

RESOLUTION 2024- 04
OF THE TOWN OF ZIONSVILLE

**A RESOLUTION AUTHORIZING THE
ACCEPTANCE OF AN EASEMENT**

WHEREAS, the Town Council of the Town of Zionsville, Boone County, Indiana (the “Town Council”), is the legislative body for the Town of Zionsville, Boone County, Indiana (the “Town”) pursuant to Indiana Code § 36-5-2-2; and

WHEREAS, the Town Council may accept the grant of an easement pursuant to Indiana Code § 36-5-2-9; and

WHEREAS, C & V Farm, LLC desires to grant to Dahm No. 68, LCC and to the Town, an easement on land owned by C & V Farm, LLC to facilitate a retail shopping center to be developed.

NOW, THEREFORE, BE IT RESOLVED BY, by the Town Council of the Town of Zionsville, Boone County, Indiana, as follows:

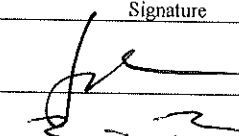
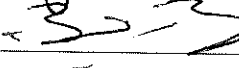
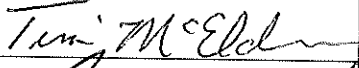
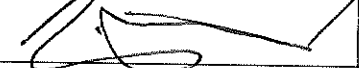
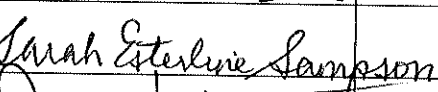
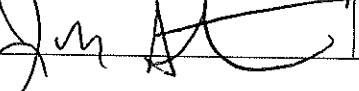
Section One. The Town of Zionsville accepts the grant of an easement by C & V Farm, LLC as identified in the attached Access Easement Agreement attached hereto as “Exhibit A” and made a part hereof.

Section Two. The Mayor of the Town or the Director of Community & Economic Development of the Town shall execute the Access Easement Agreement on behalf of the Town of Zionsville.

Resolution 2024-04

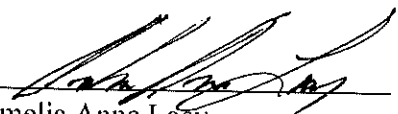
DULY PASSED AND ADOPTED this 5th day of Feb., 2024, by the Town Council of the Town of Zionsville, Boone County, Indiana, having been passed by a vote of 7 in favor and 0 opposed.

TOWN COUNCIL OF THE TOWN OF ZIONSVILLE,
BOONE COUNTY, INDIANA

	YEA Signature	NAY Signature
Jason Plunkett, President		
Brad Burk, Vice President		
Tim McElderry, Member		
Craig Melton, Member		
Evan Norris, Member		
Sarah Esterline Sampson, Member		
Joe Stein, Member		

I hereby certify that the foregoing Resolution was delivered to Town of Zionsville Mayor John Stehr on the 6th day of February 2024, at 11:30 A. m.

ATTEST:


Amelia Anne Lacy,
Municipal Relations Coordinator

MAYOR'S APPROVAL


John Stehr, Mayor

2-6-24
DATE

MAYOR'S VETO

John Stehr, Mayor

DATE

This Resolution was prepared by Heather D. Harris, Partner, Barnes & Thornburg LLP serving as Legal Counsel the Town Council, Town of Zionsville, Boone County, Indiana on January 10, 2024. No subsequent revision to this Resolution has been reviewed by Ms. Harris for legal sufficiency or otherwise.

