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Dec 23 2021 VH
JOHN E. PETALAS
LAKE COUNTY AUDITOR

2021-544604
12/28/2021 02:24 PM
TOTAL FEES: 25.00
BY: KK
PG #: 16

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

16

This document is being re-recorded to correct the notary date.

DECLARATION OF RECIPROCAL ACCESS EASEMENT AND DEVELOPMENT AGREEMENT

This DECLARATION OF RECIPROCAL ACCESS EASEMENT AND DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into this 3rd day of December, 2021, by LUKE LAND, LLC, AN INDIANA LIMITED LIABILITY COMPANY (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of 16.7 undeveloped acres of real property located in the County of Lake and State of Indiana, more particular descriptions of which real property are:

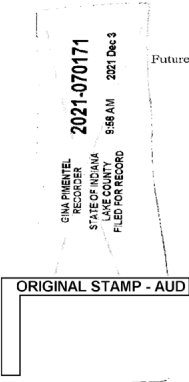
Lots 1 - 4:

Lots 1 - 4 in Oak District Phase 1, a Planned Unit Development to the Town of Schererville, Lake County, Indiana as per plat thereof, recorded in Plat Book 114, Page 09, in the Office of the Recorder of Lake County, Indiana.

Future Lot 5:

Part of the South Half of the Southwest Quarter of the Northwest Quarter of Section 4, Township 35 North, Range 9 West of the Second Principal Meridian, except therefrom the lands conveyed to Indiana Harbor Railroad by deed recorded August 8, 1902 in Deed Record 93, page 302, and to Chicago, Indiana and Southern Railroad by deed recorded October 20, 1908 in Deed Record 137, page 313, in the Town of Schererville, Lake County, Indiana, and leaving after said exception a tract more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 4, which is a point 2633.47 feet North of the Southwest corner of said Section 4 and 2886.89 feet South of the Northwest corner of said Section 4, measured along the West line of said Section 4; thence Easterly along the South line of the Northwest Quarter, 1229.43 feet (deeded), 1229.45 feet (measured), to the West line of the Chicago, Indiana and Southern Railroad 180 foot right of way owned and described in Deed Record 93, page 302 and Deed Record 137, page 313 in Lake County, Indiana; thence N 00°21'58" E along the West of said C.I.&S. railroad right-of way line a distance of 64.54 feet to the point of beginning; thence continuing N 00°21'58" E along said right-of way line a distance of 593.43 feet; thence N 89°00'50" W, a distance of 783.27 feet; thence S 01°06'25" W, a distance of 114.55 feet; thence S 18°56'28" E, a distance of 266.77 feet; thence S 01°08'47" W, a distance of 265.87 feet; thence S 88°59'57" E, a distance of 502.71 feet to a point of curve; thence Easterly along a curve concave to the North and having a radius of 170.00 feet (the chord of which bears N 83°43'07" E a chord distance of 43.10 feet), an arc distance of 43.21 feet; thence N 76°26'11" E, a distance of 100.00 feet to a point of curve; thence Easterly along a curve concave to the South and having a



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radius of 230.00 feet (the chord of which bears N 83°40'38" E a chord distance of 57.98 feet) an arc distance of 58.13 feet to the point of beginning, containing 10.500 acres all in Lake County, Indiana.

(said parcels being hereinafter referred to collectively as the "Property"); and

WHEREAS, Developer subdivided the Property into five (5) lots consisting of the following: four (4) commercial lots (Lots 1-3, and Future Lot 5); one (1) common area lot (Lot 4). Lot 4 and the stormwater detention area on Future Lot 5 shall hereinafter be referred to as the "Common Areas" and shall consist of private drives, additional parking, and the stormwater detention area. A copy of the plan depicting all of the Lots is attached hereto as Exhibit "A"; and

WHEREAS, Lot 4 shall be owned, managed, maintained, repaired, and replaced by the Oak District Business Owners Association (hereinafter referred to as the "Association"); and

WHEREAS, Developer is reserving and granting an easement over the Property for the collection, retention, and drainage of storm water from all parts of Lots 1-5. Developer shall construct certain storm water detention and drainage facilities on Lot 5, including but not limited to the detention pond for the benefit of the Lots; and

WHEREAS, the stormwater detention area that is situated within Future Lot 5 shall be managed, maintained, repaired, and replaced by the Association;

WHEREAS, Developer desires to subject the Property to the terms and provisions of this Agreement in order to implement the administration of the operation, maintenance, repair, replacement of the Common Areas. In connection therewith, Developer has formed the Association under the Indiana General Not-For-Profit Corporation Act. The Association shall have the responsibility for managing, administering, maintaining, repairing, and replacing the Common Areas and shall set budgets and fix assessments to pay the expenses incurred in connection with such responsibility.

