

# Board of Park Commissioners

## Project Summary

**Buckner Park**  
**Indiana Association of Seventh-Day Adventists, Inc.**  
**Drainage Easement Agreement**  
**Project No: n/a**

### Project Approval Request

#### **Scope of Work:**

This easement agreement is a request from The Indiana Association of Seventh-Day Adventists, Inc. to grant a drainage easement for the purposes of providing surface drainage from the church property across Buckner Park property into Flaugh Ditch. Details of the agreement and exact location can be found in the attached document. This property currently surface drains across Buckner Park in this exact location and staff believes that granting this easement will not adversely impact any current or future use of the park.

#### **Board Approval:**

At this time, I would like to request approval of this easement with The Indiana Association of Seventh-Day Adventists, Inc. Please see the attached easement document and maps for details.

The Fort Wayne Parks and Recreation and the Board of Park Commissioners, met to host their regularly scheduled monthly Board meeting on **February 9, 2023** to approve the above referenced easement agreement.

*We The Board of Park Commissioners, on the date stated do ATTEST, and sign to the above referenced and attached document, and approve as presented.*

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
**Director/Secretary**

## STORMWATER AND SURFACE DRAINAGE EASEMENT AGREEMENT

THIS STORMWATER AND SURFACE DRAINAGE EASEMENT AGREEMENT ("Agreement") is entered into this 3rd day of November, 20  , by and between the **Board of Park Commissioners to the City of Fort Wayne** ("Grantor") and **The Indiana Association of Seventh-Day Adventists, Inc.**, an Indiana non-profit corporation ("Grantee"). Grantor and Grantee are sometimes referred to collectively herein as the "Parties".

### RECITALS

- A. Grantor is the owner in fee simple of certain real property located in the City of Fort Wayne, Indiana, and legally described in Exhibit "A" attached hereto and made a part hereof by this reference ("Grantor Real Estate") which was conveyed to Grantor pursuant to that certain Warranty Deed from Edward J. Flaugh to Grantor dated June 18, 2002 and recorded as Document No. 202048287 in the Office of the Recorder of Allen County, Indiana.
- B. Grantee is the owner in fee simple of certain real property located in the City of Fort Wayne, Indiana as legally described in Exhibit "B" attached hereto and made a part of this Agreement by this reference (the "Grantee Real Estate") on which Grantee intends to develop and construct certain improvements as depicted in Exhibit "C" attached hereto and made a part of this Agreement by this reference (the "Project").
- C. Grantor has agreed to grant an easement to Grantee, over, upon, across and through that portion of the Grantor Real Estate, legally described in Exhibit "D" and depicted in Exhibit "E," both of which are attached hereto and made part of this Agreement by this reference, solely for the purposes described in this Agreement ("Easement Premises").

### AGREEMENT

In consideration of the foregoing, the mutual covenants and agreements set forth in this Agreement, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The recitals set forth above are true and are incorporated herein and made a part of this Agreement by this reference.
2. Easement Grant: Grantor hereby grants, warrants, and conveys to Grantee a permanent, non-exclusive easement over, upon, across and through the Easement Premises for the express purpose of permitting storm water and surface water drainage generated by the Project to flow from the Grantee Real Estate ("Easement") onto the Easement Premises. Any expansion of the Project or the construction of additional improvements on the Grantee Real Estate which generates additional storm water and surface drainage, as determined by Grantor, shall require a modification of this Agreement or the execution of a separate Stormwater and Surface Drainage Easement Agreement by the Parties to address the additional stormwater and surface drainage

generated by the expansion of the Project or the construction of additional improvements on the Grantee Real Estate.

3. Access Rights: In consideration of the easement rights granted to Grantee hereunder, Grantee agrees to reimburse Grantor for all expenses incurred by Grantor in connection with the cleaning, maintenance, repair, alteration and expansion of the Easement Premises which are attributable to Grantee's use of the Easement Premises and the exercise of the rights granted to Grantee hereunder. In the event Grantee's use of the Easement Premises imposes an adverse condition on Grantor, Grantor shall so notify Grantee and Grantee shall take such action as required to correct the adverse condition which, if not timely corrected by Grantee, may be corrected by Grantor at Grantee's expense. Grantor may alter the location of the Easement Premises in the event of the development or sale of the Grantor Real Estate by Grantor in which event Grantor shall bear the costs associated with such relocation.

