

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE WHITESTOWN REDEVELOPMENT AUTHORITY  
APPROVING AND AUTHORIZING THE EXECUTION OF A  
PERRY WORTH ROAD/FACILITIES LEASE AND A FINANCING LEASE RELATING  
TO THE ANSON SOUTH ECONOMIC DEVELOPMENT AREA #1**

WHEREAS, the Whitestown Redevelopment Authority (the "Authority") has thoroughly studied that area of the Town of Whitestown, Indiana (the "Town"), known as the Town of Whitestown, Indiana Anson South Economic Development Area #1; and

WHEREAS, the Authority desires, pursuant to Indiana Code 36-7-14.5-14 and Indiana Code 36-7-14-25.2, to lease to the Whitestown Redevelopment Commission (the "Commission") certain property described in the Lease attached hereto as Exhibit A and incorporated herein by reference (the "Financing Lease"); and

WHEREAS, certain of the property described in the Financing Lease is owned or will be owned by the Town and consists of (i) a portion of Perry Worth Road (such portion, "Perry Worth Road") and (ii) certain real estate in the Town, including any facilities located thereon (such real estate, the "Facilities Real Estate"), as more particularly described in Exhibit C of the Financing Lease; and

WHEREAS, the Authority desires to obtain a leasehold interest in Perry Worth Road and the Facilities Real Estate pursuant to the Lease Agreement attached hereto as Exhibit B and incorporated herein by reference (the "Perry Worth Road/Facilities Lease"); and

WHEREAS, there has been presented to this meeting for consideration and approval of the Authority (i) the Perry Worth Road/Facilities Lease between the Authority and the Town and (ii) the Financing Lease between the Authority and the Commission; and

WHEREAS, the Perry Worth Road/Facilities Lease is permitted and complies with the provisions of Indiana Code 36-1-11-8 and Indiana Code 36-7-14.5-8; and

WHEREAS, the Financing Lease is permitted and complies with the provisions of Indiana Code 36-7-14, as amended and Indiana Code 36-7-14.5, as amended (collectively, the "Act"), including, more particularly, Indiana Code 36-7-14-25.2 and Indiana Code 36-7-14.5-14; and

WHEREAS, the Town Council of the Town has approved the Perry Worth Road/Facilities Lease and the Financing Lease prior to their execution; and

WHEREAS, the Commission has determined, pursuant to the Act, that the lease rental provided for in the Financing Lease is fair and reasonable and has approved the execution of the Financing Lease by the Commission, following a public hearing thereon; and

WHEREAS, the Commission has also approved the Perry Worth Road/Facilities Lease; and

WHEREAS, the Authority deems it advisable to (i) approve and authorize the execution of (A) the Perry Worth Road/Facilities Lease and (B) the Financing Lease and (ii) issue bonds in order to finance (A) the construction of improvements to Perry Worth Road, including the realignment of such road, and (B) the construction of municipal utility maintenance buildings and structures on the Facilities Real Estate (collectively, the "Projects"), all to be leased to the Commission pursuant to the Financing Lease.

NOW, THEREFORE, BE IT RESOLVED by the Authority, as follows:

Section 1. The Financing Lease and the Perry Worth Road/Facilities Lease, attached hereto as Exhibit A and Exhibit B, respectively, are hereby approved, and the President and Secretary of the Authority are authorized to execute and attest said Financing Lease and Perry Worth Road/Facilities Lease.

Section 2. The President and Secretary of the Authority are hereby authorized and empowered to approve such amendments, additions, deletions and changes to the Financing Lease and Perry Worth Road/Facilities Lease as they deem necessary or advisable, and their approval shall be signified by their execution of said Financing Lease and Perry Worth Road/Facilities Lease.

Section 3. The President and Secretary shall proceed to take such actions as are necessary or desirable to permit the Authority to construct and acquire the Projects, as more particularly described in the Financing Lease.

Section 4. This resolution shall take effect immediately upon its adoption by the Authority.

ADOPTED the 1<sup>st</sup> day May of 2014.

**WHITESTOWN REDEVELOPMENT AUTHORITY**

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Member

**EXHIBIT A**

*Form of Financing Lease*

**LEASE AGREEMENT**

**Between**

**WHITESTOWN REDEVELOPMENT AUTHORITY  
as “Lessor”**

**and**

**WHITESTOWN REDEVELOPMENT COMMISSION  
as “Lessee”**

**Dated as of May \_\_, 2014**

**TABLE OF CONTENTS**

*(This Table of Contents is not a part of the Lease and is for convenience of reference only.)*

ARTICLE I. DEFINITIONS .....1

ARTICLE II. LEASE TERM AND WARRANTY.....4

    Section 2.01. Term. ....4

    Section 2.02. Title. ....4

ARTICLE III. RENTAL PAYMENTS .....4

    Section 3.01. Semiannual Rental Payments and Source of Payment. ....4

    Section 3.02. If No Substitution of Premises. ....5

    Section 3.03. Additional Rental. ....6

    Section 3.04. Place of Payments. ....7

    Section 3.05. Lessee’s Obligations. ....7

    Section 3.06. Prepayment of Annual Rent or Additional Rental. ....7

    Section 3.07. Past Due Annual Rent and Additional Rental.....8

    Section 3.08. No Abatement of Rent. ....8

ARTICLE IV. CONSTRUCTION.....8

    Section 4.01. Plan of Construction. ....8

    Section 4.02. Plans and Specifications. ....8

    Section 4.03. Completion Date. ....8

    Section 4.04. Contingency Accounting. ....9

    Section 4.05. Performance Bond. ....9

    Section 4.06. Remedies Against Contractors, Subcontractors and Sureties. ....9

ARTICLE V. MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE .....10

    Section 5.01. Maintenance and Modifications of Leased Premises by the Lessee.....10

Section 5.02. Removal of Portions of the Premises.....	10
Section 5.03. Removal of Lessee’s Own Personal Property.....	10
Section 5.04. Taxes, Other Governmental Charges and Utility Charges.....	10
Section 5.05. Property Insurance. ....	11
Section 5.06. Rental Interruption Insurance. ....	11
Section 5.07. Additional Provisions Respecting Insurance. ....	11
Section 5.08. Public Liability Insurance. ....	12
Section 5.09. Workers’ Compensation Coverage. ....	12
ARTICLE VI. DAMAGE, DESTRUCTION AND CONDEMNATION.....	13
Section 6.01. Damage and Destruction.....	13
Section 6.02. Eminent Domain. ....	13
Section 6.03. Condemnation of Property.....	14
Section 6.04. Rent Abatement. ....	14
ARTICLE VII. MECHANICS’ AND OTHER LIENS.....	14
ARTICLE VIII. REPRESENTATIONS AND SPECIAL COVENANTS AND CONDITIONS	15
Section 8.01. Representations and Covenants of the Lessee. ....	15
Section 8.02. Representations and Covenants of the Lessor. ....	15
Section 8.03. Maintenance of Lessor. ....	15
Section 8.04. Leasehold Interest of Leased Real Property. ....	16
Section 8.05. No Warranty of Condition or Suitability. ....	16
Section 8.06. Quiet Enjoyment. ....	16
Section 8.07. Right of Access. ....	16
Section 8.08. Indemnification. ....	16
Section 8.09. Termination.....	17

Section 8.10. Covenant to Restrict Use of Funds. ....	17
Section 8.11. Supplemental Lease. ....	18
Section 8.12. Continuing Disclosure. ....	18
ARTICLE IX. RELEASE OF PORTIONS OF REAL ESTATE.....	18
Section 9.01. Release of Real Estate.....	18
Section 9.02. No Abatement or Diminution of Rent. ....	19
ARTICLE X. ASSIGNMENT AND SUBLEASING .....	20
Section 10.01. Assignment and Subleasing by Lessee. ....	20
Section 10.02. Assignment and Mortgaging by Lessor. ....	20
ARTICLE XI. LESSEE’S OPTIONS.....	20
Section 11.01. Option to Renew. ....	20
Section 11.02. Option to Purchase Premises. ....	20
Section 11.03. Conveyance on Exercise of Option to Purchase.....	20
Section 11.04. Transfer to Lessee.....	21
Section 11.05. Duty of Lessee. ....	21
Section 11.06. Duty of Lessor.....	21
ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES.....	21
Section 12.01. Events of Default. ....	21
Section 12.02. Remedies on Default.....	22
Section 12.03. No Remedy Exclusive.....	22
Section 12.04. Agreement to Pay Attorneys’ Fees and Expenses. ....	23
Section 12.05. No Additional Waiver Implied by One Waiver.....	23
Section 12.06. Waiver of Valuation and Appraisalment Laws.....	23
Section 12.07. Notice of Default.....	23

Section 12.08. Reinstatement.....	23
ARTICLE XIII. MISCELLANEOUS .....	23
Section 13.01. Surrender of Premises.....	23
Section 13.02. Notices.....	24
Section 13.03. Net Lease.....	24
Section 13.04. Binding Effect.....	24
Section 13.05. Execution Counterparts.....	24
Section 13.06. Severability.....	24
Section 13.07. Captions.....	24
Exhibit A – Schedule of Lease Payments	
Exhibit B – Completion Certificate	
Exhibit C – Legal Description	

## LEASE AGREEMENT

As of May \_\_, 2014, the undersigned Whitestown Redevelopment Authority (the “Lessor”), a separate body corporate and politic organized and existing under Indiana Code 36-7-14.5, as amended, as an instrumentality of the Town of Whitestown, Indiana (the “Town”), and the Whitestown Redevelopment Commission (the “Lessee”), the governing body of the department of redevelopment of the Town, organized and existing under Indiana Code 36-7-14, as amended, hereby agree as follows:

### ARTICLE I. DEFINITIONS

In addition to the words and terms elsewhere defined in this Lease or the Indenture, which apply to any such capitalized term used in this Lease, the following words and terms as used in this Lease shall have the following meanings unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined.

