

Cross-referenced: Instrument No.  
Parcel No.: 06—08-09-000-039.000-016

## PUBLIC ACCESS ROAD EASEMENT AGREEMENT

THIS PUBLIC ACCESS ROAD EASEMENT AGREEMENT (the “**Agreement**”) is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”), by and between ZIONSVILLE COMMUNITY SCHOOLS, an Indiana political subdivision (“**Grantor**”), and the ZIONSVILLE BOARD OF PARKS AND RECREATION a municipal agency (“**Park Board**”).

### Recitals:

A. Grantor is the owner of certain real property situated in the Town of Zionsville, County of Boone, State of Indiana, commonly known as parcel 06-08-09-000-039.000-016 and described in Exhibit A (“**Grantor Property**”), attached hereto and incorporated herein by reference.

B. The Park Board is the owner of certain real property situated in the Town of Zionsville, County of Boone, State of Indiana, commonly known as parcel 06-08-09-000-007.005-016 and described in Exhibit B (“**Park Board Property**”), attached hereto and incorporated herein by reference.

C. Grantor is willing to grant a 50’ wide public access road easement along the eastern boundary line of Grantor Property for the benefit of Grantor Property and the Park Board Property and for the benefit of Grantor and Park Board to be used exclusively for park or public purposes in perpetuity, on the terms and conditions hereinafter set forth. Should the Park Board Property be transferred such that it is no longer used as a public park or public amenity, this easement shall be vacated.

NOW, THEREFORE, in consideration of the above premises, the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, Grantor and the Park Board hereby covenant and agree as follows:

### Section 1. Grant of Easement.

(a) Grant of Easement. Grantor acknowledges that Park Board intends to construct and has committed to construction of a public access road to primarily provide noncommercial vehicular access to and from the Park Board Property to County Road 125 South, Zionsville, Indiana and for use by the Grantor, Park Board, and visitors to the Park Board Property. Grantor hereby grants and conveys to the Park Board a 50’ wide public access road easement over the eastern boundary line of Grantor Property as depicted and legally described on Exhibit C, (the “**Easement Area**”) to provide access for utilities, ingress and egress for Grantor, the Park Board, and visitors to the Park Board Property for the purposes described in this Agreement (the “**Easement**”). Grantor agrees and acknowledge that the Easement also includes the Park Board’s right at its expense and cost to construct, reconstruct, alter, renovate, operate, repair, maintain, and

use any public street, road, sewer, drain, utilities, curbs, pedestrian sidewalks, signage, and related improvements within the Easement Area.

(b) No Interference with Use by Grantor. Grantor may not use the Easement Area in a manner that materially interferes with Park Board's use and rights to the Easement Area. Grantor agrees that at no time shall ingress and egress over the Easement Area be restricted by a negligent or intentional act or omission of Grantor.

(c) Maintenance of Easement Area. The Park Board shall maintain and use the Easement Area and the improvements at all times in a safe manner and ensure that the Easement Area is kept free of any condition which interferes with the Grantor's ownership, use, rights, and enjoyment of Grantor's Property and the Easement Area. The Park Board covenants that this Agreement creates a duty of the Park Board to promptly reconstruct, alter, renovate, operate, maintain, and repair the Easement Area, which shall include restoring the Easement Area and improvements to a safe condition and ensure noncommercial vehicular access to the Park Board Property.

## Section 2. Miscellaneous.

(a) Attorneys' Fees. In the event a party institutes and is wholly successful any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its actual costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

(b) Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of Grantor and Park Board, evidenced by a document that has been fully executed and acknowledged by Grantor and Park Board and recorded in the official records of the Recorder of Boone County, Indiana.

(c) Consents. Wherever in this Agreement the consent or approval of Grantor or Park Board is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably conditioned, withheld or delayed. Any request for consent or approval shall: (i) be in writing; (ii) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (iii) be accompanied by such background data as is reasonably necessary to make an informed decision thereon.

(d) Covenants to Run with Land. It is intended that each of the easements, covenants, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby while Park Board owns the Park Board Property, shall bind Grantor and Park Board. Should the Park Board transfer the Park Board Property such that it is no longer used as a public park or public amenity, the easements, covenants, rights and obligations shall be vacated.

(e) Severability. Each provision of this Agreement is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

(f) Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein (i.e the Easement), and all prior representations, negotiations, and understandings are superseded.

(g) Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Owner may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Owners are as follows:

ZIONSVILLE COMMUNITY SCHOOLS  
900 Mulberry Street  
Zionsville, IN 46077  
Attn: Superintendent

TOWN OF ZIONSVILLE PARK BOARD  
1100 W. Oak Street  
Zionsville, IN 46077  
Attn: Superintendent

AMY E. NOONING, Esq.  
WHITSITT & NOONING, PC  
121 N. Meridian Street  
Lebanon, IN 46052

(h) Governing Law. The laws of the State of Indiana shall govern the interpretation, validity, performance, and enforcement of this Agreement.

(i) Bankruptcy. In the event of any bankruptcy affecting Grantor or Park Board, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

(j) Counterparts. This Agreement may be executed in one or more counterparts and each fully-executed counterpart shall be deemed to be one original document.

[The remainder of this page intentionally left blank.]

[Signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**“GRANTOR”**

ZIONSVILLE COMMUNITY SCHOOLS

By:\_\_\_\_\_

(Name), President (Title)

STATE OF INDIANA                    )  
                                                  ) SS:  
COUNTY OF BOONE                 )

Before me, a Notary Public in and for the above County and State, personally appeared Zionsville Community Schools, an Indiana non-profit corporation, by \_\_\_\_\_, its Board of Trustees president, who acknowledged the execution of the foregoing Agreement on behalf of said non-profit corporation.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

[SEAL]

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

Printed:\_\_\_\_\_

I am a resident of \_\_\_\_\_ County, \_\_\_\_\_ (State).

My commission expires: \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

TOWN OF ZIONSVILLE PARK BOARD

By: \_\_\_\_\_  
\_\_\_\_\_(Name), \_\_\_\_\_(Title)

STATE OF INDIANA                    )  
                                                  ) SS:  
COUNTY OF BOONE

Before me, a Notary Public in and for the above County and State, personally appeared the Town of Zionsville Park Board, a municipal agency, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged the execution of the foregoing Agreement on behalf of said corporation.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

[SEAL]

\_\_\_\_\_  
Notary Public  
Printed: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, \_\_\_\_\_ (State).

My commission expires: \_\_\_\_\_.

I affirm under penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law.

\_\_\_\_\_  
Amy E. Noonning

This instrument prepared by: Amy E. Noonning, 121 N. Meridian Street, Lebanon, Indiana 46052.

Return after recording to: Zionsville Park Board, 1100 W. Oak Street, Zionsville, IN 46077, Attn: Superintendent.

**Exhibit A**  
**“GRANTOR PROPERTY”**

The East 50 feet of the eastern most line of the following described real estate:

Part of the Northeast, Southeast, and Northwest Quarters of Section 9, Township 18 North, Range 2 East, Union Township, Boone County, Indiana, more fully described as follows: Beginning at the Northeast corner of the Northwest Quarter of said Section 9; thence along the approximate center line of County Road 850 East and the Quarter Section line, South 00 degrees 09 minutes 37 seconds West 1320.13 feet; thence along the approximate center line of County Road 125 South and the Quarter Quarter Section line, North 88 degrees 57 minutes 05 seconds East 486.37 feet; thence along the West described line of the Scott E. Keeler and Lisa C. Keeler Property recorded as Instrument No. 0111097, Boone County Recorder's Office, South 00 degrees 28 minutes 35 seconds East 1347.80 feet; thence along part of the North described line of the Robert L. Turner and Catherine Turner Property recorded as Instrument No. 9701028, South 89 degrees 01 minutes 48 seconds West 501.19 feet; thence along part of the East described line of Lot No. 5 of the Gregg H. Montgomery Builders, Inc. recorded survey Property recorded as Instrument No. 0206706, North 00 degrees 05 minutes 00 seconds West 34.38 feet; thence along the North described line of said Gregg H. Montgomery Builders, Inc. Property and the Quarter Section line, South 89 degrees 10 minutes 07 seconds West 1342.85 feet; thence along the approximate center line of County Road 825 East and the Quarter Quarter Section line, North 00 degrees 07 minutes 56 seconds East 1712.06 feet; thence along the South described line of the Carl J. Wouden and Cheryl K. Wouden Property recorded in Deed Record 249, pages 945-946, North 89 degrees 20 minutes 26 seconds East 529.80 feet; thence along the East described line of said Wouden Property, North 02 degrees 30 minutes 22 seconds West 326.25 feet; thence along a North described line of said Wouden Property, South 89 degrees 18 minutes 51 seconds West 239.87 feet; thence along an East described line of said Wouden Property North 00 degrees 32 minutes 52 seconds East 231.07 feet; thence along the North described line of said Wouden Property, South 89 degrees 19 minutes 03 seconds West 276.59 feet; thence along the approximate center line of said County Road 825 East and the Quarter Quarter Section line, North 00 degrees 07 minutes 56 seconds East 373.88 feet; thence along the approximate center line of County Road 100 South and the Section line, North 89 degrees 35 minutes 11 seconds East 1344.01 feet to the point of beginning, containing 91.2550 acres, more or less, subject to the right of way for County Roads 850 East, 125 South, 825 East, and 100 South.

Said East 50 feet of said eastern most line contains 1.547 acres, more or less.

**Exhibit B**

**“PARK BOARD PROPERTY”**