4. Permissible Improvements Within Easement Premises: Grantor shall maintain the Easement Premises for the purposes described herein. Grantor shall not alter the Easement Premises or locate any item thereon which would result in the obstruction or impediment of the flow of storm water or surface drainage from the Grantee Real Estate onto the Easement Premises. Grantor may construct or install surface improvements to the Grantor Real Estate, including paved driveways, parking, walkways, pedestrian trails, landscaping, utilities or similar improvements, provided such improvements do not obstruct the flow of stormwater or surface drainage from Grantee Real Estate onto the Easement Premises.

5. Grantee's Release and Indemnity of Grantor: Grantee forever waives and releases Grantor from and agrees to indemnify and hold harmless Grantor, Grantor's members, officers, employees, representatives, agents, departments and divisions, to the extent permitted by law, from and against any and all claims made against Grantor by Grantee or third parties for property damage, personal injuries, death, losses, claims, demands, liabilities, costs and expenses, both known and unknown and whether now existing or hereafter arising, which result from or are in any manner associated with: (a) Grantee's exercise of the rights granted hereunder; and (b) Grantee's occupancy and use of the Easement Premises, and (c) Grantee's breach of this Agreement, except for any claims resulting directly from Grantor's intentional or grossly negligent acts or omissions. The covenants of release and indemnity made by Grantee in this Section 5 shall survive the expiration or termination of this Agreement for any reason.

6. Limitation of Indemnity: The covenant of indemnification made by Grantee pursuant to paragraph 5 hereof is limited to indemnity for direct damages and expressly excludes indemnification for special, consequential, punitive, and incidental damages.

7. No Effect on Rates and Fees: Grantee acknowledges that nothing in this Agreement shall be construed as an express or implied release or waiver of the right of the City of Fort Wayne, Indiana to subject the Grantee Real Estate to sewer rates, drainage fees, potable water rates, rentals, and other charges, including special assessments, as may be authorized by law.

8. Continuing Effect: This Agreement shall be binding upon Grantor, Grantee and their respective successors and assigns, provided that the assignment of the Agreement by Grantee and Grantee's rights and obligations created hereunder shall

require the prior written consent of Grantor. Any subsequent sale or transfer of the Grantor Real Estate shall be subject to this Agreement. This Agreement is subject to all prior easements and other encumbrances of record. Grantor shall have uninterrupted access on, over, across and through the Easement Premises to all prior and subsequent easements of record. Nothing contained herein shall prevent Grantor from granting additional easements which encumber or affect the Easement Premises provided the granting of such additional easements by Grantor does not affect the flow of stormwater and surface water drainage from the Grantee Real Estate onto the Easement Premises.

9. Grantor Rights: Except as to the rights expressly granted to Grantee in this Agreement, Grantor shall have the full and complete ownership, control, management and use of the Easement Premises. Nothing contained in this Agreement shall be construed as granting or conveying to Grantee any legal or equitable rights of ownership in the Easement Premises or the Grantor Real Estate.

10. Amendments: This Agreement may only be amended upon the written agreement of the Parties.

11. Notices: All notices to either Party shall be sent to the following addresses:

If to Grantor: City of Fort Wayne  
Attn: Christopher Carmichael  
200 E Berry St, Suite 510  
Fort Wayne, IN 46802  
[christopher.carmichael@cityoffortwayne.org](mailto:christopher.carmichael@cityoffortwayne.org)

Copy to: Fort Wayne Parks and Recreation  
Attn: Steve McDaniel  
705 E State Blvd  
Fort Wayne, IN 46805  
[steve.mcdaniel@cityoffortwayne.org](mailto:steve.mcdaniel@cityoffortwayne.org)

If to Grantee: Indiana Conference of Seventh-Day Adventists  
Attn: Vialo Weis  
PO Box 5000  
Westfield, IN 46074  
[vweis@indysda.org](mailto:vweis@indysda.org)

Either Party may change its respective address by mailing notice of same to the other party via certified mail.