WHEREAS, the Developer desires to enter into this Reciprocal Access Easement and Development Agreement for the joint use of the Common Areas, subject to the restrictions and limitations set forth herein; and

NOW, THEREFORE, for and in consideration of the premises, easements, restrictions and encumbrances contained herein, and Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Developer does hereby declare that the Property and all present and future owners and occupants of the Lots shall be and hereby are subject to the terms, covenants, easements, restrictions, and conditions hereinafter set for in this Agreement, so that said Lots shall be maintained, kept, sold, and used in full compliance with and subject to this Agreement and, in connection therewith, Developer and Permittees covenant and agree as follows:

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1. DEFINITIONS.

A. **Access Drive:** The private roadways in Lot 4, including all roadways and related roadway improvements, paving, curbing, entrances and exits, located thereon, which is intended to provide for the passage of motor vehicles and pedestrians to and from all abutting public streets or rights of way furnishing access to the Development.

B. **Association:** The Oak District Business Owners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

C. **Board:** The board of directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Section 5.

D. **Common Areas:** All areas included within Lot 4, including, without limitation, the Access Drive and the driveways, roadways, walkways, light standards, curbing, paving, entrances, exits, and other similar Development improvements within Lot 4, together with the Detention Area on Lot 5 and all the landscaped areas within the Detention Area on Lot 5, but specifically excluding all portions of and improvements on Lots 1-3, and further excluding all improvements on Future Lot 5 except for the Detention Area. Developer acknowledges that Future Lot 5 may be further subdivided in the future for commercial development. In that case, the detention area that is situated within Future Lot 5 shall remain a Common Area and shall be managed, maintained, repaired, and replaced by the Association.

E. **Common Area Maintenance Costs:** Such costs and expenses shall include, but may not be limited to: maintaining the Access Drive of the Common Areas, and the Detention Area (including a proposed Lift Station) as defined above; cleaning; removal of rubbish and other refuse; restriping, resealing, resurfacing replacing, and repairing potholes in, the Common Areas; exterior illumination of Common Areas, and illumination and maintenance of signs located in the Common Areas; snow and ice clearance; costs and expenses of planting, maintaining and replanting flowers and other landscaping; premiums for liability, property damage, fire, extended coverage, malicious mischief, vandalism, worker's compensation, employees' liability and other insurance paid by Landlord on, or in respect of, the Common Areas for any calendar or premium year or part thereof; the amount of any uninsured loss or damage to the Common Areas suffered or incurred by Developer (including, without limitation, the amount of any loss or damage not covered by insurance due to applicable deductible provisions); wages, unemployment taxes and social security taxes; special assessments; personal property taxes; real estate taxes on the Common Areas, if any; fees for audits; required licenses and permits; costs and expenses of supplies; operation of loudspeakers and any other equipment supplying music to the Common Areas; reasonable depreciation of, and rents paid for, the leasing of equipment used in the operation of the Common Areas and an administrative fee equal to ten percent (10%) of the total amount of the Common Area Maintenance Costs. The Common Area Maintenance Costs shall not include the snow and ice clearance of the shared parking areas included within Lot 4 (but shall include snow and ice removal from all portions of the Access Drive within Lot 4) which snow and ice removal costs relating to the shared parking areas shall be the shared responsibility of the Owners of Lots 1, 2 and 3 in the proportionate shares set forth below.

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F. **Developer:** Luke Land, LLC, an Indiana limited liability company, and its successors and assigns.

