

6

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2013 022328

2013 MAR 26 PM 3: 54

MICHAEL D. BROWN
RECORDER

THIS INSTRUMENT PREPARED BY
AND RETURN AFTER RECORDING TO:
GREG A. BOUWER
KORANSKY, BOUWER & PORACKY, P.C.
425 JOLIET STREET
SUITE 425
DYER, INDIANA 46311

DOCUMENT NO. _____
DEED REFERENCE NO. _____

ACCESS AND EASEMENT AGREEMENT

This ACCESS AND EASEMENT AGREEMENT (hereinafter referred to as the "Agreement"), entered into this 10th day of December, 2012, by and between **DEER CREEK INVESTORS, LLC, an Indiana Limited Liability Company** (hereinafter referred to as "Deer Creek"), and **TOWN OF WINFIELD, LAKE COUNTY, INDIANA**, (hereinafter referred to as "Town").

RECITALS:

WHEREAS, Deer Creek is the owner in fee simple of that certain tract or parcel of real property located in the Town of Winfield, Lake County, Indiana, which is legally described as follows (hereinafter referred to as "Parcel A"):

Outlot "B" in Deer Creek Estates Phase 1, a Planned Unit Development, to the Town of Winfield, as recorded in Plat Book 97 Page 30 and Plat Book 98 Page 91 in the Office of the Recorder of Lake County, Indiana.

Key Number: 45-17-08-103.002.000-047

WHEREAS, Deer Creek is the owner of a lift station located on Parcel A, (hereinafter referred to as the "Lift Station") located within the Deer Creek Estate Subdivision (hereinafter referred to as the "Subdivision"), and commonly referred to as "Outlot B", as identified on the Plat for the Subdivision; and

WHEREAS, the Parties hereto intend to enter into this Access and Utility Easement Agreement for an access and utility easement across a portion of the Subdivision (hereinafter referred to as Parcel B), for accessing the Lift Station, for the benefit of Parcel A ("Access and Easement"), which Parcel B is described in Exhibit "A" attached hereto and incorporated herein

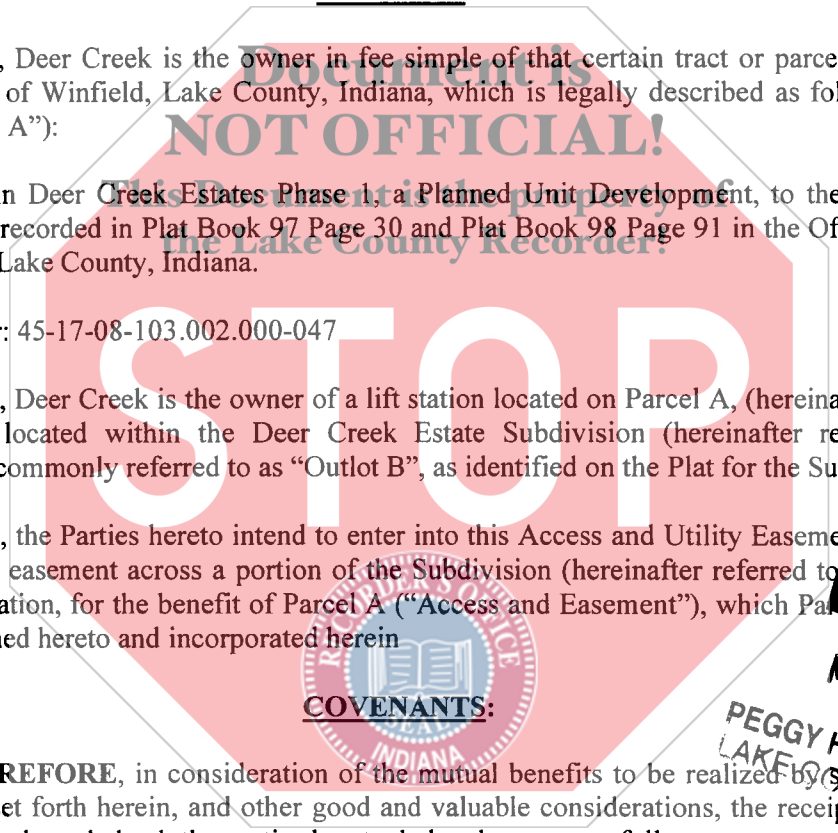
COVENANTS:

NOW THEREFORE, in consideration of the mutual benefits to be realized by such joint use, the mutual agreements set forth herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals Incorporated**. The Town and Deer Creek agree that the Recitals set forth hereinabove are an inherent part of, and are incorporated herein. Further, said Recitals shall be used to interpret this Agreement hereafter.

21.00
21570
RM

001664



FILED
MAR 26 2013
PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

2. **Easement Description.** Deer Creek grants an easement for access and to repair, maintain, and/or replace the Lift Station located on Parcel A, over Parcel B. The Town shall ensure that such installations, maintenance, or repair of the lift station located on Parcel A is undertaken in a manner so as to minimize the effect on Parcel B and Deer Creek. All such work shall be done in a good workmanlike manner. Any portion of the parcels which is affected by such installation, maintenance, and/or repair shall be restored to the same condition as existed prior to such work, if appropriate. Deer Creek and Town hereby agree to enter into any dedication to the Town of Winfield or other appropriate governmental entity as necessary to carry out the intent of this Easement.

3. **Indemnification.** Town shall indemnify and hold harmless Deer Creek from and against all claims, liabilities and expenses (including, without limitation, reasonable attorney's fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from or in any manner relating to the use of the easements by Town pursuant to the grant of easements contained in this Agreement, excluding those matters arising from the negligence of Deer Creek.

Each owner having the rights with respect to the easements granted hereunder shall indemnify and hold the other party whose parcel is subject to the easement harmless from and against all claims, liabilities and expenses (including, without limitation, reasonable attorney's fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from or in any manner relating to the use by the indemnifying owner or its Permittees of any easement granted hereunder except as may result from the gross negligence or intentional misconduct of the owner whose parcel is subject to the easement or its Permittees.

4. **Effective Date & Enforceability.** The easements, restrictions, and agreements provided for herein shall be effective upon execution of this Agreement by the parties hereto. The easements provided for herein shall run with the land. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, heirs, tenants of each party hereto, and shall remain in full force and effect and shall be unaffected by any change in ownership of Parcel A, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by action for specific performances, it being agreed by both parties hereto that an action for damages would not be an adequate remedy for a breach of this Agreement.

5. **Recording.** This Agreement shall be recorded at the Office of the Recorder of Lake County, Indiana and shall be prior in title to any mortgage which is now or may hereafter be placed upon any portion of Parcel A.

6. **Duration.** This Easement shall endure perpetually and shall run with the land and this Easement is made expressly for the benefit of and shall be binding on the successors in interest and assigns of the respective parties.

7. **Construction.** The rule of strict construction does not apply to this Agreement. This Agreement shall be given reasonable construction so that the intention of the parties to grant and obtain a commercially usable easement is carried out.

8. **Severability.** If it shall, at any time, be held that any of the provisions of this instrument or any part thereof are invalid or for any reason become unenforceable, no other provision or part thereof shall hereby be affected or impaired.

9. **Corporate/Entity Authority.** The undersigned Person or Persons executing this Contract on behalf of any entity to this Agreement, if any, represent and certify that their entity/entities are in good standing and that they are duly elected or appointed Officers or Representatives of the entity, and are fully empowered to execute and deliver this Agreement, and that all necessary corporate action for the making of this Agreement has been taken and done.

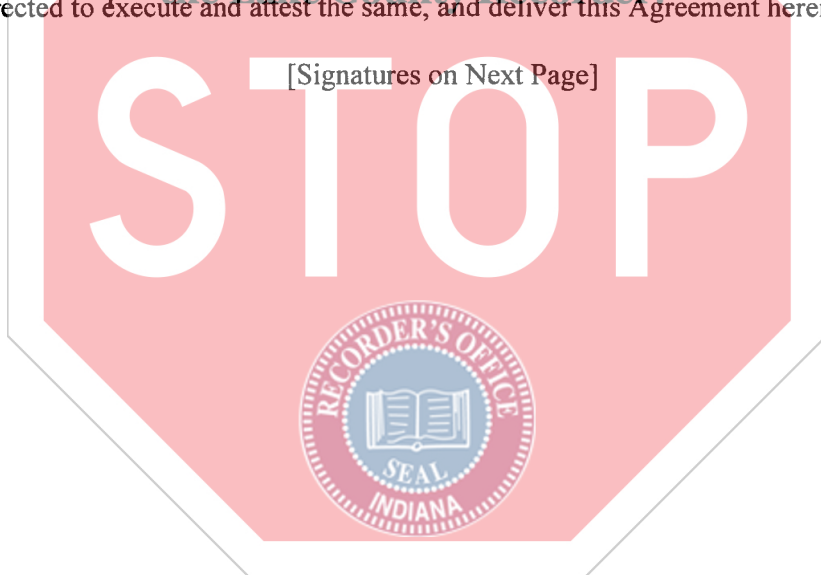
10. **Counterparts.** This Agreement may be signed in counterparts by the parties hereto.

11. **Additional Documents.** The Parties hereto agree to execute any and all additional documents necessary to effectuate the terms and provisions of this Agreement.

12. **Winfield Town Council Public Action.** It is expressly acknowledged and stated that this Agreement is entered into by the Town Council of the Town of Winfield, Lake County, Indiana, after action at a duly noticed public meeting of the Winfield Town Council on the 10 day of Dec, 2012, and wherein by a vote of 5 in favor, and 0 opposed, the President of the Town Council and the Town Clerk-Treasurer, respectively, were directed to execute and attest the same, and deliver this Agreement herein.

13. **Winfield Sanitary Board Public Action.** It is expressly acknowledged and stated that this Agreement is entered into by the Sanitary Board of the Town of Winfield, Lake County, Indiana, after action at a duly noticed public meeting of the Winfield Sanitary Board on the 2 day of Dec, 2012, and wherein by a vote of 2 in favor, and 0 opposed, the President of the Sanitary Board and the Town Clerk-Treasurer, respectively, were directed to execute and attest the same, and deliver this Agreement herein.

