

**ORDINANCE NO.: 20-2018**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, PORTER COUNTY, INDIANA, ANNEXING CERTAIN REAL ESTATE INTO THE CITY OF VALPARAISO, INDIANA, KNOWN AS THE "SPECTACLE DRIVE ANNEXATION"**

WHEREAS, the City of Valparaiso, Porter County, Indiana ("City"), in accordance with Ind. Code § 36-4-3-5.1, wishes to annex an area consisting of approximately 17.14 acres located outside of but contiguous to the City, those areas being depicted in Exhibit A, attached hereto and incorporated herein and particularly described in Exhibit B, attached hereto and incorporated herein ("Annexed Territory"); and

WHEREAS, in accordance with Ind. Code § 36-4-3-5.1(e), on or around October 22, 2018, the Common Council held a duly noticed public hearing regarding the Annexed Territory; and

WHEREAS, the Common Council has determined, in accordance with Ind. Code § 36-4-3-5.1, the petition requesting a super voluntary annexation is signed by 100% of the owners of land within the Annexed Territory; and

WHEREAS, in accordance with Ind. Code § 36-4-3-1.5, the Common Council has determined that the Annexed Territory is contiguous as at least one-eighth (1/8) of the aggregate external boundaries of the Annexed Territory coincides with the boundaries of the City; and

WHEREAS, on or around October 22, 2018, and prior to holding the above-referenced public hearing, in accordance with Ind. Code §§ 36-4-3-3.1 and 36-4-3-12, the Common Council adopted by resolution a written fiscal plan for the Annexed Territory; and

WHEREAS, on or around October 9, 2018, the City's Plan Commission held a duly noticed public hearing regarding the initial zoning of the Annexed Territory; and

WHEREAS, on or around October 18, 2018, the City's Plan Commission voted by a vote of \_\_\_\_\_ to favorably recommend initially zoning the Annexed Territory as General Residential (GR); and

WHEREAS, the Common Council finds that the annexation and initial zoning of the Annexed Territory pursuant to the terms and conditions of this Ordinance is in the best interest of all owners of land in the Annexed Territory, is fair and equitable, and should be accomplished.



WHEREAS, the Common Council now desires to annex the Annexed Territory generally known as the "Spectacle Drive Annexation."

NOW, THEREFORE BE IT ORDAINED by the Common Council of the City of Valparaiso, Porter County, Indiana, as follows:

Section 1. *Incorporation of Recitals.* The foregoing recitals (or "whereas clauses") are findings of fact by the Common Council and are incorporated into this Ordinance by reference.

Section 2. *Contiguity.* The petition requesting super voluntary annexation for the Annexed Territory, depicted in Exhibit A, attached hereto and incorporated herein, and particularly described in Exhibit B, attached hereto and incorporated herein, is signed by 100% of the owners of land within the Annexed Territory and is contiguous to the City boundaries as at least one-eighth (1/8) of the aggregate external boundaries of the Annexed Territory coincides with the boundaries of the City.

Section 3. *Annexed Territory.* The real estate containing approximately 17.14 acres more or less depicted in Exhibit A attached hereto and incorporated herein, and particularly described in Exhibit B, attached hereto and incorporated herein, generally to be known as the Spectacle Drive Annexation, is hereby annexed to and declared part of the City of Valparaiso, Porter County, Indiana.

Section 4. *Council District.* The Annexed Territory is hereby assigned City Council District No. 4 and shall become a part thereof immediately upon the effective date of this Ordinance.

Section 5. *Zoning.* Upon the effective date of this Ordinance, the Annexed Territory shall be classified for zoning purposes as General Residential (GR).

Section 6. *Effective Date.* This Ordinance shall be in full force and effect upon its passage by the Common Council and as provided by Indiana law.

