

IN-LIEU OF CONSTRUCTION AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of the 30th day of November, 2016, by and between **THE CITY OF WESTFIELD, INDIANA** (“City”), and **MREC EH HARMONY WESTFIELD, LLC**, owner of the property (“Owner”).

WHEREAS, Owner is the owner of certain real property located on the north side of 151st Street west of Ditch Road, commonly known as Harmony Section 4, a legal description for which is attached as Exhibit A, and referred to herein as the “Property”; and

WHEREAS, Owner seeks to develop the Property into 108 residential lots. The City approved the construction drawings for said lots on April 20, 2016 (“Approved Construction Plans”). The Approved Construction Plans illustrate passing blisters on the south side of 151st Street opposite the two entries into the Property as required by Section 8.9.D.1 of the Westfield Unified Development Ordinance.

WHEREAS, Owner has attempted unsuccessfully to acquire land from property owners on the south side of 151st Street to construct the passing blisters and has provided the City the support information required by Section 8.9.D.1 of the Unified Development Ordinance.

WHEREAS, City does not wish to pursue eminent domain of the land for the passing blisters at this time, but would like the resources to construct the passing blisters in the future,

WHEREAS, the parties desire to enter into this Agreement in order to confirm the terms of the in-lieu of construction payment.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained in this Agreement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The parties hereby represent and warrant that the foregoing recitals are accurate and correct and hereby incorporate them in this Agreement.
2. **Owner**, in-lieu of constructing the two passing blisters on the south side of 151st Street, hereby covenants and agrees to pay to **City** a one-time fee of Fifty-Four Thousand One Hundred Seventy-Six and 65/100 Dollars (\$54,176.65).
3. The fee comprises the cost of acquiring the land and constructing the passing blisters. Land acquisition cost is based upon the current market rate of the land of the three properties affected by the passing blisters as identified in the appraisals prepared by Will Stump & Associates attached hereto as Exhibit B. Construction costs are based upon proposals provided by independent contractors attached hereto as Exhibit C.

4. These costs are summarized in Table 1 below.

Table 1

Cost	Description
\$4,350.00	Land acquisition of Kirby property
\$3,300.00	Land acquisition of Allen property
\$5,700.00	Land acquisition of Fesenko property
\$4,964.00	Cost of earthwork for passing blisters
\$6,750.00	Cost of stabilization for passing blisters
\$29,112.65	Cost of asphalt for passing blisters
\$54,176.65	Total Cost

5. City has approved **Owner** to proceed with the construction of the 151st Street entries and roadway improvements as shown on the Approved Construction Plans, minus the passing blisters. **Owner** is endeavoring to complete as much of the entry improvements and 151st Street reconstruction as practicable this season.

6. City agrees building permits will be released as they normally would with the improvements made in Harmony Section 4 and will not withhold building permits in Harmony Section 4 based upon the completion status of the 151st Street improvements.

7. City confirms the improvements made within the existing 151st Street right-of-way by **Owner** qualify as part of the 151st Street Road Improvements available for reimbursement per the Development Agreement between the City and JR Farmer Harmony, LLC, dated January 10, 2013).

8. All of the terms and provision of this Agreement shall be binding upon, inure to the benefits of and be enforceable by, the parties to this Agreement and their respective successors, legal representatives, and assigns.

9. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of this Agreement. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

10. This Agreement may not be amended, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties to this Agreement.

11. This Agreement shall be governed by the laws of the State of Indiana.

12. On November 30, 2016, the Westfield Board of Public Works and Safety authorized the Director of the Public Works Department to execute this Agreement.

This instrument was prepared by: Bryan D. Stumpf, 11th Street Development, LLC, (317) 721-8279.

I affirm under the penalties for perjury, that I have taken reasonable care to redact each and every Social Security number from this document, unless it is required by law. Bryan D. Stumpf

City of Westfield, Hamilton County, Indiana ("City")

By: _____
Jeremy Lollar, Director
Public Works Department

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:

Subscribed and Sworn before me this _____ day of _____, 2016.

Printed Name of Notary Public _____

My Commission Expires _____

[Remainder of page intentionally left blank; signature page follows.]

MREC EH HARMONY WESTFIELD, LLC (“Owner”)

By: _____
Paul E. Estridge, Jr., Member

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:

Subscribed and Sworn before me this _____ day of _____, 2016.