12. Compliance with Laws: Grantee shall comply with all applicable federal, state and local laws (including all environmental laws), rules, requirements and regulations, including without limitation the requirements, rules and regulations of the Allen County, Indiana Surveyor and the Allen County, Indiana Drainage Board. Failure to so comply may result, at Grantor's option, in the termination of this Agreement and the rights granted hereunder to Grantee.

13. Governing Law: The laws of the State of Indiana shall govern this Agreement.

14. Grantor's Covenant of Ownership: Grantor covenants that Grantor is the lawful owner of the Real Estate, that Grantor is freely and lawfully granting the easement rights herein, and that Grantor has full right and power to convey the same.

15. Entire Agreement: The Six (6) pages of this Agreement, together with attached Exhibit(s) "A", "B" "C", "D" and "E" comprise the entire Agreement made between Grantor and Grantee.

**(Signature pages and Exhibits to follow.)**

IN TESTIMONY WHEREOF, witness the signature of Grantor on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

**Board of Park Commissioners to the City of Fort Wayne**

\_\_\_\_\_  
Steve McDaniel  
Director of Parks  
City of Fort Wayne, Indiana

Date: \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF INDIANA     )  
                                  )     SS:  
COUNTY OF ALLEN    )

Before me, a Notary Public in and for said County and State, personally appeared **Steve McDaniel**, Director of Parks for the City of Fort Wayne, and acknowledged the execution of the foregoing **Stormwater and Surface Drainage Easement Agreement**.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
Notary Public Printed Name

My County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**GRANTEE:**

**The Indiana Association of Seventh-Day Adventists Inc**

*M.M. Eaton* (must be signed in front of a Notary Public)  
Signature

Printed Name & Title: *W.W. Eaton, Treasurer*

*Vialo Weis, Jr.* (must be signed in front of a Notary Public)

Attest *Vialo Weis, Jr., Secretary*

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF INDIANA )  
  *ms* ) SS:  
COUNTY OF ALLEN )  
  *Hamilton*

Before me, a Notary Public in and for said County and State, personally appeared *M.M. Eaton* and *Vialo Weis, Jr*, on behalf of **The Indiana Association of Seventh-Day Adventists Inc.**, and acknowledged the execution of the foregoing **Stormwater and Surface Drainage Easement Agreement** as a voluntary act and deed for the uses and purposes therein contained.

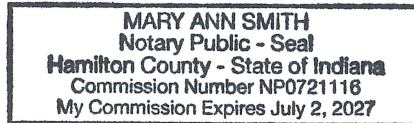
WITNESS my hand and seal this *3rd* day of *November*, 20 *22*

*Mary Ann Smith*  
Notary Public Signature

*Mary Ann Smith*  
Notary Public Printed Name

My Commission Expires: *7/2/27*

My County of Residence: *Hamilton*



Prepared by Lawrence Shine, Associate City Attorney City of Fort Wayne, Citizens Square, Suite 430, 200 E. Berry Street, Fort Wayne, Indiana 46802 / Telephone: 260-427-1190

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. Lawrence Shine

EXHIBIT A

The East 56 rods of the Southwest Quarter of Section 31, Township 31 North, Range 12 East, more particularly described as follows:

COMMENCING at the Northeast corner of the Southwest Quarter of Section 31, Township 31 North, Range 12 East; thence South 160 rods; thence West along the South line of said Section 56 rods; thence North 160 rods; thence East 56 rods to the Place of Beginning, containing 56 acres, more or less.

EXCEPT the West 80 feet of the South 330 feet thereof.