“Act” means Indiana Code 36-7-14 and 36-7-14.5, as amended.

“Additional Rental” means amounts specified in Section 3.02 hereof.

“Annual Rent” means the amounts payable in semiannual installments set forth in Exhibit A attached hereto, or such lesser amounts as shall be specified in an addendum to this Lease as described in Section 3.01.

“Area” means the Town of Whitestown, Indiana Anson South Economic Development Area #1 established by the Lessee as an economic development area in accordance with the Act and as more particularly described in the Declaratory Resolution adopted by the Lessee on February 17, 2014.

“Authorized Officer” means any officer of the Lessor or the Lessee.

“Bond” or “Bonds” means the Initial Bonds and any Additional Bonds issued pursuant to the Indenture.

“COIT Funds” means the county option income tax revenues received by the Town pursuant to Indiana Code 6-3.5-6 and pledged by the Town to the Lessee pursuant to its Ordinance No. 2014-08, adopted by the Town Council of the Town on April 8, 2014.

“Completion Certificate” means the certificate substantially in the form of Exhibit B attached hereto and to be delivered by the Lessor to the Lessee and the Trustee on the date on which the Facilities are substantially completed and ready for use and occupancy pursuant to Section 4.03 hereof.

“Completion Date” means the date on which the Facilities are substantially completed and ready for use and occupancy as evidenced by the Completion Certificate.

“Expiration Date” means the earlier of the date no Bonds remain Outstanding under the Indenture or the date the Lease is prepaid in full and the Premises are purchased as provided herein.

“Facilities” means the Perry Worth Road and the Municipal Facilities, in, serving or benefitting the Area, in accordance with the Plans and Specifications, together with any other renovations, improvements or additions thereto or in connection therewith, and any fixtures or equipment located therein related to the operation by the Lessee.

“First Payment Date” means the later of June 30, 2015 or the Completion Date.

“Indenture” means the Trust Indenture dated as of \_\_\_\_\_ 1, 2014 between the Lessor and the Trustee.

“Lease Term” means the period of time between the First Payment Date and the Expiration Date.

“Municipal Facilities” means the municipal utility maintenance facilities to be constructed and/or acquired on the Real Estate which has been leased by the Town to the Lessor pursuant to the Perry Worth Road/Facilities Lease.

“Notice Address” means:

As to the Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indianapolis, Indiana 46204  
Attention: Corporate Trust Dept.

As to the Lessor:

Whitestown Redevelopment Authority  
6320 Cozy Lane  
Whitestown, IN 46075  
Attention: President, Board of Directors

As to the Lessee:                   Whitestown Redevelopment Commission  
6320 Cozy Lane  
Whitestown, IN 46075  
Attention: President, Redevelopment Commission

or such other address as the Lessee, the Lessor or the Trustee may specify in writing to such other two parties.

“Perry Worth Road” means the portion of Perry Worth Road in the Town located on the Real Estate which has been leased by the Town to the Lessor pursuant to the Perry Worth Road Lease.

“Perry Worth Road/Facilities Lease” means the Lease Agreement, dated as of May \_\_, 2014, between the Lessor and the Town, pursuant to which the Town has granted a leasehold interest in the Real Estate, including Perry Worth Road, to the Lessor for a term no less than the term of this Lease.

“Plans and Specifications” means the plans and specifications prepared for the Projects, together with such modifications as may be approved by the parties from time to time which do not alter the character of the Facilities.

“Premises” means the Real Estate, the Facilities and all equipment furnished by the Lessor to the Lessee in connection therewith.

“Projects” means the construction, improvement, renovation, equipping and/or acquisition by the Lessor of all or any portion of Perry Worth Road and the Utility Maintenance Facilities and any related improvements in connection therewith.

“Purchase Price” means the amount specified in Section 11.02 hereof.

“Real Estate” means the real estate described in **Exhibit C** attached hereto.

“Rental Payment Date” means June 30 and December 31 of each year, commencing with the First Payment Date, during which this Lease is in effect.

“State” means the State of Indiana.

“Tax Increment” means the captured incremental *ad valorem* property tax revenue levied and collected in the allocation area created by the Lessee within the Area pursuant to Indiana Code 36-7-14-39.

“Transportation Revenues” means the motor vehicle highway funds and local road and street funds received by the Town pursuant to Indiana Code 8-14-1-3 and 8-14-2-4, as amended, respectively, and pledged by the Town to the Lessee pursuant to its Ordinance No. 2014-08, adopted by the Town Council of the Town on April 8, 2014.

“Trustee” means \_\_\_\_\_, or such other bank or trust company as may from time to time be named successor trustee under the terms of the Indenture.

**ARTICLE II.  
LEASE TERM AND WARRANTY**

**Section 2.01. Term.** The Lessor does hereby lease and demise to Lessee the Premises to have and to hold for the Lease Term.

**Section 2.02. Title.** The Lessor represents and warrants that it is possessed of, or will acquire, a leasehold interest in the Real Estate subject only to taxes and assessments not yet due and payable and to other encumbrances which will not adversely affect the Lessee’s use of the Premises and that it will defend the leasehold interest against all claims not suffered or caused by the acts or omissions of the Lessee or its assigns or successors in interest.

**ARTICLE III.  
RENTAL PAYMENTS**

**Section 3.01. Semiannual Rental Payments and Source of Payment.** (A) The Lessee’s first semiannual rental payment shall be due on the First Payment Date. Commencing on such date, the Lessee shall pay Annual Rent in the amounts and on the dates set forth in **Exhibit A** attached hereto. Each such semiannual rental payment shall be payable in advance. If the annual debt service costs to the Lessor on the Bonds are less than the amounts shown in **Exhibit A** attached hereto, the semiannual rental payments for each such Rental Payment Date shall be reduced to amounts equal to the amounts set forth in the addendum hereto, as provided below. The parties to this Lease agree to execute an addendum to the Lease setting forth the amounts of reduced Annual Rental as soon as possible after the sale of the Initial Bonds.

(B) Annual Rental payments may be reduced by an amount equal to the amount on deposit in the Revenue Account created by the Indenture which is available to pay the principal of, premium, if any, and interest on the Bonds on the next Interest Payment Date. Annual Rent payments may be increased to an amount required by any supplement to the Lease entered into pursuant to Section 8.11 hereof, or, in the event Additional Bonds are issued by the Lessor, the semiannual rental payments for each Rental Payment Date shall be sufficient to pay the principal of and interest on all Outstanding Bonds.

(C) The Annual Rental payments and any Additional Rental payments due under this Lease shall be payable by Lessee from (i) Tax Increment, (ii) Transportation Revenues and (iii) COIT Funds.

(D) The Lessee reserves the right to issue bonds, enter into leases, or enter into additional pledges payable from Tax Increment, in whole or in part, on a parity with the pledge thereof to the payment of Annual Rentals hereunder for the purposes of raising money for future capital projects in, serving or benefitting the Area (collectively, the "Future Parity Obligations"). The authorization and issuance of such Future Parity Obligations shall be subject to the following conditions precedent:

- 1) All payments due under the Bonds and any other obligations payable from the Tax Increment shall be current to date in accordance with the terms thereof, with no payment in arrears;
- 2) The Commission shall have received a certificate prepared by an independent certified public accountant or an independent financial consultant (the "Certifier") certifying that the Tax Increment estimated to be received in each succeeding year during the term of the proposed Future Parity Obligations, adjusted as provided below, is estimated to be equal to at least 125% (or such higher percentage as is determined by certification of the President of the Commission at the time of the sale of such Future Parity Obligations upon advice of the Commission's financial advisor) of the combined principal and interest requirements on the outstanding Bonds, all then outstanding Future Parity Obligations and any proposed Future Parity Obligations. In estimating the Tax Increment to be received in any future year, the Certifier shall base the calculation on assessed valuation actually assessed or to be assessed as of the assessment date immediately preceding the issuance of the Future Parity Obligations, adjusted for current and future reductions of property tax abatements granted to taxpayers in the Area without regard to any assumed increases in property values or property tax rates; provided, however, the Certifier may include in the calculation (i) of Tax Increment to be received in the Area, Tax Increment based on the addition of new assessed value estimated to be derived from the real property under construction in the Area as of the date of issuance of the Future Parity Obligations, even though not yet assessed, to the extent that the Certifier believes the amount to be reasonable and (ii) other funds irrevocably pledged to the Bonds (including Transportation Revenues and COIT Revenues) and all then outstanding Future Parity Obligations; and
- 3) Principal of and interest on any proposed Future Parity Obligations and lease rentals on Future Parity Obligations that are leases shall be payable semiannually on \_\_\_\_\_ and \_\_\_\_\_.