Cross Reference: Deed recorded as/at _____, recorded _____, _____
in the office of the Boone County Recorder

ACCESS EASEMENT AGREEMENT

This ACCESS EASEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2023 (the "Effective Date"), by and among DAHM NO. 68, LLC, an Indiana limited liability company ("Dahm"), C & V FARM, LLC, an Indiana limited liability company ("Owner"), and TOWN OF ZIONSVILLE, and its successors and assigns (collectively, the "Grantee"), under the following circumstances:

- A. Owner is the fee simple owner of certain unimproved real estate comprised of approximately 8.1 acres and located in Whitestown, Boone County, Indiana, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Real Estate").
- B. Dahm and Owner executed that certain Ground Lease (the "Lease") with respect to the use and occupancy of the Real Estate.
- C. Dahm intends to develop the Real Estate as a retail shopping center (the "Shopping Center"), including without limitation a Crew Carwash facility with drive through and self-service bays, self-service vacuums, together with various commercial and retail uses, in accordance with the terms and conditions of the Lease.
- D. Dahm and Owner desire to grant certain access easements to Grantee to facilitate vehicular and pedestrian access to and from the Real Estate to and from Royal Run Boulevard, subject to the terms and conditions herein contained.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. There is shown and described an area in Exhibit B that is designated as "Access Easement" or abbreviated as "A.E.", such easement is hereby established in favor of the present and future property owners and occupants of the Real Estate and grants other invitees, including the general public and public utilities, permission to enter the Access Easement to maneuver vehicles to access adjacent rights of ways and the developments adjacent to said Access Easement. Dahm, Owner, and any other person shall be prohibited from placing any obstruction within the Access Easement. This Agreement is binding on all heirs, successors, and assigns to the Real Estate on which the Access Easement is located. The Grantee may, but is not obligated to, enforce the provisions of the Agreement. The Agreement shall only be modified or vacated in the manner stipulated in the Town of Zionsville Zoning Ordinance, or its successor's ordinance. No permanent or other structures are to be erected or maintained upon or within the Access Easement.
- 2. Either Dahm or Owner shall have the right to grant other non-exclusive easements under, over, along, in or upon the Access Easement; provided, however, that any such easement shall

be granted subject to the easement rights and restrictions granted in this Agreement, and shall not materially interfere with the rights granted under this Agreement.

3. During the entire term of the Lease, Dahm, at its sole cost, shall construct, install, maintain, repair, replace, and service the private road contained within the Access Easement as reasonably necessary for the safe and efficient use and enjoyment of the Access Easement, including paving and snow and ice removal. Grantee shall have no obligation to maintain the surface of the Access Easement or any improvements located within the Access Easement.
4. At all times during the term of this Agreement, Dahm shall purchase and maintain the commercial general liability insurance providing coverage of not less than Two Million Dollars (\$2,000,000) against any and all liability. Such policy shall name Owner as an additional insured and contain a provision that the insurer will not cancel, non-renew, or change in any material way the nature or extent of the coverage provided by the policy without first giving the Owner thirty (30) days prior written notice by certified mail.
5. Prior to commencing any work on or within the Access Easement, Dahm shall cause its contractor(s) and subcontractor(s) to procure and keep in effect, during the course of their work in, on or about the Access Easement, a non-deductible comprehensive general liability insurance policy, including, but not limited to, contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, all of not less than Two Million Dollars (\$2,000,000) with respect to personal injury or death, and One Million Dollars (\$1,000,000) with respect to property damage; and workman's compensation or similar insurance in form and amounts required by law.
6. Dahm agrees to defend, indemnify and save harmless Owner and Grantee, from and against any and all liability or claim thereof (including but not limited to reasonable actual attorney fees and costs) whether for injury to persons, including death, or damage to property, which may be imposed upon, incurred by or asserted against Owner: (i) arising in connection with or as a direct result of any activity by Dahm, its employees, agents, contractors, subcontractors, lessees, invitees, or licensees in, on, or about the Access Easement; or (ii) arising out of the gross negligence or willful misconduct of Dahm, its agents, employees, contractors or subcontractors. The foregoing indemnity from Dahm shall not extend to liability directly resulting from the negligence of Owner or its related parties.
7. Vehicular traffic within the Access Easement shall be subject to the laws and ordinances of the Grantee.
8. Notices: All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing, and delivered to the party entitled to receipt thereof at the following addresses: