LINE 464.00 FEET; THENCE SOUTH 00 DEGREES 34 MINUTES 25 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER 615.00 FEET; THENCE NORTH 88 DEGREES 40 MINUTES 35 SECONDS EAST PARALLEL WITH SAID NORTH LINE 464.00 FEET; THENCE NORTH 00 DEGREES 34 MINUTES 25 SECONDS WEST PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER 615.00 FEET TO THE PLACE OF BEGINNING.

PARCEL II

PART OF THE NORTH HALF OF SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST THAT IS 2326.55 FEET SOUTH 88 DEGREES 40 MINUTES 35 SECONDS WEST (ASSUMED BEARING) MEASURED ON SAID NORTH LINE FROM THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 88 DEGREES 40 MINUTES 35 SECONDS WEST ON SAID NORTH LINE 332.22 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 2; THENCE SOUTH 88 DEGREES 40 MINUTES 35 SECONDS WEST ON THE NORTH LINE OF SAID NORTHWEST QUARTER 156.37 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 19 NORTH, RANGE 3 EAST; THENCE SOUTH 00 DEGREES 32 MINUTES 41 SECONDS EAST 530.85 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH LIES 1000.00 FEET SOUTH 89 DEGREES 27 MINUTES 19 SECONDS WEST FROM SAID POINT OF CURVATURE; THENCE SOUTHWESTERLY, CURVING TO THE RIGHT OF SAID CURVE, AN ARC DISTANCE OF 83.99 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 615.00 FEET SOUTH 00 DEGREES 34 MINUTES 25 SECONDS EAST OF THE NORTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 88 DEGREES 40 MINUTES 35 SECONDS

EAST ON SAID LINE 492.43 FEET TO A LINE THAT BEARS SOUTH 00 DEGREES 34 MINUTES 25 SECONDS EAST FROM THE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 34 MINUTES 25 SECONDS WEST ON SAID LINE 615.00 FEET TO THE PLACE OF BEGINNING.

EXCEPTING FROM SAID PARCELS I AND II THAT PART CONVEYED TO THE STATE OF INDIANA BY WARRANTY DEED RECORDED SEPTEMBER 6, 2007 AS INSTRUMENT NO. 2007050879, DESCRIBED AS FOLLOWS:

A PART OF THE NORTH HALF OF SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST, HAMILTON COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MARKED EXHIBIT "B," DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION; THENCE SOUTH 89 DEGREES 58 MINUTES 50 SECONDS WEST 1,862.55 FEET ALONG THE NORTH LINE OF SAID SECTION TO THE PROLONGED EAST LINE OF THE GRANTOR'S LAND; THENCE SOUTH 00 DEGREES 43 MINUTES 08 SECONDS WEST 25.00 FEET ALONG SAID EAST LINE PROLONGED TO THE SOUTH BOUNDARY OF 32 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 00 DEGREES 43 MINUTES 08 SECONDS WEST 57.01 FEET ALONG THE EAST LINE OF THE GRANTOR'S LAND; THENCE SOUTH 89 DEGREES 57 MINUTES 47 SECONDS WEST 353.70 FEET TO THE POINT DESIGNATED 1037 ON SAID EXHIBIT "B," THENCE NORTH 70 DEGREES 44 MINUTES 49 SECONDS WEST 105.95 FEET TO THE POINT DESIGNATED 1036 ON SAID EXHIBIT "B," THENCE SOUTH 89 DEGREES 57 MINUTES 47 SECONDS WEST 200.00 FEET TO THE POINT DESIGNATED 1035 ON SAID EXHIBIT "B," THENCE SOUTH 84 DEGREES 58 MINUTES 34 SECONDS WEST 230.07 FEET TO THE POINT DESIGNATED 1034 ON SAID EXHIBIT "B"; THENCE SOUTH 46 DEGREES 51 MINUTES 41 SECONDS WEST 43.76 FEET TO THE POINT DESIGNATED 1033 ON SAID EXHIBIT "B"; THENCE SOUTH 00 DEGREES 44 MINUTES 08 SECONDS WEST 153.60 FEET TO THE POINT DESIGNATED 1032 ON SAID EXHIBIT "B"; THENCE NORTH 89 DEGREES 15 MINUTES 52 SECONDS WEST 12.98 FEET TO THE POINT DESIGNATED 1031 ON SAID EXHIBIT "B" ON THE EAST BOUNDARY OF AUSTRIAN PINE WAY; THENCE NORTH 00 DEGREES 44 MINUTES 31 SECONDS EAST 225.34 FEET ALONG THE BOUNDARY OF SAID AUSTRIAN PINE WAY TO THE SOUTH BOUNDARY OF S.R. 32; THENCE NORTH 89 DEGREES 57 MINUTES 47 SECONDS EAST 927.59 FEET ALONG THE BOUNDARY OF SAID S.R. 32 TO THE POINT OF BEGINNING.

TAX PARCEL IDENTIFICATION: 09-09-02-00-00-004.401





**EXHIBIT D**  
**Preliminary Cost Estimate**

As submitted by:

Construction: Sullivan Corporation, Noblesville, Indiana

Civil Engineering: Weihe Engineering, Carmel, Indiana

Legal Service: Taft Stettinius & Hollister LLP, Indianapolis, Indiana

1. 8' wide paved trail across the northern Belle Tire parcel within the 30' Greenbelt along SR32.
  - a. Item is represented within the current Belle Tire construction plans on file with the City as shown on sheet C200.

\$8,775.00
2. 12' wide paved trail across the southern Belle Tire parcel within a platted block being provided along 175<sup>th</sup> Street.

\$9,213.00

  - a. Item is represented within the current Belle Tire construction plans on file with the City as shown on sheet C200.

Total            \$17,988.00