G. **Detention Area:** The year-round stormwater and surface water detention pond and drainage facilities located on Future Lot 5 as designated on the Plat, together with all improvements located above and below the ground on Future Lot 5 and rights appurtenant thereto, including a lift station.

H. **Lot:** The term "Lot" or "Lots" shall mean those parcels designated as individual subdivision lots on the Plat, including, without limitation, Lots 1 through 5 designated on the Plat.

I. **Mortgagee:** The hold of a bona fide first mortgage, first trust deed or equivalent security interest covering a Lot.

J. **Municipality:** The Town of Schererville, Indiana or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Municipality as of the recording of this Agreement.

K. **Owner:** Owner or Owners shall mean, individually or as a group, the fee title holders/record owners of the Lots and any and all successors or assigns or such persons as the owner or owners of the fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property. The Developer shall be deemed to be an Owner with respect to each Lot owned by the Developer.

L. **Permittees:** The tenant(s) or occupant(s) of a Lot, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).

M. **Person:** A natural individual, corporation, limited liability company, partnership, trustee or other legal entity capable of holding title to real estate.

N. **Plat:** The Plat of Oak District Phase 1, a Planned Unit Development, Addition to the Town of Schererville, Indiana, designating the Lots and Access Drive, recorded in Plat Book 114, Page 09, in the Office of the Recorder of Lake County, Indiana

O. **Property:** All real property located within the Plat and shown on Exhibit A hereto (i.e., all of Lots 1, 2, 3, 4 and 5, collectively).

2. SCOPE OF AGREEMENT.

A. **Property Subject to Agreement:** Developer, as the owner of fee simple title to the Property, expressly intends to, and by recording this Agreement hereby does, subject the Property to the provisions of this Agreement.

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B. **Conveyances Subject to Agreement:** All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved, or declared by this Agreement shall be deemed to be covenants appurtenant, running with the land, and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in any part of the Lots. Any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument relating to any portion of the Lots shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Agreement, as fully and completely as though they were set forth in their entirety in any such document, regardless of whether a specific reference to this Agreement is made in such instrument.

C. **Term and Duration:** Except as otherwise specifically provided herein, the covenants, conditions, restrictions, easements, reservations, liens, and charges which are granted, created, reserved or declared by this Agreement shall be appurtenant to, and shall run with and bind the Lots for a period of forty (40) years from the date of recording of this Agreement and thereafter for successive periods of ten (10) years each unless revoked, changed, or amended in whole or in part by a recorded instrument executed by the holders of not less than three-fourths (3/4) of the voting interests of the Association.

3. **GRANT OF EASEMENTS.** Subject to any express conditions, limitations or reservations contained herein (including, specifically, the limitations in Section 3B below), Developer hereby grants, establishes, covenants, and agrees that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by the following non-exclusive, perpetual and reciprocal easements which are hereby imposed upon the Lots and all present and future Owners and Permittees of the Lots:

A. **Access Easement:** An easement for pedestrian and vehicular (both commercial and non-commercial) passage in, on, over and across the Common Areas for the purpose of providing ingress to and egress from the Property to U.S. Highway 41 (the "Access Easement"). The Access Easement shall be transferable with Lots 1-5, and neither the Common Areas nor their points of connection with U.S. Highway 41 shall be relocated or modified without the prior written consent of the Owners of the Lots and the current holder(s) of any mortgage or deed of trust upon the Property, which such consent shall not be unreasonably withheld, conditioned or delayed, and in any such case the modified location must continue to provide adequate access to and from the Property that is of substantially the same grade, width and visibility, and affords substantially the same convenience of access, as the former location.

B. **Parking Easement:** An easement for motor vehicle parking over and upon those portions of Lot 4 which are from time to time striped for parking purposes; provided, however, in no event shall any Owner(s) or any Permittee(s) of all or any portion of Future Lot 5 be entitled to any parking rights or easements over Lot 4, it being agreed that the parking easement set forth in this Section 3B are for the sole and exclusive benefit of the Owner and Permittees of Lots 1-3. Further, no Owner or Permittee of Future Lot 5 may rely on any parking spaces included within Lot 4 for the purpose of meeting any parking requirements imposed with respect to the development of Future Lot 5 or the operation of any business located within any portion of Future

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Lot 5. No portion of the Access Drives within Lot 4 will be used for parking purposes and the Access Drives shall at all times remain free and unobstructed drives.

C. **Detention Area:** An easement upon, over, under and across Lot 5 to be used for the construction, maintenance and operation of the Detention Area and for the collection, retention, and drainage of storm water from all or parts of the Property.

D. **Stormwater:** An easement upon, under over, above and across a portion of each Lot as graded pursuant to grading plans previously approved by the Municipality and Developer, so as to provide for the discharge, drainage, use, detention and retention of storm water runoff in the manner approved by the Municipality and Developer and to install, construct, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, culverts, grates, pipes and other surface water management apparatus under, over and across those portions of the Lots intended for drainage by the approved plans as storm water drainage and/or detention easement areas. The easements granted herein shall include the right of reasonable ingress and egress with respect to such easement areas as may be required to maintain, operate, and replace the same.

E. **Damage or Destruction by Party.** Any Owners and Permittees of the Lots who disturbs or damages the Common Areas or any portion thereof, in the exercise of any rights or obligations hereunder, shall, in a prompt and workmanlike manner, repair and restore such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance.

4. **COMMON AREAS**

A. **Construction of Common Areas.** Developer shall be responsible, at its own cost, for the initial construction of the Common Areas as defined herein. Said construction shall be performed in a good and workmanlike manner so as not to unreasonably disturb the operation of any business conducted upon the Property or interfere with any Owners and Permittees of the Lots, and once commenced, such work will be diligently pursued to completion. Once constructed, the Common Areas and any portion(s) thereof shall not be materially obstructed during the normal business hours of any Owners and Permittees of the Lots except as may be reasonably necessary to perform maintenance, repair and replacement or as may be reasonably necessary to prevent the dedication of the Common Areas to public use.

B. **Ownership.** At no cost to the Association, Lot 4 shall be conveyed to the Association by Developer within thirty (30) days subsequent to the completion of construction of the Access Drive and all other portions of the Common Area to be located within Lot 4 (including all parking spaces in Lot 4). The Association shall accept the conveyance of Lot 4 from the Developer as set forth above and thereafter, the Association shall be subject to all limitations in and to such areas as may be set forth in all publicly recorded documents (including any recorded agreement which may provide that the areas within Lot 4 may not be modified).

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C. **Maintenance Standard.** The Association shall operate, manage, equip, light, insure, repair and maintain the Common Areas for their intended purposes in good condition and repair.

D. **Owner's Pro Rata Share of Common Area Maintenance Costs.** Owner's pro rata share (the "Pro Rata Share") of the Common Area Maintenance Costs shall be as follows:

Owner Lot 1	9.427%
Owner Lot 2	10.429%
Owner Lot 3	9.994%
Owner Lot 5	70.150% (subject to change if subdivided into multiple lots)

The Pro Rata Share of the Common Area Maintenance Costs has been and shall be determined by a fraction, the numerator of which is the acreage of the applicable Lot and the denominator of which is the overall acreage of the Property.

The Common Area Maintenance Costs related to snow and ice clearance of the shared parking areas included within Lot 4 shall be prorated between the Owners of Lots 1-3 as follows:

Owner Lot 1	31.580%
Owner Lot 2	34.937%
Owner Lot 3	33.483%

Landlord agrees that all snow piling shall occur only within the "Snow Piling Area" as designated on Exhibit "A".

E. **Assessments.** Each year on December 1, the Board shall adopt and furnish, or cause to be furnished, each Owner with a budget for the ensuing calendar year, which shall show the following (with reasonable explanations and itemizations):

- (1) The estimated Common Area Maintenance Costs;
- (2) The estimated amount, if any, to maintain adequate reserves for Common Area Maintenance Costs including;
- (3) The estimated excess funds, if any, from the current year's assessments; and
- (4) The amount of the "Assessment" due and payable by the Owners.

F. **Payment of Assessment.** Each Owner of a Lot which is subject to assessment shall pay to the Association, or to another party as the Board may direct, that portion of the Assessment which is payable by each Owner of a Lot under this Section 4(D) at such times the Board shall determine from time to time. Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Lot from the date thirty (30) days subsequent to delivery of notice of the special assessment to a Lot Owner and also shall be an obligation of the Owner in favor of the Association.

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G. **Revised Assessment.** If at any time the Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 4(E) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

H. **Creation of Lien and Personal Obligation.** The Developer hereby covenants, and each Owner of a Lot by acceptance of a deed thereof (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay the Association all Common Area Maintenance Costs pursuant to this Section, together with interest thereon and reasonable costs for collection, if any, as hereinafter provided, shall be a continuing lien upon the Lot against which such Common Area Maintenance Costs is made and also shall be the personal obligation of the Owner of the Lot at the time when the Common Area Maintenance Costs become due. All liens and personal obligations created under this Section shall be in favor and shall be enforceable by the Association.

I. **Non-Payment of Common Area Maintenance Costs.** Any Common Area Maintenance Cost which is not paid to the Association when due shall be deemed delinquent. Any Common Area Maintenance Cost which is delinquent for ten (10) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the original due date to the date when paid. The Association may (i) bring an action against the Owner personally obligated to pay the Common Area Maintenance Costs to recover the Common Area Maintenance Costs (together with interest, costs, and reasonable attorney fees for any such action, which shall be added to the amount of the Common Area Maintenance Costs and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Association may add a reasonable late fee to any installment of an assessment which is not paid within ten (10) days of its due date. No Owner may waive or otherwise escape personal liability for the Common Area Maintenance Costs hereunder by nonuse of the Detention Area, nonuse of the Access Drive, nonuse of the Additional Parking Areas, or by abandonment or transfer of its Lot.

J. **Other Remedies of the Association.** In addition to or in conjunction with the remedies set forth above, to enforce any of the provisions contained in this Agreement or any rules and regulations adopted hereunder, the Association may levy a fine or the Association may bring an action at law or in equity by the Association against any Owner violating or attempting to violate any such provision, either to restrain such violation, to require performance thereof; to recover sums due and payable or to recover damages or fines, and against the land to enforce any lien properly created hereunder; and failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

5. DEVELOPMENT BUSINESS OWNERS ASSOCIATION.

A. **In General.** Developer has caused or shall cause the Association to be incorporated as a not-for-profit corporation under Indiana law. The Association shall be the governing body for all the Owners for the administration and operation of the Commons Areas.

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B. **Membership.** Each Owner shall be a member of the Association. There shall be one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. In the event any Lot which exists as of the date hereof is subsequently re-subdivided, each such subdivided lot shall be deemed a Lot hereunder and the Owner of each such Lot shall be entitled to one membership. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Lot within ten (10) days after such change.

C. **Voting Members.** Voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" of each Lot. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Association. If the record ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board; provided, however, that if no such designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot.

D. **Board.** Subject to the rights retained by the Developer under this Agreement, the Board shall consist of three (3) directors, each of whom shall be an Owner or Voting Member.

E. **Voting Rights.** All the voting rights at any meeting of any Association shall be vested in the Voting Members and each Voting Member shall have a number of votes equal to 1,000 times the Pro Rata Share applicable to such Owner. Any action may be taken by the Voting Members at any meeting at which a quorum is present upon an affirmative vote of at least sixty (60%) percent of the Voting Interests present at such meeting.

F. **Director and Officer Liability.** Neither the directors nor the officers of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever in their capacities as such directors and officers except for any acts or omissions found by a court of competent jurisdiction to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Developer and each of the directors and officers, their heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any such director may be involved by virtue of such person being or having been a director or officer; provided, however, that such indemnity shall not be operative with respect to any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of its duties as a director or officer.

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G. **Managing Agent.** The Developer (or an entity controlled by or affiliated with the Developer) shall initially be engaged by the Association to act as the managing agent for the Association, and as managing agent shall be paid a reasonable, fair market fee for its services as fixed by a written agreement between the Association and the Developer (or an entity controlled by or affiliated with the Developer). Any management agreement entered into by the Association shall have a term of not more than one year and shall be terminable by the Association without payment of a termination fee on thirty (30) days written notice.