Printed Name of Notary Public _____

My Commission Expires _____

[Remainder of page intentionally left blank.]

EXHIBIT A
Legal Description

A PART OF THE NORTHEAST QUARTER AND NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 18 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION, THENCE SOUTH 89 DEGREES 17 MINUTES 41 SECONDS WEST ON AND ALONG NORTH LINE OF SAID SOUTHEAST QUARTER, ALSO BEING ON AND ALONG THE BOUNDARY OF HARMONY SECTION ONE, A RESIDENTIAL SUBDIVISION RECORDED AS INSTRUMENT NUMBER 2014047702 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, A DISTANCE OF 310.42 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89 DEGREES 17 MINUTES 41 SECONDS WEST ON AND ALONG SAID SOUTH LINE 1046.64 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89 DEGREES 01 MINUTE 52 SECONDS WEST ON AND ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 678.57 FEET; THENCE NORTH 00 DEGREES 11 MINUTES 39 SECONDS WEST 1315.85 FEET; THENCE SOUTH 89 DEGREES 07 MINUTES 05 SECONDS WEST 679.24 FEET; THENCE NORTH 00 DEGREES 13 MINUTES 25 SECONDS WEST 823.62 FEET; THENCE NORTH 89 DEGREES 12 MINUTES 17 SECONDS EAST 794.85 FEET; THENCE NORTH 00 DEGREES 13 MINUTES 25 SECONDS WEST 3.82 FEET; THENCE NORTH 89 DEGREES 12 MINUTES 17 SECONDS EAST 285.30 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 53 SECONDS EAST 108.70 FEET; THENCE NORTH 89 DEGREES 12 MINUTES 17 SECONDS EAST 279.15 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 38 SECONDS EAST 450.00 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 53 SECONDS EAST 57.15 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 38 SECONDS EAST 518.47 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 655.30 FEET TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 16; THENCE NORTH 89 DEGREES 16 MINUTES 38 SECONDS EAST ON AND ALONG SAID NORTH LINE 1751.34 FEET TO THE NORTHEAST CORNER OF SAID SECTION 16; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 414.39 FEET TO A POINT BEING THE NORTHEAST CORNER OF HARMONY SECTION THREE, A RESIDENTIAL SUBDIVISION RECORDED AS INSTRUMENT NUMBER 2015057669 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, THE NEXT TWENTY SEVEN (27) COURSES BEING ON AND ALONG THE BOUNDARY OF SAID HARMONY SECTION THREE; (1) THENCE SOUTH 52 DEGREES 05 MINUTES 15 SECONDS WEST 127.65 FEET; (2) THENCE SOUTH 56 DEGREES 03 MINUTES 19 SECONDS WEST 1003.02 FEET; (3) THENCE SOUTH 33 DEGREES 53 MINUTES 10 SECONDS EAST 99.67 FEET; (4) SOUTH 56 DEGREES 06 MINUTES 50 SECONDS WEST 57.00 FEET; (5) THENCE NORTH 33 DEGREES 53 MINUTES 10 SECONDS WEST 99.61 FEET; (6) THENCE SOUTH 56 DEGREES 03 MINUTES 19 SECONDS WEST 321.79 FEET; (7) THENCE SOUTH 55 DEGREES 42 MINUTES 37 SECONDS WEST 81.38 FEET; (8) THENCE SOUTH 58 DEGREES 19 MINUTES 20 SECONDS WEST 102.85 FEET; (9) THENCE SOUTH 72 DEGREES 20 MINUTES 50 SECONDS WEST 96.98 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE EAST HAVING A CENTRAL ANGLE OF 2 DEGREES 50 MINUTES 02 SECONDS AND A RADIUS OF 771.50 FEET; (10) THENCE SOUTHERLY ON AND ALONG SAID CURVE AN ARC DISTANCE OF 38.16 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 18 DEGREES 41 MINUTES 29 SECONDS EAST AND A LENGTH OF 38.16 FEET); (11) THENCE SOUTH 20 DEGREES 06 MINUTES 30 SECONDS EAST 148.83 FEET; (12) THENCE SOUTH 69 DEGREES 53 MINUTES 30 SECONDS WEST 57.