**Section 3.02. If No Substitution of Premises.** If the Completion Date is after June 30, 2015, the Lessee shall not be required to make a full payment of rent with respect to the Real Estate until the Completion Date. In such an event, on the Completion Date, the Lessee shall pay in advance an installment of rent with respect to the Real Estate in an amount at least equal to the product of (a) the amount of the semiannual rental payment due on the then next Rental Payment

Date with respect to the Real Estate and (b) the quotient resulting from the number of days during the period from the Completion Date to the then next Rental Payment Date divided by the number of days during the period from the Rental Payment Date immediately prior to the Completion Date to the then next Rental Payment Date. If the Completion Date is after the First Payment Date, but a portion of the Facilities are substantially completed and available for occupancy, the Lessee may take occupancy of that portion and pay rent therefor in advance in an amount at least equal to the product of (a) the amount of the semiannual rental payment due on the then next Rental Payment Date with respect to the Real Estate, (b) the quotient resulting from the number of days during the period from the date of occupancy with respect to such space within the Facilities to the then next Rental Payment Date divided by the number of days during the period from the Rental Payment Date immediately prior to such occupancy date to the then next Rental Payment Date, and (c) the quotient resulting from the square feet of the area of the Facilities so occupied by the Lessee divided by the square feet of the area of the Facilities upon its completion.

**Section 3.03. Additional Rental.** (A) The Lessee agrees to make the following payments as Additional Rental to the Lessor:

(1) Reimbursement for any and all costs, expenses and liabilities paid by the Lessor in satisfaction of any obligation of the Lessee hereunder not performed in accordance with the terms hereof by the Lessee.

(2) Reimbursement for or prepayment of expenses paid or to be paid by the Lessor and requested by the Lessee or required by this Lease and not otherwise required to be paid by the Lessee under this Lease.

(3) Any payments required to be made by the Lessor pursuant to the terms of the Indenture which may be required to maintain the exclusion from gross income of interest paid on the Bonds.

(4) All taxes and assessments levied against or because of the lease of the Premises.

(5) All insurance premiums for the insurance required by Article V hereof.

(6) The cost and expense of all maintenance required by Article V hereof.

(7) Any other expense of the Lessor associated with this Lease and which, if paid by the Lessor, would result in a reduction of the amount of Annual Rent available to pay principal of and interest on the Bonds as scheduled.

(8) Reimbursement for the Lessor's annual operating expenses not to exceed \$1,000 per annum.

(9) Any cost associated with compliance with Securities and Exchange Commission rules regarding continuing disclosure.

(10) Reimbursement of all Trustee and Registrar and Paying Agent fees and expenses incurred by the Lessor under the terms and provisions of the Indenture.

(B) Amounts required under Section 3.03(A)(3) through and including (9) may be paid directly to the appropriate creditor or as an Additional Rental payment.

**Section 3.04. Place of Payments.** The Annual Rent and any Additional Rental shall be paid directly to the Trustee at its Notice Address or to any bank or other financial institution designated by the Trustee in a notice to the Lessee.

**Section 3.05. Lessee's Obligations.** The obligations of the Lessee to pay Annual Rent and Additional Rental and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional without any right of set-off, except as provided in Section 3.07 hereof. For the period of the Lease Term, the Lessee: (i) will not suspend or discontinue payment of Annual Rent or Additional Rental pursuant to this Lease, except as provided in Section 3.07 hereof; (ii) will perform and observe all of its other agreements contained in this Lease; and (iii) except for the exercise of its termination option as herein provided, will not terminate this Lease for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Premises, frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by or under authority of the United States of America or of the State or any failure of Lessor to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation, exclusive of the completion of the Premises, arising out of or in connection with this Lease. Nothing contained in this Section shall be construed to release the Lessor from the performance of any of the agreements on its part contained in this Lease, and in the event the Lessor should fail to perform any such agreement on its part, the Lessee may institute such action against the Lessor as the Lessee may deem necessary to compel performance or recover its damages for nonperformance so long as such action shall not impair the agreement on the part of the Lessee contained in the preceding sentence. The Lessee may, at its own cost and expense and in its own name or, to the extent lawful, in the name of the Lessor, prosecute or defend any action or proceeding or take any other action involving third persons which the Lessee deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the Lessor hereby agrees to cooperate fully with the Lessee, but at the Lessee's expense, and to take all action necessary to effect the substitution of the Lessee for the Lessor in any such action or proceeding if the Lessee shall so request.

**Section 3.06. Prepayment of Annual Rent or Additional Rental.** There is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted, at any time on and after the date 65 days preceding the first optional redemption date of the Initial Bonds, to prepay all or any part of the Annual Rent, or any Additional Rental, and the Lessor agrees to accept such

prepayment. Any Annual Rent or any Additional Rental so prepaid shall be credited to the Annual Rent or Additional Rental, as the case may be, in the order in which they are payable.

**Section 3.07. Past Due Annual Rent and Additional Rental.** In the event the Lessee should fail to make any Annual Rent payment or to pay any Additional Rental required hereby, the amount in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid together with interest at an annual rate equal to that paid by the Lessor on its borrowings plus two percent (2%).

**Section 3.08. No Abatement of Rent.** (A) In the event the Facilities are partially or totally destroyed by fire or any other casualty rendering them unfit, in whole or in part, for use and occupancy by the Lessee, the Lessor shall be obligated to restore and rebuild the Facilities and any damaged equipment which is a part of the Premises as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessor excepted. The Lessor shall not, however, be obligated to expend on that restoration or rebuilding more than the amount of the proceeds received by the Lessor from the insurance required in Section 5.05 of this Lease. Any such rebuilding or restoration shall be done in accordance with the direction of the Lessee and the plans and specifications approved by the Lessee.

(B) There shall be no abatement of Annual Rent unless there is in force on the date of partial or total destruction of the Facilities insurance of the Premises and rental interruption insurance in accordance with Section 5.06 of this Lease. If such insurance is in force, the Annual Rent for the Premises shall be abated for the period during which Annual Rent is being paid in full to the Lessor by the insurer.

#### **ARTICLE IV. CONSTRUCTION**

**Section 4.01. Plan of Construction.** The Lessor agrees to cause the Facilities to be constructed, acquired, renovated, improved and equipped as promptly as is feasible in accordance with the Plans and Specifications and in such manner as to conform with all applicable zoning, planning, building, environmental and other regulations of governmental authorities having jurisdiction.

**Section 4.02. Plans and Specifications.** The Plans and Specifications have been submitted to and approved by the Lessee and are on the date hereof on file with the Lessor and the Lessee and may be changed from time to time at the direction of the Lessee, provided that the Plans and Specifications shall not be changed to such an extent that the Premises cannot be used as municipal facilities.

**Section 4.03. Completion Date.** Substantial completion of the acquisition, construction, renovation, improvement and equipping of the Premises shall be evidenced by the Completion Certificate signed by an Authorized Officer of the Lessor and delivered to the Lessee and the Trustee specifically describing any personal property included in the Premises and stating that

the acquisition, construction, renovation, improvement and equipping of the Project have been substantially completed in accordance with the Plans and Specifications and all costs of the Project then due and payable have been paid or provided for. Notwithstanding the foregoing, the Completion Certificate shall state that it is given without prejudice to any rights against third parties which then exist or may subsequently come into being.

**Section 4.04. Contingency Accounting.** The Lessor covenants that it will keep and maintain or cause to be kept and maintained a strict accounting of all charges incurred in purchasing the Real Estate and acquiring, constructing, renovating, improving and equipping the Facilities. As soon as practical after all payments relating to the Premises have been made, a copy of said accounting shall be furnished to the Lessee.

**Section 4.05. Performance Bond.** The Lessor shall furnish to the Lessee, concurrently with the execution of the respective contracts made in connection with the acquisition, construction, renovation, improvement and equipping of the Premises, written evidence that it has obtained performance, payment and maintenance bonds of each contractor for each contract made by the Lessor in connection with acquisition, construction, renovating, improving and equipping the Premises in an amount equal to not less than one hundred (100%) percent of the face amount of each respective contract.