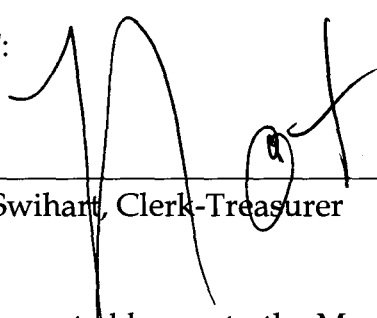
Section 7. *Severability.* The sections, subsections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining sections, subsections, paragraphs, sentence, clauses and phrases of this Ordinance.



DULY PASSED AND ADOPTED this \_\_\_\_ day of November, 2018, by the Common Council of the City of Valparaiso, Porter County, Indiana, having been passed by a vote of \_\_\_\_ in favor and \_\_\_\_ opposed.

\_\_\_\_\_  
Jon Costas, Mayor

ATTEST:

  
\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

*Passed  
4 No 3 yes*

Presented by me to the Mayor of the City of Valparaiso, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2018 at the hour of \_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this \_\_\_\_ day of \_\_\_\_\_, 2018, at the hour of \_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Jon Costas, Mayor



# Exhibit A Spectacle Drive Annexation Territory



## Exhibit A

CASE # A18-001 and RZ18-001  
Ordinance #20, 2018

Spectacle Drive Annexation

### Legend

- Proposed Annexation Area
- Parcel Lines
- Valparaiso City Limits
- NC - Neighborhood Conservation
- ER - Estate Residential
- SR - Suburban Residential
- GR - Residential, General
- UR - Residential, Urban
- PS - Public Space
- RU - Rural
- RT - Residential Transition
- CA - Campus
- PUD - Planned Unit Development

October 2018





## Exhibit B

### Legal Description of land to be Annexed

A parcel of land in the Southwest Quarter of Section 1, Township 35 North, Range 6 West of the Second Principal Meridian, Porter County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the South One-Half of the Northeast Quarter of said Southwest Quarter of Section 1; thence South  $0^{\circ}16'17''$  East along the East line of said South One-Half of the Quarter-Quarter Section 189.20 feet to the Point of Beginning; thence continuing South  $0^{\circ}16'17''$  East along said East line 479.46 feet to the South line of the South One-Half of said Quarter-Quarter Section, said line also being the North line of the South One-Half of said Southwest Quarter of Section 1; thence South  $0^{\circ}13'31''$  East along the East line of the South One-Half of said Southwest Quarter 54.36 feet to a point which is 5.00 feet North as measured along said East line from the Northeast corner of Concord Meadows - Unit 2 as per plat thereof recorded in Plat File 14-A-2 in the Office of the Recorder of Porter County, Indiana; thence North  $89^{\circ}13'47''$  West parallel with the North line of said Unit 2 a distance of 30.01 feet to the Northeast Corner of Lot 101 of said Unit 2; thence continuing North  $89^{\circ}13'47''$  West along the North line of said Unit 2 a distance of 1166.55 feet to the point of intersection with the Southerly prolongation of the East line of the West 132.00 feet of the South One Half of the Northeast Quarter of the Southwest Quarter of said Section 1; thence North  $0^{\circ}10'47''$  East along said southerly prolongation 32.42 feet to the North line of said South One-Half of the Southwest Quarter of Section 1, said line also being the South line of said South One-Half of the Northeast Quarter of the Southwest Quarter of Section 1; thence continuing North  $0^{\circ}10'47''$  East along the East line of said West 132.00 feet a distance of 325.72 feet to a point which is 336.70 feet South of the North line of the South One-Half of said Quarter-Quarter Section as measured along the East line of said West 132.00 feet; thence South  $89^{\circ}49'13''$  East at 90 degrees to the previous described course 150.00 feet; thence North  $0^{\circ}10'47''$  East 337.75 to the North line of the South One-Half of said Quarter-Quarter; thence North  $89^{\circ}25'06''$  East along said North line 781.94 feet to the northeast corner of land conveyed to Kilmer by instrument recorded as Deed Record 281, Page 403 in said Recorder's Office; thence South  $0^{\circ}16'17''$  East along the east line of Kilmer Land 189.20 feet to the north line of land conveyed to Kilmer by instrument recorded as Deed Record 193, Page 357 in said Recorder's Office; thence North  $89^{\circ}25'06''$  East along said north line 259.00 feet to the Point of Beginning, containing 17.14 acres, more or less.

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## ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”) is made by and between Herbert L. Kilmer, Christine L. Moore, Philip R. Kilmer, and Carol A. Himes (“Petitioners”), and the City of Valparaiso, Indiana, a municipality created and existing pursuant to the laws of the State of Indiana (“City”).

### WITNESSETH:

WHEREAS, Petitioners are the fee simple owner of the following described real estate located in Porter County, Indiana, generally located on the south side of Spectacle Drive and containing 17.14 acres (“Property”):

A parcel of land in the Southwest Quarter of Section 1, Township 35 North, Range 6 West of the Second Principal Meridian, Porter County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the South One-Half of the Northeast Quarter of said Southwest Quarter of Section 1; thence South  $0^{\circ}16'17''$  East along the East line of said South One-Half of the Quarter-Quarter Section 189.20 feet to the Point of Beginning; thence continuing South  $0^{\circ}16'17''$  East along said East line 479.46 feet to the South line of the South One-Half of said Quarter-Quarter Section, said line also being the North line of the South One-Half of said Southwest Quarter of Section 1; thence South  $0^{\circ}13'31''$  East along the East line of the South One-Half of said Southwest Quarter 54.36 feet to a point which is 5.00 feet North as measured along said East line from the Northeast corner of Concord Meadows – Unit 2 as per plat thereof recorded in Plat File 14-A-2 in the Office of the Recorder of Porter County, Indiana; thence North  $89^{\circ}13'47''$  West parallel with the North line of said Unit 2 a distance of 30.01 feet to the Northeast Corner of Lot 101 of said Unit 2; thence continuing North  $89^{\circ}13'47''$  West along the North line of said Unit 2 a distance of 1166.55 feet to the point of intersection with the Southerly prolongation of the East line of the West 132.00 feet of the South One Half of the Northeast Quarter of the Southwest Quarter of said Section 1; thence North  $0^{\circ}10'47''$  East along said southerly prolongation 32.42 feet to the North line of said South One-Half of the Southwest Quarter of Section 1, said line also being the South line of said South One-Half of the Northeast Quarter of the Southwest Quarter of Section 1; thence continuing North  $0^{\circ}10'47''$  East along the East line of said West 132.00 feet a distance of 325.72 feet to a point which is 336.70 feet South of the North line of the South One-Half of said Quarter-Quarter Section as measured along the East line of said West 132.00 feet; thence South  $89^{\circ}49'13''$  East at 90 degrees to the previous described course 150.00 feet; thence North  $0^{\circ}10'47''$  East 337.75 to the North line of the South One-Half of said Quarter-Quarter; thence North  $89^{\circ}25'06''$

East along said North line 781.94 feet to the northeast corner of land conveyed to Kilmer by instrument recorded as Deed Record 281, Page 403 in said Recorder's Office; thence South 0°16'17" East along the east line of Kilmer Land 189.20 feet to the north line of land conveyed to Kilmer by instrument recorded as Deed Record 193, Page 357 in said Recorder's Office; thence North 89°25'06" East along said north line 259.00 feet to the Point of Beginning, containing 17.14 acres, more or less.

WHEREAS, on or about September 26, 2018, Petitioners filed Petition No. A18-001 and RZ18-001 ("Petition") with the City seeking to have the Property annexed into the City and zoned as General Residential (GR) District pursuant to the City's Unified Development Ordinance, and the Petition is hereby incorporated by reference into this Agreement as if fully set forth herein;

WHEREAS, on October 9, 2018, the City Plan Commission conducted a legally advertised public hearing on the Petition; and

WHEREAS, on October 18, 2018, the City Plan Commission made a favorable recommendation to the Common Council of the City by a vote of 8 to 0 (with 1 abstention); and

WHEREAS, on October 22, 2018, the Common Council of the City adopted Resolution No. 14-2018 and in doing so approved the Fiscal Plan for the Property. Resolution No. 14-2018 is hereby incorporated by reference into this Agreement as if fully set forth herein.