H. **Litigation.** No judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote for the commencement and prosecution of the proposed action of Voting Members representing at least seventy-five percent (75%) of the Voting Interests. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Agreement or rules and regulations adopted by the Board or (b) counterclaims brought by the Association in proceedings instituted against it.

I. **Meetings of Members.** An annual meeting of the members ("Annual Meeting") shall be held on the 1st Monday of August of each year for the transaction of such business as may come before the meeting. If such day be a legal holiday, the meeting shall be held at the same hour on the next succeeding business day. Special meetings of the members may be called by the Board. The Board may designate any place as the place of meeting for any annual meeting or for any special meeting and shall also provide for any Member to attend via teleconference. Written notice stating the place, date, and hour of any meeting of members shall be delivered to each member not less than ten (10) nor more than forty-five (45) days before the date of such meeting. In case of a special meeting or when required by statute or by this Agreement, the purpose for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when received in the United States mail (or via a nationally recognized overnight carrier) addressed to the member at its address as it appears on the records of the Association. Any action required to be taken at a meeting of the members of the Association, or any other action which may be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by sixty percent (60%) of all the members entitled to vote with respect to the subject matter thereof. The members holding sixty percent (60%) of the votes which may be cast any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting at any time without further notice.

J. **Quorum of the Board.** The Board of Directors shall consist solely of three (3) persons from time to time elected by the Owners of the Lots. The initial three (3) directors, however, shall be designated by the Developer but shall serve only until the first meeting of the Association whereupon a vote shall be held to elect new directors. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, provided that if less than a majority of the directors are present at said meeting, a majority of the directors present shall adjourn the meeting to another time without further notice.

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K. **Board's Manner of Acting.** The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by statute or this Agreement.

L. **Vacancies on Board.** Any vacancy occurring in the Board of Directors shall be filled by the Voting Members. A director elected to fill a vacancy shall be elected for the unexpired term of its predecessor in office.

M. **Administration of Property Prior to Election of the Initial Board of Directors.** Until the election of the initial board of directors, the same rights, titles, powers, privileges, trust, duties and obligations that are vested in or imposed upon the board of directors shall be held and performed by the Developer. The election of the initial board of directors of the Association shall be held not later than 60 days after the date which is five (5) years after the recording of this Agreement. The date this election takes place shall be referred to as the "Turnover Date." The Developer shall give at least 21 days' notice of the meeting to elect the initial board of directors and shall upon request provide to any member, within 3 working days of the request, the names, addresses, and vote of each member entitled to vote at the meeting and its percentage voting interest. If the initial board of directors is not elected at the time established in this paragraph, the Developer shall continue in office for a period of 30 days, whereupon written notice of its resignation and a notice of a new meeting to elect the initial Board shall be sent to all of the members or members of the board of directors entitled to vote at an election for members of the board of directors.

6. **EMINENT DOMAIN.**

A. **Developer's Right to Award.** In the event of the exercise of eminent domain or transfer in lieu thereof of a Lot or any portion thereof (whether or not such taking includes any Common Areas or any portion(s) thereof) (the "Condemned Tract"), the award attributable to the Condemned Tract shall be payable only to the Owner thereof. No other Party shall have an interest in any award or payment made in connection with the exercise of eminent domain or transfer in lieu thereof of the Condemned Tract, provided, however, that the other Party(s) may file collateral claims with the condemning authority for their losses and may receive payment if awarded separately and apart from the award made to the Owner of the Condemned Tract, including any separate award for substantial impairment to the benefits hereunder.

B. **Restoration of Access Easement Facilities.** If any Common Areas or any portions thereof, are so condemned or transferred, Developer shall promptly repair and restore the remaining portion of the affected area as nearly as practicable to the condition which existed immediately prior to such condemnation or transfer. If proceeds are insufficient to allow Developer to complete its obligations hereunder, then the Developer may request that the Association adopt a revised budget for Assessments and each Owner will thereafter contribute their pro rata share of any such deficiency in proceeds as a supplemental Assessment.

