

Declaration of Easement for Common Private Drive Among Several Landowners and Agreement as to its Maintenance

This declaration is made _____ (*date*), by the the record title owners of two parcels of property abutting a certain right-of-way described on the attached **Exhibit A**.

Whereas, the two parcels about the private drive within the right-of-way described in **Exhibit A**, *the easement premises*, each of which is described on **Exhibit A**, attached. Parcels A and B are collectively referred to as the *Parcels*; and

Whereas, the owners of the *Parcels* have easement rights over, across, and through the *easement premises* for utility connections and adequate access to their individual parcels; and

Whereas, it is essential to the value of the *Parcels* that the private drive located within the *easement premises*, known as **Alford Drive**, be properly maintained, in good condition; and

Whereas, the owners of **Parcels A and B** as designated on a survey recorded with the Clark County, IN Recorders Office as # **202303436**, *the Parcel Owners* have agreed to share in the cost of maintaining **Alford Drive** according to a formula set forth in **Section Three**, below; and

Whereas, as of the date of this Agreement, the *Parcel Owners* and their addresses are as follows:

Parcel A: **Jacob C and Gabrielle Adam**
 901 Utica Charlestown Rd
 Jeffersonville, IN 47130

Parcel Two: _____

(Name of Owner, Street Address, City, County, State, Zip Code);

Now, therefore, for and in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Easement

A. A perpetual easement has been established across, over, and through the *easement premises* for the purpose of ingress to and egress from *Parcels A and B*, inclusive, and for the construction, maintenance, and repair (including reconstruction) of utilities.

B. The *easement* burdens the *easement premises*, and benefits and runs with *Parcels A and B*, inclusive.

C. The *easement* also benefits any utility company or municipality providing utility services to one or more of the *Parcels*.

II. Repair, Maintenance, and Capital Improvements of Easements

A. The *easement premises* are used as a drive for vehicular traffic and shall be properly maintained in good condition for this purpose.

B. When repairs and/or maintenance appear to be necessary, the parcel owners shall share in the costs of any agreed-upon maintenance, and repair, according to the formula outlined in **Section Three**, below.

C. The *Parcel Owners* grant to one another reasonable rights of access and passage over their respective parcels to conduct maintenance and repair of the easement premises or install capital improvements.

D. If a *Parcel Owner* fails to pay his or her respective share of costs incurred within 30 days after receipt of a statement, the amount of the statement, plus any attorney fees necessary to collection, shall automatically become a continuing lien against the parcel of the defaulting *Parcel Owner*. This lien will be superior to all other liens or claims against the *Parcel* except an institutional or purchase money first mortgage. Each *Parcel Owner's* obligation to pay his or her share of the costs will be an enforceable personal obligation of the *Parcel Owner*.

E. The *Parcel Owners* shall work together to coordinate their repair and maintenance activities to make the repairs and maintenance of the *easement* as economical as possible and to minimize interference with the *Parcel Owners'* use of the *easement premises*. To the extent reasonably possible, a *Parcel Owner* performing any repairs, maintenance, or capital improvements will obtain competitive bids for cost comparison. The *Parcel Owners* will be provided with reasonable notice before the undertaking of any repair, maintenance, or capital improvement. All work will be performed with reasonable dispatch.

F. The *Parcel Owners* will exercise reasonable care in their use of the *easement premises* so as not to cause more than normal wear and tear on the drive or other *easement* improvements. Any damage to the *easement premises* caused by a *Parcel Owner* or his or her guests or invitees shall promptly be repaired by that *Parcel Owner* at his or her sole expense.

III. Cost-Sharing Formula

The formula to apportion the costs for repair, maintenance, and capital improvements to the *easement premises* is as follows:

A. 100 percent of the entire cost is a base (fixed) cost that will be shared equally by *Parcels A and B*, to a point noted on the survey (Exhibit A). If either parcel A or B is subdivided beyond its current use/configuration each new unit will be considered an equal party in the maintenance of the easement. (Example: 4 housing units would each pay 25% of the maintenance.)

V. Assignment of Rights

All rights granted in this Agreement shall not be further assignable by the *Parcel Owners* except as an appurtenance to and in conjunction with the sale or subdivision of their *Parcels*.

VI. Amendment

The provisions of this Agreement may be amended, but only with the consent of the *Parcel Owners* of all the property described in **Exhibit A**.

VII. Binding Agreement

The *easement* rights and responsibilities outlined in this Agreement shall be perpetual and shall run with the land and shall be binding on the successors and assigns of the *Parcel Owners*.

VIII. Voting

If a *Parcel* is owned by more than one person, all the owners of a *Parcel* will collectively be referred to as the *Parcel Owner*, and will be entitled to only one collective vote, i.e., each *Parcel* represents one vote in the matters covered by this Agreement.

IX. Mandatory Arbitration

Notwithstanding the foregoing, and anything herein to the contrary, any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

Signature of Owner of Parcel A

Print Name of Owner of Parcel A

Signature of Owner of Parcel A

Print Name of Owner of Parcel A

AS WITNESSED

State of INDIANA

)ss.:

County of CLARK

On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me based on satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____ Notary Public

Signature of Owner of Parcel B

Print Name of Owner of Parcel B

Signature of Owner of Parcel B

Print Name of Owner of Parcel B

AS WITNESSED

State of INDIANA

)ss.:

County of CLARK

On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me based on satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____ Notary Public

EXHIBIT A

Copy of Survey Indicating Easement