**Section 4.06. Remedies Against Contractors, Subcontractors and Sureties.** In the event of default of any contractor or subcontractor under any contract made by it in connection with the acquisition, construction, renovating, improving and equipping of the Premises, or in the event of a breach of warranty with respect to any materials, workmanship or performance guaranty in connection with the Premises, the Lessor will promptly inform the Lessee of the steps it intends to take in connection with any such default, either separately or in conjunction with others, against the contractor or subcontractor so in default and against each such surety for the performance of such contract. If the Lessor shall so inform the Lessee, the Lessor may, in its own name or, to the extent lawful, in the name of the Lessee, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor or surety that the Lessor deems reasonably necessary, and in such event the Lessor hereby agrees to cooperate fully with Lessee and to take all action necessary to effect the substitution of the Lessor for the Lessee in any such action or proceeding.

**ARTICLE V.  
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

**Section 5.01. Maintenance and Modifications of Leased Premises by the Lessee.**

The Lessee during the Lease Term shall keep and maintain the Premises and any personal property therein or thereon in good repair and good operating condition at its own cost, and upon the expiration or termination of this Lease shall, unless it shall have purchased or become the owner of the Premises pursuant to the terms hereof, surrender the Premises to the Lessor in as good condition as prevailed at the time the Lessee was put in full possession thereof, loss by fire or other casualty covered by insurance, ordinary wear and tear, obsolescence and acts of God excepted. Notwithstanding the preceding sentence, the Lessee shall have the privilege of remodeling the Premises or making additions, modifications and improvements thereto, from time to time as it, in its discretion, may deem to be desirable for its uses and purposes, the cost of which remodeling, additions, modifications and improvements shall be paid by the Lessee and the same shall be the property of the Lessor and be included under the terms of this Lease as part of the Premises.

**Section 5.02. Removal of Portions of the Premises.** The Lessor shall not be under any obligation to renew, repair or replace any inadequate, obsolete, valueless, unsuitable, undesirable or unnecessary portions of the Premises. The Lessee shall have the privilege from time to time of substituting personal property or fixtures located in or on the Premises. Personal property or fixtures so substituted shall not impair the character or significance of the Premises. Any such substituted personal property or fixtures shall become the property of Lessor and shall be included under the terms of this Lease. The Lessee shall also have the privilege of removing any portions of the Premises, without substitution therefor; provided, that the Lessee pays to the Lessor a sum equal to the then fair market value of the removed portions of the Premises.

**Section 5.03. Removal of Lessee's Own Personal Property.** The Lessee may, at any time while it is not in default under this Lease, remove from the Premises any personal property purchased and installed by it and not included as part of the Premises. In the event any removal of property pursuant to this Section causes damage to any portion of the Premises, the Lessee shall restore the same or repair such damage at its sole expense.

**Section 5.04. Taxes, Other Governmental Charges and Utility Charges.** (A) The Lessee shall pay, as the same become due, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or on account of or with respect to the Premises or any personal property or fixtures installed or brought by the Lessee therein or thereon and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Premises. Taxes, special assessments or other governmental charges that may lawfully be paid in installments over a period of years may be paid by the Lessee in such installments as are required to be paid during the Lease Term.

(B) The Lessee may, at its expense and in its own name and behalf or, to the extent lawful, in the name and behalf of the Lessor, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee that in the opinion of counsel to the Lessor: (i) the nonpayment of any such items will cause the interests of the Lessor or the Lessee in the Premises to be materially endangered; or (ii) the Premises or part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly by the Lessee. The Lessor will cooperate fully with the Lessee, at the Lessee's expense, in any such contest. The Lessor will also cooperate fully with the Lessee, at the Lessee's expense, in attempting to exempt the Premises from taxation.

**Section 5.05. Property Insurance.** (A) The Lessee shall insure the Premises against physical damage, however caused, to the Premises, including, but not limited to, the Facilities and all equipment therein, with exceptions ordinarily required by insurers of buildings or facilities of a similar type, in an amount equal to 100% of the replacement cost thereof. The replacement cost shall be determined on the effective date of that insurance and on or before January 31 of each year thereafter by a registered architect or engineer or a recognized independent insurance consultant registered, if required, under State law, and in each case approved by the Trustee. The Trustee shall be provided an agreed value endorsement each year based on this determination. Such appraisal may be made on a recognized index of conversion factors. This insurance shall be written in an "all risk" form.

(B) To the extent not covered in Section 5.05(A) above, the Lessee shall insure against boiler explosion, vandalism, sprinkler leakage and malicious mischief insurance in an amount equal to 100% of the replacement cost of the Premises as determined above, with the optional liability for bodily injury coverage and a consequential damages endorsement, if available, to the extent these risks are not covered by the insurance required herein.

**Section 5.06. Rental Interruption Insurance.** From the First Payment Date until the Expiration Date, the Lessee shall obtain and keep in force with reference to the Premises a rental interruption insurance policy with coverage in an amount equal to twice the Annual Rent, plus the estimated expense of operating the Premises for two years. The policy or policies shall be issued by reputable insurance companies, to the extent such policies are from time to time reasonably available. The Lessee may insure such property under a blanket insurance policy or policies which cover not only such property but other properties.

**Section 5.07. Additional Provisions Respecting Insurance.** (A) Any insurance policy issued pursuant to Article V hereof shall be so written or endorsed, and any plan in substitution thereof shall be so written, as to make losses, if any, payable directly to the Trustee or to such other person or persons as the Trustee may designate. Each insurance policy provided for in Article V hereof shall, to the extent such provisions are obtainable, contain a provision to the effect that the insurance company shall not cancel or substantially modify the same without first giving written notice thereof to the Lessor, the Lessee and the Trustee at least sixty (60)

days in advance of such cancellation or substantial modification. The policies of insurance may provide for such a deductible amount as is then customary and acceptable to the Lessor and the Lessee. The Lessee shall deliver to the Trustee and the Lessor evidence of the insurance procured under said Article by the Lessee and agrees to keep such evidence up to date. Such insurance policies shall be countersigned by an agent of the insurer who is a resident of the State, and such policies, together with a Certificate of the Insurance Commissioner certifying that the persons countersigning such policies are duly qualified in the State as resident agents of the insurers on whose behalf they have signed (or a certificate of insurance and proof of payment of premium satisfactory to the Lessor), shall be deposited with the Lessor and the Trustee.

(B) In the event that insurance policies such as those described in this Article are not, in the judgment of the Lessee, reasonably available, then the Lessee shall provide either: (i) such insurance with such limits or amounts or other provisions as are then reasonably obtainable and customary for the Facilities; or (ii) a plan, in compliance with the law of the State and reasonably satisfactory to the Lessor, which provides protection similar to the protection required herein against the inability of the Lessee to meet its liabilities hereunder. In the case of either clause (i) or (ii) of the preceding sentence, the limits, amounts and other provisions of such insurance or plan shall be such as are recommended by a recognized qualified independent insurance consultant satisfactory to the Trustee, the Lessor and the Lessee and who shall annually, or for such longer interval specified by the Trustee, review such policy or plan and advise the Lessor and the Trustee of changes required therein in order to adequately protect the financial position of the Lessor, and the Lessor shall be entitled to rely upon such advice to make its determination as to what is customary and reasonably obtainable or most nearly provides protection similar to that herein required.

**Section 5.08. Public Liability Insurance.** The Lessee agrees that it will carry public liability insurance with reference to the Premises with one or more reputable insurance companies in an amount not less than \$1,000,000 combined single limit of liability protection for death, bodily injury or property damage resulting from each occurrence. The policy may provide for such deductible amount as is then customary. The Trustee and the Lessor and such other person or persons as the Lessor may designate shall be made an additional insured under such policies, as their interests may appear. The insurance provided by this Section may be by blanket insurance policy or policies. The proceeds of insurance required by this Section (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid.

**Section 5.09. Workers' Compensation Coverage.** During the period from the commencement of the renovation and improvement of the Premises until delivery of the Completion Certificate by the Lessor to the Lessee and the Trustee pursuant to Section 4.03 hereof, and thereafter throughout the Lease Term, the Lessee shall cause each person or entity contracting in connection with the acquisition, construction, renovation, improving or equipping of the Premises to maintain and the Lessee shall maintain the workers' compensation coverage required by the applicable laws of the State or cause the same to be maintained.

