

**PARK IMPACT FEE CREDIT AGREEMENT BY AND BETWEEN THE TOWN OF
WHITESTOWN, INDIANA AND BRAUN PROPERTY DEVELOPMENT, LLC**

THIS PARK IMPACT FEE AGREEMENT ("Agreement") is made and entered into this ____ day of, _____, 2024, by and between the TOWN OF WHITESTOWN, Boone County, Indiana, an Indiana municipal corporation ("Town"), and BRAUN PROPERTY DEVELOPMENT, LLC ("Builder"), as follows:

WHEREAS, pursuant to Ind. Code § 36-7-4 *et. seq.*, the Town adopted an ordinance in 2013, as well as its related replacement ordinance in 2019 and 2024, establishing park and recreation impact fees that are assessed for new development;

WHEREAS, the Town desires to foster the development and improvement of its parks and parks infrastructure through cooperative efforts with the development community;

WHEREAS, Builder desires to assist the Town in its effort to improve the Town's parks system and infrastructure;

WHEREAS, Builder is the owner of real property currently identified as State Parcel No. 06-08-18-000-039.060-019 (hereinafter referred to as the, "Real Estate");

WHEREAS, Builder plans to develop a residential townhome community, commonly known as Prairie Chase Section 2, with a total buildout of approximately ninety-six (96) townhomes (the "Community") upon the Real Estate;

WHEREAS, the Community may be built in phases, each of which is subject to park impact fees of the Town; and

WHEREAS, Builder desires to convey to the Town and the Town desires to accept a portion of the Real Estate to assist the Town in improving the Town's parks system and infrastructure (the "Park Land") as depicted and described on the attached Exhibit A, which is incorporated herein by reference; and

WHEREAS, pursuant to Ind. Code § 36-7-4-1335, in consideration for Builder causing the Park Land to be conveyed to the Town and constructing the trail as shown on Exhibit B (the "Builder Commitment"), the Town desires to issue Builder a park impact fee ("PIF") credit.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I. INCORPORATION OF RECITALS

1.01 Incorporation. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as if fully set forth in this Article I.

ARTICLE II. COMMITMENTS

2.01. Builder's Commitment. In consideration for the Town issuing PIF credits as set forth below Builder hereby agrees to satisfy the Builder Commitment. As a part of the Builder Commitment, the Park Land and any improvements therefore shall be conveyed to the Town by General Warranty Deed in fee simple in a form reasonably required by the Town, free and clear of all liens and encumbrances not reasonably acceptable to the Town, and with a standard owner's policy of title insurance issued by a title company reasonably acceptable to the Town, in which the title insurer agrees to insure, in the full amount of the PIF Credits (as hereinafter defined), merchantability title to the Property in the name of the Town, all at Builder's sole cost and expense. In addition, any improvements and related costs to the Park Land by Developer for which PIF credits may be granted shall be submitted to the Town for review and approval prior to such expenditure.

Prior to the transfer of the Park Land to the Town, the Builder shall provide an adequate opportunity for the Town to conduct environmental surveys, review title work, and obtain other feasibility studies related to the Town's proposed use of the Park Land at the Town's own cost and expense, and the Town shall have the right to satisfy itself relative to drainage, permits, environmental conditions, access, and any other matters relevant to the Town's proposed use of the Park Land as park and recreation property ("Contingencies"). In the event that the Town determines that it is not satisfied as to any Contingencies prior to the Town's acceptance of the Park Land, the Town may terminate this Agreement and the parties shall have no further rights or obligations under this Agreement. In addition, the Town may terminate this Agreement if the Builder fails to transfer the Park Land to the Town as set forth herein within one (1) year of execution of the Agreement.

2.02 Town's Commitments. Within thirty (30) days of the Town's acceptance of the transfer of the Park Land to the Town, the Town will issue Builder the PIF Credits in the amount of Forty Thousand, Seven Hundred and Ninety Seven dollars (**\$40,797**) ("PIF Credits"). The PIF Credits, once issued by the Town, may be applied by the Builder against the PIFs that are or may be owed to the Town by the Builder for new residential units in the Community.

This Agreement shall not provide any PIF Credits for the Builder concerning any other development. Accordingly, the PIF Credits authorized in this Agreement may be applied by Builder only to those park impact fees that may be imposed on new residential units within the Community. The Builder shall pay any additional PIFs to the Town if the amount of PIF's owed for the Community exceed the total available PIF Credits. Moreover, notwithstanding anything

to the contrary, all PIF Credits not used for new residential units within the Community within ten (10) years of execution of this Agreement shall expire and will no longer be available for use against PIFs.

ARTICLE III. GENERAL PROVISIONS

3.01 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

3.02 Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within seven (7) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

3.03 Amendment. This Agreement may be amended only in writing by the mutual consent of the parties, and by the execution of said amendment by the parties or their successors in interest.

3.04 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

3.05 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

3.06 Indiana Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Indiana and applicable local ordinances. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Boone County, Indiana.

3.07 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To Builder:

Braun Property Development, LLC
1155 Pkwy Drive- Ste 300
Zionsville, Indiana 46077

To the Town of Whitestown:

Attn: Parks Director
Whitestown Municipal Complex
6210 Veterans Drive
Whitestown, Indiana 4607

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

3.08 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

3.09 Assignment. The rights and obligations contained in this Agreement may not be assigned by Builder without the consent of the Town.

3.10 No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

3.11 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the Town has approved or ratified this Agreement as required by law.

PASSED by the Town Council of the Town of Whitestown, Indiana this ___ day of _____, 2024, by a vote of ___ in favor and ___ against.

THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA

Dan Patterson, President

Eric Nichols, Vice President

Cheryl Hancock

Tobe Thomas

Courtenay Smock

ATTEST:

Matt Sumner, Clerk-Treasurer

EXHIBIT A
Real Estate Legal Description

EXHIBIT B
The Proposed Park Land and Trail Improvements