SETTLEMENT AGREEMENT

WHEREAS, the City of Westfield, Indiana (hereinafter "City") is an Indiana Municipal Corporation located in Hamilton County, Indiana, and;

WHEREAS, J & R Kelich Farms, LLC (hereinafter "Kelich") owns real property located at 14939 Ditch Road, Westfield, Indiana (the "Real Estate"), and;

WHEREAS, the Parties have been engaged in a dispute related to the use of the Real Estate under Westfield Board of Zoning Appeals (the "BZA") Docket No. 1609-AA-01, an appeal of Westfield Administrative Determination No. 1604-AD-02 regarding the use of the Real Estate in the operation of a concrete business (the "Land Use") pursuant to BZA Variance of Use No. 79-V-12; and

WHEREAS, the Parties desire to stay their respective claims against each other that relate to the Land Use upon the terms and conditions hereinafter set forth; and;

NOW THEREFORE, in consideration for the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the parties hereto, Parties hereby agree to the matters set forth herein.

1. **RESTRICTIONS ON LAND USE** – Upon the execution of this Agreement, Kelich shall cause the Land Use to adhere to the following restrictions on the Land Use (the "Restrictions"):

   (a) No lawn care business permitted to be operated on or from property.
   (b) No beepers on trucks backing up before 7:30 AM or after 6:00 PM (exceptions to be communicated to the President of the Centennial Homeowners Association, Inc. in advance).
   (c) Send emails to President of the Centennial Homeowners Association, Inc 48 hours in advance of heavy activity days on the property that would create disruptive noise.
   (d) Must finish front berm and plantings pursuant to previous plans submitted by Kelich to City. Attached hereto.

2. **STAY OF ALL PROCEEDINGS** - Parties agree that all proceedings are stayed pending relocation of the Kelich business operations as described hereinbelow.

   (a) Both the administrative decision of the City and the appeal of that decision are hereby dismissed without prejudice. Both shall be deemed inadmissible in any further proceedings by the Parties.
   (b) Promptly following execution of this Agreement, Kelich agrees to look for another site suitable for the Land Use. ("Suitable." as used herein, means a property containing at least 4 acres (preferably with 8,000 square foot building) which is or can be zoned appropriately for the Land Use, and can be acquired and operated at at least the same return on investment for Kelich as the Real Estate). If any such location is located within the City of Westfield, the City will confer

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with Kelich regarding the suitability of the site for the Land Use, and if the City deems it suitable, the City will assist Kelich with all necessary approvals for the Land Use.

(c) City agrees to use its best efforts to assist in: finding a suitable purchaser for the Real Estate, and the relocation of the Land Use to another location within the City of Westfield, independent of Kelich's agreement in 2(b) hereinabove. Such assistance may include the use of City funds reasonably necessary to accomplish the relocation.

(d) Upon relocation, Kelich agrees to allow the City to vacate the variance applicable to the property 78-V-12, at no expense to Kelich.

(e) Kelich and the City agree to pursue their obligations in this Section 2 diligently and in good faith; provided, however, nothing contained herein shall require a party to enter into an agreement with a third party with respect to the Real Estate or a relocation property if such party does not believe such an agreement is in its best interest, acting in good faith.

(f) Kelich and the City agree to revisit, and if necessary, renegotiate, the terms of this Agreement in the event that neither the City nor Kelich have identified a suitable replacement property within two (2) years of the date of this Agreement.

3. **MUTUAL RELEASE** - The Parties waive and release any and all claims, demands, agreements, contracts, covenants, representations, warranties, promises, undertakings, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, fees, accounts, damages, judgments, losses, and liabilities, reckonings, trespasses of whatsoever kind or nature, whether in law or equity, whether or not presently known or unknown, and whether or not disclosed or concealed, which against them or any of them.

4. **AUTHORITY** - The parties represent that they have full authority to enter into this Settlement Agreement and that all acts necessary to give binding effect to this Settlement Agreement have been performed.

5. **BINDING EFFECT** - This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective shareholders, directors, officers, managers, members, employees, partners, assigns, sureties, personal representatives, executors, heirs, agents, successors-in-interest, debtors, and creditors. The parties to this Settlement Agreement acknowledge that they have signed this Settlement Agreement after consulting with their own respective attorneys, that they fully read and fully understand all of the provisions of this Settlement Agreement, and that they are not relying upon any representations and/or inducements of any other party (and/or any agents and/or attorneys of any other party) in entering into this Settlement Agreement.

6. **PREFATORY STATEMENTS** - The parties agree and acknowledge that the prefatory statements in this Settlement Agreement are intended to be and shall be a part of the provisions of this Settlement Agreement.

7. **OTHER DOCUMENTS** - The parties agree to enter into and to sign all other documents necessary to carry out the purposes and intent of this Settlement Agreement.

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8. **COOPERATION** - The parties agree to perform all reasonable acts, to provide all reasonable assistance, and to fully cooperate to carry out the purposes and intent of this Settlement Agreement.

9. **GOVERNING LAW** - This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. Hamilton County Circuit or Superiors Courts shall be the only appropriate venue.

10. **COUNTERPARTS** - This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **FACSIMILE/E-MAIL SIGNATURES** - Any of the parties to this Settlement Agreement may sign this Settlement Agreement and transmit a copy of the signature page with their signature thereon by facsimile transmission and/or by e-mail and the facsimile and/or e-mail copy of their signature upon said signature page shall constitute a valid and binding signature of this Settlement Agreement by said party in the same manner and to the same extent as their original signature upon this document.

12. **INTEGRATION** - This Settlement Agreement contains the full and complete agreement of the parties as to all matters covered by this Settlement Agreement, prior oral and/or written agreements notwithstanding.

SIGNED AND ENTERED INTO on the dates listed below.

CITY OF WESTFIELD, INDIANA	J & R KELICH FARMS, LLC
("City")	("Kelich")
BY: _____	BY: Jeffrey L. Kelich
ITS: Director of Economic and Community Development	ITS: _____
DATE: September 24. 2018	DATE: September 24, 2018

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