AND EXCEPT that portion thereof appropriated by the State of Indiana for a limited access right-of-way for highway purposes, which appropriated portion is more particularly described as follows:

BEGINNING at the Southeast corner of Section 31, Township 31 North, Range 12 East, Washington Township, Allen County, Indiana; thence West 2760 feet along the South side of said Section to a point; thence North 22.5 feet to a point; thence West 121.8 feet to the Point of Beginning of this tract; thence North 33 degrees 54 minutes East 72.2 feet to a point; thence North 37 degrees 52 minutes East 150 feet to a point; thence North 43 degrees 1 minute East 179.2 feet to a point in the property line on the East side of the East 56 rods of the Southwest Quarter of said Section; thence South 0 degrees 14 minutes West 316 feet along said East property line to a point in the North edge of the right-of-way for Bass Road; thence North 88 degrees 32 minutes West 253.5 feet along said North right-of-way edge to the Point of Beginning, said appropriated portion containing 0.992 acres, more or less.

AND EXCEPT that portion thereof appropriated by the State of Indiana for a permanent right-of-way for highway purposes, which appropriated portion is more particularly described as follows:

BEGINNING at the Southeast corner of Section 31, Township 31 North, Range 12 East, Washington Township, Allen County, Indiana; thence West 2760 feet along the South side of said Section to a point; thence North 22.5 feet to a point; thence West 121.8 feet to the Point of Beginning of this tract; thence North 88 degrees 32 minutes West 572.4 feet along the North

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Continued on next page



EXHIBIT A (CONT.)

edge of the right-of-way for Bass Road to a point; thence North 87 degrees 38 minutes East 599.4 feet to a point; thence South 33 degrees 54 minutes West 47.3 feet to the Point of Beginning, said appropriated portion containing 0.263 acres, more or less.

AND EXCEPT that portion thereof described as follows:

BEGINNING on the West line of the East 56 rods of the Southwest Quarter of Section 31, Township 31 North, Range 12 East, Allen County, Indiana, at a point situated 330 feet North of the Southwest corner of said East 56 rods; thence North, on and along said West line, a distance of 11.75 feet; thence Easterly by a deflection angle right of 88 degrees 59 minutes, on and along a line established by a partial fence line, a distance of 92.75 feet; thence Southerly, by a deflection angle right of 91 degrees 01 minutes, and parallel to said West line of said East 56 rods, a distance of 345.93 feet to the South line of said Southwest Quarter; thence Westerly, by a deflection angle right of 91 degrees 34 minutes, on and along said South line, being also the centerline of Bass Road, a distance of 12.77 feet to the Southeast corner of the West 80 feet of the South 330 feet of said East 56 rods; thence North, by a deflection angle right of 88 degrees 26 minutes, on and along the East line of the West 80 feet of the South 330 feet of said East 56 rods, a distance of 330 feet to the Northeast corner of the West 80 feet of the South 330 feet of said East 56 rods; thence Westerly, by a deflection angle left of 88 degrees 26 minutes, on and along the North line of the West 80 feet of the South 330 feet of said East 56 rods and parallel to the South line of said Southwest Quarter, a distance of 80 feet to the Point of Beginning, said exception containing 0.126 acres of land, more or less.

Containing after all said exceptions 53.721 acres, more or less.

END OF EXHIBIT A

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**EXHIBIT B**

The West 45 acres of the fractional South West Quarter of Section 31, Township 31 North, Range 12 East, excepting therefrom the West 392 feet thereof, and excepting the East 124 feet of the West 556 feet of the South 350 feet thereof.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY;

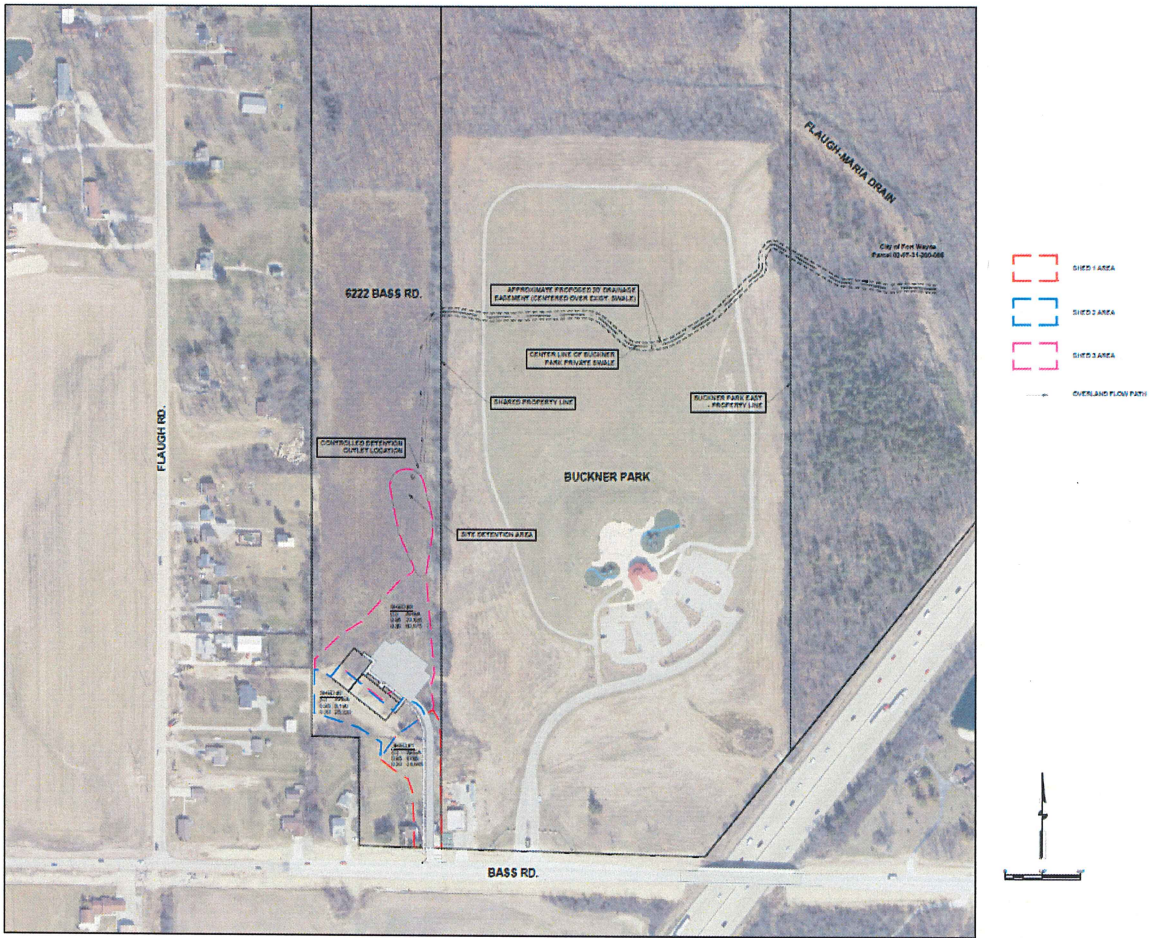
A part of the Southwest Quarter of Section 31, Township 31 North, Range 12 East, Allen County, Indiana, and being that part of the grantors' land lying within the right-of-way lines depicted on the attached right-of-way Parcel Plat, marked Exhibit "B", described as follows: Beginning at a point on the South line of said Section South 88 degrees 47 minutes 31 seconds East 516.00 feet (556 feet by Instrument Number 86-024185) from the Southwest corner of said Section, said Southwest corner being designated as Point "109" on said plat, which point of beginning is the Southeast corner of the 124-foot wide exception described in said Instrument Number 86-024185; thence North 0 degrees 28 minutes 35 seconds West 59.97 feet along the East line of said exception; thence South 88 degrees 48 minutes 50 seconds East 218.69 feet to the East line of the grantors' land; thence South 0 degrees 28 minutes 35 seconds East 60.06 feet along said East line to the South line of Section; thence North 88 degrees 47 minutes 31 seconds West 218.69 feet along said South line to the point of beginning and containing 0.301 acres, more or less, inclusive of the presently existing right-of-way which contains 0.085 acres, more or less.