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS AND A RADIUS OF 20.00 FEET; (13) THENCE SOUTHWESTERLY ON AND ALONG SAID CURVE AN ARC DISTANCE OF 31.42 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 24 DEGREES 53 MINUTES 30 SECONDS WEST AND A LENGTH OF 28.28 FEET); (14) THENCE SOUTH 69 DEGREES 53 MINUTES 30 SECONDS WEST 7.32 FEET; (15) THENCE SOUTH 20 DEGREES 06 MINUTES 30 SECONDS EAST 57.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTH HAVING A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS AND A RADIUS OF 10.00 FEET; (16) THENCE ON AND ALONG SAID CURVE AN ARC DISTANCE OF 15.71 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 65 DEGREES 06 MINUTES 30 SECONDS EAST AND A LENGTH OF 14.14 FEET); (17) THENCE SOUTH 20 DEGREES 06 MINUTES 30 SECONDS EAST 127.00 FEET; (18) THENCE SOUTH 18 DEGREES 55 MINUTES 28 SECONDS EAST 66.31 FEET; (19) THENCE SOUTH 24 DEGREES 00 MINUTES 19 SECONDS EAST 52.17 FEET; (20) THENCE SOUTH 65 DEGREES 59 MINUTES 41 SECONDS WEST 2.99 FEET; (21) THENCE SOUTH 23 DEGREES 57 MINUTES 04 SECONDS EAST 57.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTH HAVING A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS AND A RADIUS OF 20.00 FEET; (22) THENCE EASTERLY ON AND ALONG SAID CURVE AN ARC DISTANCE OF 31.42 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 69 DEGREES 00 MINUTES 19 SECONDS EAST AND A LENGTH OF 28.28 FEET); (23) THENCE SOUTH 24 DEGREES 00 MINUTES 19 SECONDS EAST 77.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS AND A RADIUS OF 10.00 FEET; (24) THENCE SOUTHWESTERLY ON AND ALONG SAID CURVE AN ARC DISTANCE OF 15.71 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 24 DEGREES 59 MINUTES 41 SECONDS WEST 30.78 FEET); (25) THENCE SOUTH 24 DEGREES 00 MINUTES 19 SECONDS EAST 120.07 FEET; (26) THENCE SOUTH 49 DEGREES 26 MINUTES 47 SECONDS EAST 57.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A CENTRAL ANGLE OF 25 DEGREES 26 MINUTES 28 SECONDS AND A RADIUS OF 128.50 FEET (SAID POINT ALSO BEING ON THE BOUNDARY OF THE AFORESAID HARMONY SECTION ONE, AND CERTIFICATE OF CORRECTION RECORDED AS INSTRUMENT NUMBER 2016001967, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, THE NEXT NINE (9) COURSES BEING ON AND ALONG THE BOUNDARY OF SAID HARMONY SECTION ONE); (1) THENCE SOUTHWESTERLY ON AND ALONG SAID CURVE AN ARC DISTANCE OF 57.06 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 53 DEGREES 15 MINUTES 27 SECONDS WEST AND A LENGTH OF 56.59 FEET); (2) THENCE SOUTH 65 DEGREES 59 MINUTES 41 SECONDS WEST 102.69 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A CENTRAL ANGLE OF 08 DEGREES 24 MINUTES 24 SECONDS AND A RADIUS OF 528.5 FEET; (3) THENCE SOUTHWESTERLY ON AND ALONG SAID CURVE AN ARC DISTANCE OF 77.54 FEET (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 70 DEGREES 11 MINUTES 53 SECONDS WEST AND A LENGTH OF 77.48 FEET); (4) THENCE SOUTH 74 DEGREES 24 MINUTES 05 SECONDS WEST 38.11 FEET; (5) THENCE SOUTH 15 DEGREES 35 MINUTES 55 SECONDS EAST 202.00 FEET; (6) THENCE SOUTH 74 DEGREES 24 MINUTES 05 SECONDS WEST 229.13 FEET; (7) THENCE SOUTH 89 DEGREES 17 MINUTES 41 SECONDS WEST 25.88 FEET; (8) THENCE SOUTH 45 DEGREES 42 MINUTES 19 SECONDS EAST 28.28 FEET; (9) THENCE SOUTH 00 DEGREES 42 MINUTES 19 SECONDS EAST 53.00 FEET TO THE POINT OF BEGINNING. CONTAINING 138.80 ACRES MORE, OR LESS.