7. **RIGHTS OF MORTGAGEES.** No provision of this Agreement shall in any way defeat or render invalid the lien of any mortgage or other security instrument entered into in good faith and for valuable consideration, whether presently in existence or hereafter recorded against any part of

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the Property, but any such lien shall be subordinate and subject to the provisions of this Agreement but not to any liens created by this Agreement; provided, however, that if any portion of the Property is purchased in connection with a foreclosure of such mortgage or security instrument or is conveyed to the party so secured in lieu of foreclosure, any person so acquiring or purchasing and his successors and assigns shall hold any and all real property so purchased or acquired subject to the provisions of this Agreement.

8. **ESTOPPEL CERTIFICATE.** Each Owner, within fifteen (15) business days of written request from another Owner, shall execute, acknowledge and deliver an estoppel certificate, in a mutually acceptable form, certifying to such requesting Owner or any prospective purchaser, assignee, lessee or mortgagee designated by such requesting Owner, without charge, that: (a) this Agreement is in full force and effect, without modification (or if there have been modifications, identifying the modifications); (b) there are no existing defaults nor does any set of facts exist which with the passage of time or the giving of notice or both would constitute a default (or if so, specifying the nature and extent thereof); (c) there exist no disputes relative to amounts payable by or to such Owner or any unpaid expenses (or if so, setting forth the nature and amount of the dispute); and (d) such other information concerning the status of this Agreement or the performance of the Owners of their respective obligations hereunder as may be reasonably requested.

9. **DOCUMENT MODIFICATION OR CANCELLATION.** This Agreement (including exhibits) may be modified or canceled only by mutual agreement of all of the Owners as set forth in a written document and which shall be effective upon recording with the appropriate recording office.

10. **FORCE MAJEURE.** Any Owner shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof, in the event that, and only for as long as, the performance of any such obligation is prevented, delayed, retarded or hindered by Act of God, fire, earthquake, flood, explosion, extraordinary action of the elements, war, invasion, insurrection, terrorism, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, condemnation, requisition, Laws, order of government or civil, military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, (the "Force Majeure Event"). Such Owner shall provide notice to the other Owner(s) within five (5) business days following the onset of the Force Majeure Event, specifying the cause which prevents such Owner's performance and estimating the period of expected delay.

11. **MISCELLANEOUS.**

A. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision, to any other person or circumstance shall not be affected thereby; the remainder of this Agreement shall be given effect as if such invalid or inoperative portion had not been included.

B. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Indiana.

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C. **No Partnership or Joint Venture.** Nothing in this Agreement shall be construed to make the Parties hereto partners or joint venturers or render any of said Parties liable for the debts or obligations of the others.

D. **Notices.** All notices, approvals, consents or requests given or made pursuant to this Agreement shall be made in writing and shall be deemed given upon receipt by personal delivery; or United States certified mail, return receipt requested, with postage prepaid; or one (1) day after deposit with a recognized overnight carrier, charges prepaid. Notices shall be addressed as follows until a new address for notices shall be designated by notice in the manner provided in this paragraph to all other Owners:

If to Developer: Luke Land, LLC
3952 N. Hobart Road
Hobart, IN 46342
Attn: Thomas M. Collins, II, Manager

with a copy to: Jared R. Tauber, Esq.
Tauber Law Offices
1415 Eagle Ridge Drive
Schererville, IN 46365

E. **Interpretation.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

F. **Entire Agreement.** This Agreement and the Exhibits attached hereto set forth the entire agreement between the Parties governing the Property. There are no statements, promises, representations or understandings, oral or written, not herein expressed.

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

DEVELOPER: **LUKE LAND, LLC, AN INDIANA LIMITED LIABILITY COMPANY**
By: _____
Its: Managing Member

STATE OF INDIANA }
COUNTY OF LAKE } SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 3rd day of December 2021, personally appeared Thomas M. Collins, II as the Manager of Luke Land, LLC, and acknowledged the execution of the above and foregoing to be his voluntary act and deed for the uses and purposes expressed therein.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Stacey L. Rodriguez, Notary Public
A Resident of Lake County

My Commission Expires:
2/16/24

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. (Jared R. Tauber, Esq.)

This Instrument Prepared By:
Jared R. Tauber, Esq.
Tauber Law Offices
1415 Eagle Ridge Drive
Schererville, IN 46375
(219) 865-6666



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EXHIBIT "A"

Property of Lake County Recorder