Purported Address: 6222 Bass Rd., Fort Wayne IN 46818

A.P.N. No.: 02-07-31-326-001.000-065      Washington 108636

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# EXHIBIT C



6222 BASS ROAD - OVERALL SHED MAP AND DRAINAGE PLAN

**EXHIBIT D**

**EASEMENT PLAT**

1315 Broadway  
Fort Wayne, IN 46802  
Phone: (260) 755-5993  
Fax: (666) 808-4177

**APEX Consulting  
& Surveying**

Prepared for the City of Fort Wayne

Nana A. Opoku, PLS No. LS21200012

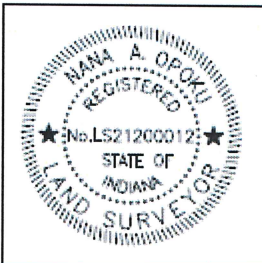
**WASHINGTON TOWNSHIP**

Parcel #02-07-31-326-002.000-065

**Easement Legal Description**

Part of the Southwest Quarter of Section 31, Township 31 North, Range 12 East, and being a portion of the grantor's land as described in Document Number 202048287 in the Office of the Recorder of Allen County, Indiana, and more particularly described as follows:

Commencing at the Northeast corner of said Southwest Quarter, said corner also being the Northeast corner of said grantor's land; thence South 00 degrees 25 minutes 46 seconds East (state plane bearing and basis of bearings to follow) along the East line of said Southwest Quarter and the East line of said grantor's land, a distance of 969.37 feet to the POINT OF BEGINNING of the centerline of a permanent drainage easement 20.00 feet wide and 10.00 feet on each side of the herein described said centerline; thence North 46 degrees 56 minutes 15 seconds West, a distance of 17.27 feet to a point of curvature of a tangent curve to the left, having a radius of 16.00 feet, an arc length of 31.54 feet, being subtended by a chord length of 26.68 feet bearing South 76 degrees 34 minutes 53 seconds West, with a central angle of 112 degrees 57 minutes 53 seconds; thence South 20 degrees 06 minutes 02 seconds West, a distance of 31.12 feet; thence South 03 degrees 11 minutes 56 seconds East, a distance of 26.91 feet; thence South 25 degrees 07 minutes 06 seconds West, a distance of 13.90 feet; thence South 47 degrees 54 minutes 38 seconds West, a distance of 194.98 feet; thence South 56 degrees 47 minutes 34 seconds West, a distance of 104.18 feet to a point of curvature of a tangent curve to the right, having a radius of 100.00 feet, an arc length of 138.54 feet, being subtended by a chord length of 127.72 feet bearing North 83 degrees 31 minutes 08 seconds West, with a central angle of 79 degrees 22 minutes 26 seconds; thence North 43 degrees 45 minutes 08 seconds West, a distance of 35.00 feet to a point of curvature of a tangent curve to the left, having a radius of 125.00 feet, an arc length of 108.08 feet, being subtended by a chord length of 104.74 feet bearing North 68 degrees 31 minutes 20 seconds West, with a central angle of 49 degrees 32 minutes 39 seconds; thence South 86 degrees 42 minutes 27 seconds West, a distance of 74.13 feet; thence South 88 degrees 25 minutes 22 seconds West, a distance of 108.53 feet; thence South 83 degrees 00 minutes 49 seconds West, a distance of 45.86 feet; thence North 80 degrees 15 minutes 03 seconds West, a distance of 33.91 feet; thence North 89 degrees 35 minutes 13 seconds West, a distance of 126.86 feet to the West line of said grantor's land and the end of said centerline. Easement contains 0.501 acres (21,815 square feet), more or less. Subject to all easements of record.



This description was prepared for The City of Fort Wayne by Nana A. Opoku, Indiana Registered Land Surveyor, License Number 21200012

Property Address:  
6114 Hazz Road  
Fort Wayne, IN 46805

Allen County  
Section 31  
Township 31 North  
Range 12 East

*Nana A. Opoku*  
Nana A. Opoku, PLS No. 21200012

IN WITNESS WHEREOF, I hereunto place my hand and seal this 15th day of August, 2022

"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."  
Nana A. Opoku

EXHIBIT E