WHEREAS, also on October 22, 2018, the Common Council of the City convened a public hearing on the Petition; and

WHEREAS, on November 12, 2018, the Common Council of the City adopted Ordinance No. 20-2018 by a vote of \_\_\_ to \_\_\_ contingent upon the City and Petitioner executing an annexation agreement imposing certain requirements on the development of a residential subdivision on the Property. Ordinance No. 20-2018 is hereby incorporated by reference into this Agreement as if full set forth herein; and

WHEREAS, the Parties wish to enter into this Agreement to memorialize and ratify the terms and conditions placed upon the Property as part of its annexation into the corporate limits of the City.

NOW, THEREFORE, in consideration of being permitted to be annexed into the City based upon the terms and conditions set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The above and foregoing recitals are true and correct and are hereby incorporated by reference and made a part of this Agreement.

2. Conditions Related to Subdivision for Residential Purposes. The Parties hereby acknowledge and agree that the current zoning of the Property is Medium Density Single Family Residential (R2) District and Residential Lake (RL) District in unincorporated Porter County,

Indiana pursuant to the Official Zone Map. The Parties further acknowledge and agree that the City's Unified Development Ordinance permits a residential subdivision to be developed on the Property under the General Residential (GR) District. In the event that a Petitioners, or their successors and assigns, seek to develop a residential subdivision on the Property, the subdivision shall comply with all of the following requirements:

- (a) All lots that border the south property line of the Property adjacent to Concord Meadows subdivision shall be no less than 11,000 square feet in size and 100 feet wide.
- (b) All other lots shall be no less than 10,000 square feet in size.
- (c) The maximum lot coverage for any lot within the anticipated subdivision on the Property shall be forty percent (40%).
- (d) All homes within the Property shall be single family detached homes.
- (e) All homes within the Property shall be subject to a restrictive covenant promoting architectural diversity of the homes with a variety of building materials, colors and architectural features of homes within close proximity of one another.
- (f) With the exception of one lot only, all driveways in a subdivision on the Property shall connect to new subdivision streets and not connect directly to Spectacle Drive. Petitioner may allow one lot to connect directly to Spectacle Drive. In the event that the total number of lots within the anticipated subdivision on the Property shall be twenty-nine (29) or less, Petitioner may connect two (2) lots directly to Spectacle Drive. Notwithstanding the preceding, any connection to Spectacle Drive must be consistent with proper subdivision design specifications and acceptable best practices. In addition, to the extent Porter County is required to provide approval of any connection to Spectacle Drive, such shall be a condition precedent.
- (g) Storm water management within the anticipated subdivision on the Property shall be approved by the City of Valparaiso and any other governmental entity with jurisdiction, however, detention basins discharging directly to the jurisdiction of unincorporated areas of Porter County shall be discharged at release rates established by the ordinances and policies established by the governmental . Storm water discharges from the Property to approved areas within the City shall be released at rates established by ordinances and policies of the City.

- (h) Upon request by the City, Petitioner shall contribute to the City (or directly to Porter County), an amount of money equal to the engineer's estimated cost of right-of-way improvements to Spectacle Drive that the Petitioner would be obligated to make under the City's ordinances and policies. The contribution amount shall be determined and paid at such time as Petitioner constructs the first phase of infrastructure improvements for the anticipated subdivision. The estimate shall be made by Petitioner's professional engineer and shall not include any itemization for "contingencies" or a similar cost. The parties hereto agree that the amount of the Petitioner's contribution shall be \$98,732.21 and this amount shall not be adjusted for a change of circumstances, increase or decrease in cost of materials, nor bear interest until paid pursuant to this subsection. In the event that the contribution has not been made prior to December 31, 2020, then the Petitioner's professional engineer shall prepare a new or revised cost estimate of right-of-way improvement costs.