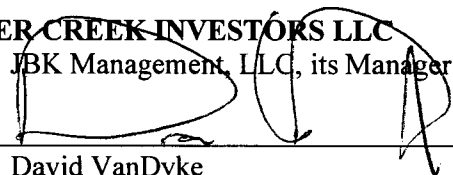
[Signatures on Next Page]



IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement under seal as of the date first written.

GRANTOR:

~~DEER CREEK INVESTORS LLC~~
By: JBK Management, LLC, its Manager


By: David VanDyke
Its: Manager

GRANTEE:

TOWN OF WINFIELD, LAKE COUNTY, INDIANA, a
municipal corporation

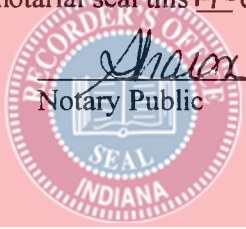

By: Gerald T. Stiener
Its: Town Council President

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

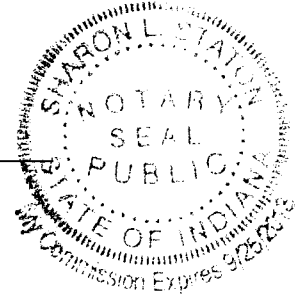
NOT OFFICIAL!
**This Document is the property of
the Lake County Recorder!**

I, a Notary Public in and for County and State aforesaid, do hereby certify that David VanDyke, Manager of JBK Management, LLC, Manager of Deer Creek Investors, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th day of December, 2012.



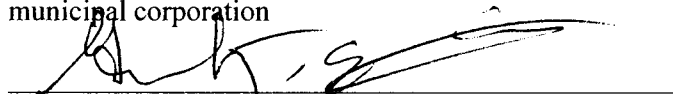

Notary Public



My Commission Expires: 9/25/13
My County of Residence: Porter

GRANTEE:

TOWN OF WINFIELD, LAKE COUNTY, INDIANA, a
municipal corporation



By: Gerald T. Stiener
Its: Sanitary Board President

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

I, a Notary Public in and for County and State aforesaid, do hereby certify that Gerald T. Stiener, not individually, but in his capacity as the Town Council President and Sanitary Board President of the Town of Winfield, Lake County, Indiana, an Indiana Municipal Corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged he signed and delivered the said instrument under his own free and voluntary act, and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18 day of December, 2012.



Notary Public

My Commission Expires: _____
My County of Residence: _____



THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:
GREG A. BOUWER, ATTORNEY ID. NUMBER 16368-53

KORANSKY, BOUWER & PORACKY, P.C., 425 JOLIET STREET, SUITE 425, DYER, IN 46311

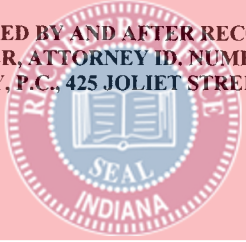


EXHIBIT A

LEGAL DESCRIPTION OF "ACCESS EASEMENT"

THE 15 FOOT WIDE UTILITY EASEMENT ALONG THE NORTH LINE OF OUTLOT "B" AS SHOWN ON PLAT OF AMENDMENT DEER CREEK ESTATES PHASE I, RECORDED ON JANUARY 17, 2006, IN BOOK 98 PAGE 91 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

AND

Description: Part of the Northwest Quarter of Section 8, Township 34 North, Range 7 West of the 2nd P.M. more particularly described as follows: Commencing at the Northwest corner of said Section 8; thence S 00°12'08" E along the West line of said Section 8, a distance of 50.00 feet; thence N 90°00'00" E, parallel to and 50.00 feet South of, by perpendicular measurement, the North line of said Section 8, a distance of 448.50 feet; thence S 36°00'00" E, a distance of 205.94 feet; thence S 20°48'49" E, a distance of 60.00 feet; thence Southwesterly along a curve concave to the Southeast, having a radius of 150.00 feet (the chord of which curve bears S 63°14'09" W, a chord distance of 31.10 feet), an arc distance of 31.16 feet to a point of reverse curve; thence Southwesterly along a curve concave to the Northwest, having a radius of 325.00 feet (the chord of which curve bears S 69°25'57" W, a chord distance of 136.78 feet), an arc distance of 137.81 feet to a point of reverse curve; thence Southwesterly along a curve concave to the Southeast, having a radius of 270.00 feet (the chord of which curve bears S 70°07'54" W, a chord distance of 107.18 feet), an arc distance of 107.90 feet to the point of beginning; thence continuing along a curve concave to the Southeast and having a radius of 270.00 feet (the chord of which curve bears S 55°18'41" W, a chord distance of 31.76 feet), an arc distance of 31.78 feet; thence S 38°03'40" E, a distance of 15.00 feet; thence Northeasterly along a curve concave to the Southeast, having a radius of 255.00 feet (the chord of which curve bears N 55°18'41" E, a chord distance of 30.00 feet), an arc distance of 30.02 feet; thence N 31°18'59" W, a distance of 15.00 feet to the point of beginning.

Date May 3, 2012
By: G. Torrenga
For: D. Van Dyke