**ARTICLE VI.  
DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 6.01. Damage and Destruction.** If the Premises shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty at any time during the Lease Term: (i) the portion of the Premises damaged or destroyed shall be promptly repaired, replaced, rebuilt or restored with such changes, alterations and modifications (including the substitution and addition of other property) as may be designated by the Lessee and as shall not impair the character of the Premises; and (ii) there shall be applied for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the Lessee necessary therefor. In the event that such net proceeds of insurance are insufficient to pay in full the costs of such repair, replacement, rebuilding or restoration, the Lessee will complete such repair, replacement, rebuilding or restoration and will provide for payment of the costs of such completion from its own moneys. Any balance of such net proceeds remaining in the insurance loss account after the payment of all costs of such repair, rebuilding or restoration shall be paid to the Lessee, upon delivery to Lessor of a Certificate signed by the Authorized Officer of the Lessee certifying that such repair, rebuilding or restoration have been paid in full and directing the transfer of the remaining moneys to the Lessee.

**Section 6.02. Eminent Domain.** (A) If title to or the temporary use of the Premises, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by the Trustee. Such proceeds shall be applied in one or more of the following ways:

(1) The restoration of the Premises to substantially the same condition as it existed prior to the exercise of said power of eminent domain; or

(2) The acquisition, by construction or otherwise, of other improvements suitable for the Lessee's operation of the Premises (which improvements shall be deemed a part of the Premises and available for use and occupancy by the Lessee without the payment of any Annual Rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby.)

(B) Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct the Lessor in writing as to which of the ways specified in this Section the Lessee elects to have the net proceeds of the condemnation award applied. Any balance of the award in such eminent domain proceedings not required to be applied for the purposes specified in Section 6.02(A) or (B) of this Lease shall become the property of the Lessee. In the event that the net proceeds are insufficient for the

purposes specified in Section 6.02(A) or (B) of this Lease, the Lessee shall make up the deficiency.

(C) The Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof and will, to the extent it may lawfully do so, permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor. In no event will the Lessor voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee covenants that it will not exercise its power of eminent domain with respect to the Premises during the Lease Term.

**Section 6.03. Condemnation of Property.** The Lessee shall be entitled to the proceeds of any condemnation award or portion thereof made for damages to or takings of property owned by it alone.

**Section 6.04. Rent Abatement.** In the event that the Premises or a portion thereof are damaged or destroyed or are taken under the exercise of the power of eminent domain, and the Premises is covered by rental interruption insurance, the Annual Rent payable by the Lessee shall: (i) be totally abated during that portion of the Lease Term that the Premises is totally unfit for use or occupancy; and (ii) partially abated during that portion of the Lease Term that the Premises is partially unfit for occupancy in the same proportion that the area of the Premises so unfit for use and occupancy bears to the total area of the Premises, provided, however, that the Lessee, to the extent it may lawfully do so, shall pay an amount equal to the difference between the Annual Rent payable in such years and the proceeds received by the Lessor from the rental interruption insurance required to be maintained by the Lessee pursuant to Section 5.06 hereof.

## **ARTICLE VII. MECHANICS' AND OTHER LIENS**

The Lessee and the Lessor shall not suffer or permit any mechanics' or other liens to be filed or exist against the Premises, nor against the Lessee's leasehold interest in the Premises, nor against any special fund or account provided for in this Lease or any Annual Rent paid or payable hereunder, by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Premises or to the Lessor or the Lessee or anyone holding the Premises or any part thereof through or under the Lessee. If any such liens shall at any time be filed, the Lessor or the Lessee, as appropriate, shall, within one hundred twenty (120) days after notice of the filing thereof but subject to the right to contest hereinafter set forth, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. The Lessee shall have the right in its own, or to the extent lawful, the Lessor's name, or both, but at the Lessee's own cost and expense, to contest the validity or the amount of any such lien by appropriate proceedings timely instituted. The Lessor will cooperate fully with the Lessee, but at the Lessee's expense, in any such contest (except if

any such lien is asserted by the Lessor, in which event the Lessee shall have the right to contest such lien as if it were the owner of the Premises). If the Lessee shall fail to cause such lien to be discharged, or to contest the validity or amount thereof, within the period aforesaid, then, in addition to any other right or remedy of the Lessor, the Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount paid by the Lessor shall be reimbursed by the Lessee on demand, and if not so reimbursed on demand may be treated as Additional Rental as provided in Section 3.02 hereof and shall be paid by the Lessee with interest on the amount so paid by the Lessor at a rate equal to that paid by the Lessor on its borrowings plus two percent (2%).

**ARTICLE VIII.  
REPRESENTATIONS AND  
SPECIAL COVENANTS AND CONDITIONS**

**Section 8.01. Representations and Covenants of the Lessee.** The Lessee warrants and represents that it is, and during the Lease Term will be, a duly organized and existing redevelopment commission under the laws of the State, including particularly the Act, that it is not in default under any of the provisions contained in the laws of the State which would in any manner impair its ability to carry out its obligations hereunder, that it has the power to enter into the transactions contemplated by this Lease, that it has been duly authorized to execute this Lease and that it will do all things required of it in order to maintain its existence. The Lessee will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code.

**Section 8.02. Representations and Covenants of the Lessor.** The Lessor warrants and represents as follows:

(1) It is a duly organized redevelopment authority under the laws of the State, including particularly the Act, a separate body corporate and politic, as an instrumentality of the Town, and will remain as such so long as it is the Lessor under this Lease.

(2) The acquisition, construction, renovation, improvement and equipping in accordance with the Plans and Specifications will be accomplished in such manner as to conform with all applicable zoning, planning, building, environmental and other regulations of all governmental authorities having jurisdiction of the Premises.

**Section 8.03. Maintenance of Lessor.** Lessor agrees that from the date of delivery of this Lease until the Lease is terminated as provided herein, there will always be a redevelopment authority of the Town acting as the Lessor under this Lease.

**Section 8.04. Leasehold Interest of Leased Real Property.** The Lessor has caused to be furnished to the Lessee written evidence as to the Lessor's leasehold interest in the Real Estate as of the date of acquisition of such leasehold interest in the Real Estate by the Lessor. The Lessee and the Lessor agree that such leaseholder interest is satisfactory and that all defects in and liens and encumbrances on such leasehold interest do not impair the Lessee's use of or the value of the Premises. Lessee hereby acknowledges that Lessor's interest in the Real Estate is that of a leasehold interest pursuant to the Sidewalk Lease and such leaseholds as are granted to the Lessor in connection with the Façade improvements.

**Section 8.05. No Warranty of Condition or Suitability.** The Lessor does not make any warranty, either express or implied, as to the suitability or utilization of the Premises for the purpose of municipal facilities or as to the condition of the Premises or that they are or will be suitable for the Lessee's purposes or needs. The Lessee agrees that the Premises as contemplated by the Plans and Specifications are useful to it.

**Section 8.06. Quiet Enjoyment.** The Lessor covenants that it will not take any action to prevent the Lessee, after timely paying the Annual Rent and Additional Rental and performing the covenants and agreements herein on the Lessee's part to be performed, from peaceably and quietly holding and enjoying the Premises for the Lease Term and any extension thereof and that the Lessor will, at the Lessee's request and expense, defend the Lessee's enjoyment and possession of the Premises against all parties or permit the Lessee in its own or, to the extent lawful, in the Lessor's name, to defend such enjoyment and possession.

**Section 8.07. Right of Access.** The Lessee agrees that, subject to reasonable security and safety regulations and to reasonable requirements as to notice, the Lessor and its duly authorized agents shall have the right at all reasonable times to enter upon the Premises and to examine and inspect the same and to have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Lessee pertaining to the Project. The Lessee further agrees that the Lessor and its duly authorized agents shall have such rights of access to the Premises as may be reasonably necessary to cause the acquisition, construction, renovation, improving and equipping provided for herein to be completed, and thereafter for the proper maintenance of the Premises in the event of failure by the Lessee to perform its obligations.

**Section 8.08. Indemnification.** (A) The Lessee releases the Lessor from, agrees that the Lessor shall not be liable for, and agrees to hold the Lessor harmless against, any loss or damage to property, or any injury to or death of any person, that may be occasioned by any cause whatsoever pertaining to the Premises or the use thereof; provided, that the indemnity in this sentence shall be effective only to the extent of any loss that may be sustained by the Lessor in excess of the net proceeds received by the Lessor from any insurance carried with respect to the loss sustained. The Lessee further agrees to indemnify and save harmless the Lessor against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the Lessee in the performance of any covenant or agreement on the part of the Lessee to be performed pursuant to the terms of this Lease, or arising from any act or negligence of or failure to act by the Lessee, or any of its agents, contractors, servants, employees or licensees, or

arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Lease Term, in or about the Premises, and from and against all costs, liability and expenses incurred in or in connection with any such claim or action or proceeding brought thereon; and in case any action or proceeding shall be brought against the Lessor by reason of any such claim, the Lessee upon notice from the Lessor covenants to resist or defend such action or proceedings at the Lessee's expense.

