

## INDEMNITY AND HOLD HARMLESS AGREEMENT

***THIS INDEMNITY AND HOLD HARMLESS AGREEMENT*** (the "Agreement") is made as of \_\_\_\_\_, 2019 by and between The Town of Munster (hereinafter "Town"), located at 1005 Ridge Road, Munster, Indiana 46321 and Community Foundation of Northwest Indiana, Inc., (hereinafter "CFNI"), located at 905 Ridge Road, Munster, Indiana 46321 .

***WHEREAS***, CFNI owns vacant real estate along the west side of Calumet Avenue which is North of Main Street and is depicted on Exhibit "A" (the "Real Estate"); and

***WHEREAS***, the Town desires to construct and maintain a snow fence on the Real Estate approximately 50 feet west of Calumet Avenue to help prevent snow drifting onto Calumet Avenue and which is also depicted on Exhibit "A"; and

***WHEREAS***, the Town proposes to remove the snow fence on or before May 1, 2019; and

***WHEREAS***, CFNI will allow the Town to construct and maintain the snow fence on the Real Estate provided the Town indemnifies and holds CFNI harmless from any damage or injuries that result from the snow fence being constructed or maintained on, or removed from, the Real Estate;

***NOW THEREFORE***, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by CFNI and the Town, the parties to this Agreement hereby agree as follows:

**INDEMNITY AND HOLD HARMLESS.** The Town desires and wishes to hold harmless and indemnify CFNI and its successor and assigns from any and all liabilities, losses, claims, judgments, suits, fines, penalties, demands or expenses, including, but not limited to, all reasonable costs for defense and investigation thereof (including but not limited to attorney's fees, court costs and expert fees) claimed by anyone by reason of injury or damage to persons or property sustained in or around as a proximate result of the acts or omissions of the Town, its agents, successors and assigns or arising out of the construction, or maintenance of the snow fence on, or removal from, the Real Estate, except when such liability may result from the sole negligence of CFNI, its officers, directors, agents, servants, and/or employees.

**REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES.** Each party signing this Agreement represents and warrants that s/he is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**MODIFICATION OF AGREEMENT.** This Agreement may be supplemented, amended, and/or modified only by and through the mutual agreement of all parties. No supplement or modification of the Agreement shall be binding unless done so in writing and signed by all parties to this Agreement.

**GENERAL WAIVER.** The failure of any party at any time to require performance of any provision or to resort to any remedy provided under this Agreement shall in no way affect the right of that party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any party of a breach be deemed to be a waiver of any subsequent breach. A waiver shall not be effective unless it is in writing and signed by the party against whom the waiver is being enforced.

**ENTIRE AGREEMENT.** This is the entire agreement between the aforementioned parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings.

**HOLD HARMLESS AGREEMENT (continued)**

**ENFORCEABILITY, SEVERABILITY AND/OR REFORMATION.** In the event that any covenant, provision and/or restriction is found by a court of competent jurisdiction to be unenforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. In the event it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement shall be enforced as if such provision was not included. In the event that any court determines that any of the covenants, provisions or restrictions to be excessive in duration or scope or to be unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restrictions may be modified or amended by the court to render it enforceable to the maximum extent permitted by the laws of that state.

**GOVERNING LAWS.** The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of Indiana applicable to contracts made and to be wholly performed within such state, without giving effect to any form of conflict of law provisions thereof. The Federal and State courts located in Indiana shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

**JURISDICTION AND VENUE.** Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Indiana.

***THE UNDERSIGNED HAVE READ, UNDERSTAND and ACCEPT THIS AGREEMENT,*** and by signing this Agreement, all parties agree to all of the aforementioned terms, conditions and policies.

COMMUNITY FOUNDATION OF NORTHWEST INDIANA, INC.

**By:** \_\_\_\_\_  
**David J. Otte, Vice President of Engineering/Support Services**

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Town of Munster, by: Dustin Anderson, Town Manager

\_\_\_\_\_  
Date Signed

EXHIBIT A