3. Compliance with City Standards. Until such time as the Property is sold or otherwise transferred to a third party, Petitioners shall at all times be responsible for maintaining the Property in compliance with all applicable sections of the City's Code of Ordinances, Unified Development Ordinance and all other ordinances, rules or regulations. All future development, construction or alternation of the Property shall be done in full conformance with all requirements of the City. Existing structures shall be non-conforming structures under the Unified Development Ordinance.

4. Further Assurances. Promptly upon request from time to time of any party, the other party(ies) shall do execute, acknowledge and deliver, or cause to be done, executed, acknowledged or deliver, to or at the direction of such party, all further acts, powers and other documents and instruments as may be so requested to give effect to the terms and conditions of this Agreement.

5. Effective Date. This Agreement shall be effective upon the execution by the parties and effective date of the annexation. Petitioner reserves the right and opportunity to withdraw the Petition prior to the effective date of the annexation.

6. Merger. This Agreement constitutes the entire agreement of the parties, and all promises, undertakings, representations, agreements and understandings, and arrangements with reference to representations are herein merged.

7. Construction. This Agreement is entered into in the State of Indiana and shall be construed in accordance with the laws thereof. In the event of a conflict or ambiguity within this Agreement, the more restrictive provision shall be deemed to prevail. The headings appearing as titles for each of the provisions of this Agreement are included for purposes of convenience only and shall not be considered in the construction of any of the substantive provisions herein.

8. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in terms and intent to such illegal, invalid or unenforceable provision as may be possible.

9. Amendments. All amendments to this Agreement shall be in writing and approved and signed by all the parties, and no such amendment shall be effective unless and until so made.

10. Attorneys Fees. If any party to this Agreement seeks to enforce its terms or provisions by way of litigation or other methods of dispute resolution, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses from the non-prevailing party.

11. Authority. Each party hereto represents and warrants to the other that it is duly authorized by proper resolution or other such valid appointment to execute this Agreement.

12. Recordation. The Parties hereby acknowledge and agree that this Agreement will be recorded with the Office of the Recorder of Porter County, Indiana. The requirements of this Agreement shall run with the land and shall be binding upon and enforceable against Petitioners and their successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates and year set forth below.

**PETITIONERS:**

[Signatures appear on following pages]

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\_\_\_\_\_  
Herbert L. Kilmer

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said county and state, do hereby certify that Herbert L. Kilmer, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he executed the foregoing instrument of his free and voluntary act.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

My Commission Expires:

\_\_\_\_\_

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





\_\_\_\_\_  
Philip R. Kilmer

STATE OF \_\_\_\_\_ )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said county and state, do hereby certify that Philip R. Kilmer, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he executed the foregoing instrument of his free and voluntary act.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

My Commission Expires:

\_\_\_\_\_

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

\_\_\_\_\_  
Carol A. Himes

STATE OF \_\_\_\_\_ )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said county and state, do hereby certify that Carol A. Himes, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he executed the foregoing instrument of his free and voluntary act.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_,  
2018.

My Commission Expires:

\_\_\_\_\_

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

**CITY:**

**CITY OF VALPARAISO, INDIANA**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF INDIANA     )  
  )  
COUNTY OF PORTER    )

SS:

Before me, a Notary Public, in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared \_\_\_\_\_, as the \_\_\_\_\_ of the City of Valparaiso, Indiana, who has stated that they are authorized to execute said document and have acknowledged the execution of the foregoing instrument to be their free and voluntary act for and on behalf of the City of Valparaiso, Indiana.

\_\_\_\_\_  
Notary Public  
Printed: \_\_\_\_\_  
County of Residence: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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. *Todd A. Leeth*

This Instrument Prepared By:

Todd A. Leeth  
Hoepfner Wagner & Evans LLP  
103 E. Lincolnway  
Valparaiso, Indiana 46383

**HOEPPNER  
WAGNER &  
EVANS LLP**  
ATTORNEYS AT LAW