(B) The Lessee further agrees to protect, defend, indemnify and save harmless the Lessor or its agents or assigns from and against all liabilities, obligations, claims, damages, penalties, lawsuits or administrative actions, response and clean-up costs, and other costs and expenses (including without limitation, attorneys' fees, consulting fees, costs of investigation and costs of remediation), imposed upon or incurred by or asserted against the Lessor by reason of or in connection with: (a) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threatened release of any hazardous materials, hazardous substances, hazardous waste, infectious waste, hazardous or toxic chemicals, solid waste, or petroleum and other materials regulated for the protection of health or the environment, including all by-products of the Lessee's operations on, from or affecting the Premises or any other property (real or personal) related thereto; and (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials, hazardous substances, hazardous waste, infectious waste, hazardous or toxic chemicals, solid waste or petroleum, arising out of the Lessee's use of the premises during the duration of the Lease.

(C) All of the releases and indemnifications provided for in this Section 8.08 are given to the extent permitted by law.

**Section 8.09. Termination.** This Lease may be terminated by the Lessor by giving written notice to the Lessee: (i) at any time after forty-five (45) days from the date of this Lease and prior to the first Rental Payment Date; or (ii) at any time during the pendency of any action, suit or proceeding, at law or in equity, or before or by any court, public board or body which contests the validity of the Lease or the validity of any of the terms and conditions of the Lease or which seeks to enjoin the performance of any of the terms and conditions of the Lease; or (iii) upon the receipt by the Lessor or the Lessee of any final nonappealable order or adjudication which declares the Lease or any of its terms and conditions invalid or which enjoins the performance of any of the terms and conditions of the Lease. Notwithstanding the foregoing, the Lessor shall not terminate this Lease until it has made adequate provisions for the payment of the principal of, premium, if any, and interest on the Bonds.

**Section 8.10. Covenant to Restrict Use of Funds.** The Lessor and the Lessee hereby covenant that they will restrict the use of the funds realized under this Lease or otherwise in connection with the acquisition, construction, renovation and improvement of the Premises in such manner and to such extent, if any, as may be necessary, after taking into account among other things, reasonable expectations at the time of recording of this Lease, so that there will not exist at any time any obligation in connection with this Lease or such acquisition, construction, renovation and improvement that constitutes an "arbitrage bond" under Section 148 of the Code

and the regulations promulgated under that Section. Any officer of the Lessee having responsibility with respect to the execution and delivery of this Lease is authorized and directed, alone or in conjunction with any other officer, employee, consultant or agent of the Lessor or the Lessee, to give an appropriate certificate of the Lessee pursuant to said Section 148 of the Code and the regulations thereunder, setting forth the reasonable expectations of the Lessee on the date of delivery of this Lease regarding this Lease and the subsequent use of funds realized under this Lease or otherwise in connection with the acquisition, construction, renovation and improvement of the Premises.

**Section 8.11. Supplemental Lease.** The Lessor and the Lessee may enter into a supplement to this Lease for the sole purpose of: (i) increasing Annual Rent by an amount equal to the debt service on any Additional Bonds issued pursuant to the Indenture; and (ii) changing the terms of the Lease in any manner which will not materially adversely affect the rights of the Bondholders (as defined in the Indenture.) However, this Lease may not be supplemented for the purpose of reducing Annual Rent unless the Trustee shall be provided with an opinion of nationally recognized bond counsel that such supplement does not affect the exclusion from gross income of interest on the Outstanding Bonds for purposes of federal income taxation.

**Section 8.12. Continuing Disclosure.** The Lessee hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Lease, failure of the Lessee to comply with the Continuing Disclosure Agreement shall not be considered an event of default under this Lease; however, any holder of the Initial Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Lessee to comply with its obligations under this Section 8.12. Notwithstanding the foregoing, if the alleged failure of the Lessee to comply with the Continuing Disclosure Agreement is the inadequacy of the information disclosed pursuant thereto, then the holders of the Initial Bonds and the Beneficial Owners (on whose behalf a holder of the Initial Bonds has not acted with respect to that alleged failure) of not less than twenty percent (20%) of the aggregate principal amount of the then Outstanding Initial Bonds must take the actions described above before the Lessee shall be compelled to perform with respect to the adequacy of such information disclosed pursuant to the Continuing Disclosure Agreement. For purposes of this Section 8.12, "Beneficial Owner" means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Initial Bonds (including any person holding Initial Bonds through nominees, depositories or other intermediaries).

## **ARTICLE IX. RELEASE OF PORTIONS OF REAL ESTATE**

**Section 9.01. Release of Real Estate.** (A) The parties hereto reserve the right, at any time and from time to time, to amend this Lease to effect the release of and removal from this Lease and the leasehold estate created hereby of any part of or interest in the Real Estate and the conveyance of such part or interest to a grantee designated by the Lessee; provided, that such

amendment shall not be effective until and unless there are deposited with the Lessor the following:

(1) An executed copy of the said amendment.

(2) A certificate of an Authorized Officer of the Lessee to the effect that the Lessee is not in default under any of the provisions of this Lease: (i) giving, if applicable, an adequate legal description of that portion of the Real Estate to be released; (ii) stating the purpose for which the release is desired; (iii) stating that the improvements, if any, to be constructed upon that portion of the Real Estate to be released will not interfere with the Lessee's use of the Premises; (iv) requesting such release; and (v) approving such amendment.

(3) A certificate of an Authorized Officer of the Lessor or an opinion of counsel for the Lessor stating that the Lessor is not in default under this Lease.

(4) If applicable, a copy of the instrument conveying the interest proposed to be released.

(5) A certificate of an engineer, acceptable to the Lessor, dated not more than sixty (60) days prior to the date of the release and stating that, in the opinion of such engineer: (i) the release of the portion of the Real Estate so proposed to be released is necessary or desirable in order to benefit the Premises or such portion is not needed for the operation of the Premises and (ii) the release so proposed to be made will not impair the usefulness of the Premises as furthering the purposes of the Act and will not destroy the means of ingress to and egress from the Premises.

(B) The Lessor shall execute and deliver such documents as the Lessee may properly request in order to effect any release pursuant to this Section and to convey the interests released to the designated grantee. Any release pursuant to this Section may be made for the purpose of conveying the part or interests released to the Lessee.

**Section 9.02. No Abatement or Diminution of Rent.** No release or conveyance effected under any of the provisions of this Lease shall entitle the Lessee to any abatement or diminution of the Annual Rent payable hereunder. Any release or conveyance under Section 9.01 of this Lease shall be made only for consideration which the Authorized Officer of the Lessee certifies is a fair and adequate consideration. Any moneys received as such consideration shall be paid to the Lessor or its assignee.

**ARTICLE X.  
ASSIGNMENT AND SUBLEASING**

**Section 10.01. Assignment and Subleasing by Lessee.** This Lease may not be assigned in whole or in part, and the Premises may not be subleased as a whole or in part, by the Lessee except to a successor corporation which is a political subdivision of the State and into which the Lessee is merged or with which the Lessee is consolidated and otherwise only with the consent of Lessor.

**Section 10.02. Assignment and Mortgaging by Lessor.** The Lessor may mortgage its leasehold interest in the Leased Premises and assign its rights under and interest in, and pledge any moneys receivable under or pursuant to, this Lease, but each such mortgage of leasehold interest, assignment or pledge shall be subordinate and subject to this Lease.

**ARTICLE XI.  
LESSEE'S OPTIONS**

**Section 11.01. Option to Renew.** The Lessee shall have the option to renew this Lease for a further like or lesser term upon the same terms and conditions as herein provided. Such option shall be exercised by the Lessee giving the Lessor notice of the exercise of such option on any date prior to the termination of this Lease.

**Section 11.02. Option to Purchase Lessor's Leasehold Interest in the Premises.** The Lessee shall have, and is hereby granted, an option to purchase the Lessor's leasehold interest in the Premises on July 15, 20\_\_, or such earlier date as agreed to by the Lessee and the Lessor, as evidenced by the addendum to this Lease, as provided in Section 3.01 hereof, and on any date thereafter, provided the Lessee is not in any default under any provisions of this Lease. In the event that the Lessee exercises such option to purchase, the Purchase Price shall be an amount equal to the principal amount of the Bonds Outstanding as of the date the Lessee exercises its option, together with (i) any interest coming due or to accrue during the period from the Lessee's exercise date to the first date on which the Bonds may be redeemed (or such shorter period as may be approved in writing by the Lessor and the Trustee), (ii) the redemption premium, if any, required on such redemption date, and (iii) any expenses relating to the redemption of the Bonds. The Purchase Price shall also include the amount necessary to dissolve the Lessor, together with all costs and expenses, including legal fees associated with the prepayment of the Bonds. The Purchase Price shall be reduced by the amounts already on deposit on the Lessee's exercise date in the Revenue Account established pursuant to the Indenture, to the extent such amounts are available to pay the principal of, redemption premium, if any, and interest on the Bonds.

**Section 11.03. Conveyance on Exercise of Option to Purchase.** After the exercise of the option to purchase granted herein, the Lessor shall, upon receipt of the Purchase Price, cause to be delivered to the Lessee documents conveying to the Lessee all of Lessor's leasehold interest in the property being purchased, as such property then exists, subject to the following: (i) those liens and encumbrances, if any, to which title to said property was subject when leased

to the Lessor; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; (iii) liens for taxes or special assessments not then delinquent; (iv) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease; or (v) any lien created by the Indenture between the Lessor and the Trustee.

**Section 11.04. Transfer to Lessee.** In the event the Lessee has not exercised the foregoing option to purchase the Premises prior to the Expiration Date and upon the full discharge and performance by the Lessee of its obligations under this Lease, the Lessor's leasehold interest in the Premises shall thereupon become the absolute property of the Lessee. Thereupon, the Lessor shall execute and record or shall cause to be recorded proper instruments conveying to the Lessee all of Lessor's leasehold interest thereto, subject, however, to only those liens and encumbrances permitted in Section 11.03 hereof.

**Section 11.05. Duty of Lessee.** In the event of purchase of the Lessor's leasehold interest in the Premises by the Lessee or conveyance of the same to the Lessee under the provisions of Sections 11.02, 11.03 or 11.04 hereof, the Lessee shall procure and pay for all surveys, title searches, abstracts, title policies and legal services that may be required, and shall furnish at the Lessee's expense all documentary stamps or other tax payments required for the transfer of Lessor's leasehold interest to Lessee.

**Section 11.06. Duty of Lessor.** Upon the written request of the Lessee, the Lessor shall furnish an itemized statement setting forth the amount required to be paid by the Lessee in order to purchase the leasehold interest in the Premises in accordance with Section 11.02 hereof.

## **ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES**

**Section 12.01. Events of Default.** (A) The following shall be "events of default" under this Lease and the terms "event of default" or "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(1) Failure by the Lessee to pay the Annual Rent required to be paid hereunder on or prior to each Rental Payment Date.

(2) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease, other than as referred to in Section 12.01(A)(1) above, for a period of sixty (60) days after notice of such failure requesting such failure to be remedied, given to the Lessee by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, that if and so long as the Lessee is proceeding with due diligence to cure the default, such period shall be extended sufficiently to permit the Lessee to proceed with due diligence to cure such default.

(B) The provisions of Section 12.01(A)(2) above are subject to the following limitations: if by reason of acts of God, fires, epidemics, landslides, floods, strikes, lockouts or other industrial disturbances, acts of public enemies, acts or orders of any kind of any governmental authority, insurrections, riots, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any cause or event not reasonably within the control of the Lessee, the Lessee is unable, in whole or in part, to carry out its agreements on its part contained herein, other than the obligations on the part of the Lessee to pay the Annual Rent, Additional Rental and taxes and to carry and pay for insurance, the Lessee shall not be deemed in default during the continuance of such inability. The Lessee shall, however, use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Lessee from carrying out its agreements; provided, that the Lessee shall in no event be required to settle strikes, lockouts or other disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Lessee, unfavorable to the Lessee.

**Section 12.02. Remedies on Default.** Whenever any event of default under Section 12.01 of this Lease shall have occurred and be continuing, any one or more of the following remedial steps may be taken:

(1) The Lessor may at its option declare all installments of Annual Rent payable hereunder for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable.

(2) The Lessor may reenter and take possession of the Premises without terminating this Lease, sublease the Premises for the account of the Lessee, holding the Lessee liable for costs, if any, not reimbursed to the Lessor from the difference between the rent and other amounts payable by such sublessee in such subleasing and the Annual Rent, Additional Rental and other amounts payable by the Lessee hereunder.

(3) The Lessor may terminate this Lease, exclude the Lessee from possession of the Premises, and lease the Premises to another, but holding the Lessee liable for costs, if any, not reimbursed to the Lessor from the proceeds of all Annual Rent, Additional Rental and other payments due up to the effective date of such leasing.

(4) The Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the Annual Rent and Additional Rental then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

**Section 12.03. No Remedy Exclusive.** No remedy conferred upon or reserved to the Lessor by this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or

power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

**Section 12.04. Agreement to Pay Attorneys' Fees and Expenses.** In the event the Lessee should default under any of the provisions of this Lease and the Lessor should employ attorneys or incur other expenses for the collection of Annual Rent or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee contained in this Lease, the Lessee shall on demand therefor, to the extent permitted by law, reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 12.05. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 12.06. Waiver of Valuation and Appraisal Laws.** In the event the Lessee should default under any of the provisions of this Lease, the Lessee agrees to waive, to the extent it may lawfully do so, the benefit of all valuation and appraisal laws now or hereafter in force and all right of valuation and appraisal to which it may be entitled.

**Section 12.07. Notice of Default.** The Lessor or the Lessee shall notify the Trustee immediately if it becomes aware of the occurrence of any event of default under Section 12.01 or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an event of default thereunder.

**Section 12.08. Reinstatement.** Notwithstanding any termination of this Lease in accordance with the provisions of Section 8.09 hereof, unless and until the Lessor shall have entered into a valid and binding agreement providing for the reletting of the Premises, the Lessee may at any time after such termination pay all accrued unpaid Annual Rent and any unpaid Additional Rental, plus any costs to the Lessor, and fully cure all other defaults then capable of being cured. Upon such payment and cure, this Lease shall be fully reinstated, as if it had never been terminated, and the Lessee shall be restored to the use, occupancy and possession of the Premises.

### **ARTICLE XIII. MISCELLANEOUS**

**Section 13.01. Surrender of Premises.** In the event the Lessee should default under this Lease and this Lease is terminated or if this Lease is terminated by the Lessor, the Lessee agrees to surrender possession of the Premises peaceably and promptly to the Lessor in as good condition as prevailed at the time the Lessee was put in full possession thereof, loss by fire and

other casualty covered by insurance or by eminent domain, ordinary wear and tear, obsolescence and acts of God excepted.

**Section 13.02. Notices.** All notices, certificates, requests or other communications required to be given hereunder by the Lessee, the Lessor or the Trustee to the Lessee, the Lessor or the Trustee shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the appropriate Notice Address.

**Section 13.03. Net Lease.** This Lease shall be deemed and construed to be a “net lease,” and the Lessee shall pay with no deduction during the Lease Term the Annual Rent, the Additional Rental and all other payments required hereunder, free of any deductions, and without deduction or set-off other than those herein expressly provided, together with any taxes, assessments or other impositions levied upon or collected from the Lessor because of or relating to this Lease or income derived by the Lessor from this Lease.

**Section 13.04. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Lessor, the Lessee and their respective successors and assigns, subject, however, to the specific provisions hereof.

**Section 13.05. Execution Counterparts.** This Lease may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Lease.

**Section 13.06. Severability.** In case any Section or provision of this Lease, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other Section or provision hereof or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken thereunder, which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such Section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 13.07. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Lease.

*[Remainder of Page Intentionally Left Blank]*

*(Signature Page to Lease)*

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

LESSOR:

**WHITESTOWN REDEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
\_\_\_\_\_, President

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

*(Signature Page to Lease)*

LESSEE:

**WHITESTOWN REDEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Robby Halford, President

ATTEST:

By: \_\_\_\_\_  
Eric Miller, Secretary

**ACKNOWLEDGMENT OF LESSOR**

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF BOONE        )

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and the Secretary, respectively, of the Whitestown Redevelopment Authority, of Boone County, Indiana (the "Authority"), and severally acknowledged before me that they executed the same as such officers in the name and on behalf of the Authority.

WITNESS my hand and official seal in the County and State aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

Printed: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_

**ACKNOWLEDGMENT OF LESSEE**

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF BOONE        )

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Robby Halford and Eric Miller, the President and the Secretary, respectively, of the Whitestown Redevelopment Commission (the "Commission"), and severally acknowledged before me that they executed the same as such officers in the name and on behalf of said Commission.

WITNESS my hand and official seal in the County and State aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

Printed: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_

***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. Dennis H. Otten, Esq.***

This document was prepared by Dennis H. Otten, Esq., Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204 (317) 684-5000.

**EXHIBIT A**

**Schedule of Lease Payments**

<u>Rental Payment Date</u>	<u>Semiannual Amount</u>	<u>Rental Payment Date</u>	<u>Semiannual Amount</u>
06/30/2015	\$	12/31/2024	\$
12/31/2015		06/30/2025	
06/30/2016		12/31/2025	
12/31/2016		06/30/2026	
06/30/2017		12/31/2026	
12/31/2017		06/30/2027	
06/30/2018		12/31/2027	
12/31/2018		06/30/2028	
06/30/2019		12/31/2028	
12/31/2019		06/30/2029	
06/30/2020		12/31/2029	
12/31/2020		06/30/2030	
06/30/2021		12/31/2030	
12/31/2021			
06/30/2022			
12/31/2022			
06/30/2023			
12/31/2023			
06/30/2024			

**EXHIBIT B**

**Completion Certificate**

To: Whitestown Redevelopment Commission (the "Lessee")  
\_\_\_\_\_ (the "Trustee")

From: Whitestown Redevelopment Authority (the "Lessor")

Subject: The Lease Agreement dated \_\_\_\_\_, 2014 as amended by the Addendum to Lease dated \_\_\_\_\_, 2014 (collectively, the "Lease"), each by and between the Lessor and the Lessee.

The undersigned does hereby certify that:

1. The acquisition, construction, renovation, improvement and equipping of the Premises have been substantially completed in accordance with the Plans and Specifications and in such manner as to render the Facilities ready for occupancy as of \_\_\_\_\_ (the "Completion Date").

2. The costs of the Project and all other costs required to be paid out of the Construction Account (as defined in the Indenture) pursuant to Section 4.03 of the Indenture have been paid in full, except for those not yet due and payable, which are described below and for which moneys for the payment thereof are being held in the Construction Account:

Costs not yet due and payable:

<u>Description</u>	<u>Amount</u>
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
Total	\$ _____.

3. The Trustee is hereby authorized and directed to apply the moneys in the Construction Account in excess of the totals set forth in 2 above in accordance with Section 4.03 of the Indenture.

4. The following constitutes the equipment furnished by the Lessor and is thus part of the Premises leased by the Lessor to the Lessee:

[Equipment

[See the Exhibits attached hereto which describe with particularity such equipment.]

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_ ]

5. To the knowledge of the Lessor, no event of default has occurred and is continuing under the Lease, nor has any event occurred which with the giving of notice or the lapse of time or both shall become such an event of default. The Lessee has fully discharged and performed all of its obligations under the Lease which are required to have been so discharged or performed thereunder as of the date hereof, and nothing has occurred to the knowledge of the Lessor that would prevent the discharge or performance of the obligations of the Lessee under the Lease on or after the date hereof.

This Certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

Capitalized terms used but not defined herein shall have the meanings given in the Lease.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WHITESTOWN REDEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Its Authorized Officer

## EXHIBIT C

### **Description of Real Estate**

#### Perry Worth Road

##### *Parcel 1*

A part of the East Half of the Northeast Quarter of Section 1, Township 17 North, Range 1 East and a part of the Northwest Quarter of Section 6, Township 17 North, Range 2 East, Boone County, Indiana, being a part of Block "E" of Anson Development Phase I South, Revision 7, recorded as Instrument No. 200800010192 in Plat Book 19, page 60 in the Office of the Recorder of Boone County, Indiana, described as follows:

Commencing at the northeast corner of said Northeast Quarter; thence South 88 degrees 24 minutes 01 second West (basis of bearings is said Anson Development plat) 1339.05 feet along the north line of said Northeast Quarter to the northwest corner of the East Half of said Northeast Quarter; thence South 00 degrees 07 minutes 28 seconds East 165.29 feet along the west line of said Half-Quarter Section to the southwestern line of said Anson Development Block "E"; thence South 44 degrees 43 minutes 15 seconds East 419.51 feet along said southwestern line to the southwest corner of the tract of land conveyed by the Limited Warranty Deed recorded as Instrument No. 200800000404 in the Office of said Recorder and the Point of Beginning; thence North 73 degrees 03 minutes 03 seconds East 113.66 feet along the southeastern line of said tract of land; thence South 43 degrees 41 minutes 10 seconds East 847.55 feet to the point of curvature of a curve to the left having a radius of 450.00 feet and subtended by a long chord having a bearing of South 67 degrees 45 minutes 40 seconds East and a length of 367.14 feet; thence Southeasterly and Easterly along said curve an arc distance of 378.17 feet to the point of tangency of said curve; thence North 88 degrees 09 minutes 50 seconds East 1411.33 feet to the point of curvature of a curve to the right having a radius of 383.00 feet and subtended by a long chord having a bearing of South 70 degrees 40 minutes 27 seconds East and a length of 276.53 feet; thence Easterly and Southeasterly along said curve an arc distance of 282.92 feet to the south line of said Block "E"; thence South 88 degrees 29 minutes 32 seconds West 92.69 feet along said south line to an east line of said Block "E"; thence South 00 degrees 40 minutes 53 seconds East 53.16 feet along said east line to a point on a curve to the left having a radius of 283.00 feet and subtended by a long chord having a bearing of North 74 degrees 06 minutes 46 seconds West and a length of 172.30 feet; thence Northwesterly and Westerly along said curve an arc distance of 175.08 feet to the point of tangency of said curve; thence South 88 degrees 09 minutes 50 seconds West 1411.33 feet to the point of curvature of a curve to the right having a radius of 550.00 feet and subtended by a long chord having a bearing of North 74 degrees 56 minutes 30 seconds West and a length of 319.67 feet; thence Westerly and Northwesterly along said curve an arc distance of 324.35 feet to the southwestern line of said Block "E"; thence North 44 degrees 43 minutes 15 seconds West 1035.27 feet along said southwestern line to the point of beginning and containing 6.509 acres, more or less.

*Parcel II*

A part of the Northwest Quarter of Section 6, Township 17 North, Range 2 East, Boone County, Indiana, described as follows:

Commencing at the southeast corner of said Northwest Quarter; thence North 00 degrees 25 minutes 47 seconds West (basis of bearings is a Warranty Deed recorded as Instrument No. 201300000935 in the Office of the Recorder of Boone County, Indiana) 1247.92 feet along the east line of said Northwest Quarter; thence South 89 degrees 34 minutes 13 seconds West 466.20 feet perpendicular to said east line to a 5/8 inch capped rebar found on the northern right of way line of Whitestown Parkway (formerly State Road 334) at the southeast corner of the tract of land conveyed by said Warranty Deed, said point being on a curve concave southerly having a radius of 3338.16 feet and subtended by a long chord having a bearing of South 82 degrees 07 minutes 07 seconds West and a length of 630.19 feet: thence along said northern right of way line Westerly along said curve an arc distance of 631.13 feet to the Point of Beginning, said point being on a curve concave southeasterly having a radius of 3338.16 feet and subtended by a long chord having a bearing of South 75 degrees 50 minutes 39 seconds West and a length of 100.01 feet; thence along said northern right of way line Southwesterly along said curve an arc distance of 100.01 feet; thence North 14 degrees 48 minutes 42 seconds West 88.35 feet to the point of curvature of a curve concave southwesterly having a radius of 283.00 feet and subtended by a long chord having a bearing of North 35 degrees 21 minutes 28 seconds West and a length of 198.65 feet; thence Northwesterly along said curve an arc distance of 202.97 feet to the west line of the tract of land conveyed by said Warranty Deed; thence North 00 degrees 12 minutes 33 seconds West 53.16 feet along said west line to the northwest corner of said tract of land; thence North 88 degrees 57 minutes 52 seconds East 92.69 feet along a north line of said tract of land to a point on a curve concave southwesterly having a radius of 383.00 feet and subtended by a long chord having a bearing of South 31 degrees 55 minutes 14 seconds East and a length of 225.35 feet; thence Southeasterly along said curve an arc distance of 228.74 feet to the point of tangency of said curve; thence South 14 degrees 48 minutes 42 seconds East 89.49 feet to the point of beginning, containing 0.755 acres, more or less.

Municipal Facilities

Parcel III

Part of the Northeast Quarter of Section Nineteen (19), Township Eighteen (18) North, Range Two (2) East, more particularly described as follows:

Commencing 16 ½ feet south from the southwest corner of Lot No. 8 in Trout's Addition to the Town of Whitestown, Indiana, thence running east 70 feet to a point of beginning, thence south 171 feet and nine (9) inches to the right of way of the Big Four Railroad, thence south easterly direction along the said Big Four Railroad to a point where the said Big Four Railroad intersects with the interurban railroad, thence in a northwesterly direction running along the right of way of

said interurban railway to a certain alley thence west running 136 feet and 9 inches to the place of beginning, containing  $1 \frac{2}{5}$  acres, more or less.

**EXHIBIT B**

*Form of Perry Worth Road/Facilities Lease*

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is entered into by and between the TOWN OF WHITESTOWN, INDIANA, a political subdivision of the State of Indiana (the “Town” or “Lessor”), and the WHITESTOWN REDEVELOPMENT AUTHORITY, a separate body corporate and politic and an instrumentality of the Town (the “Authority” or “Lessee”), as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the “Effective Date”).

### RECITALS

WHEREAS, the Authority has been established by the Town and exists for the purpose of assisting the Whitestown Redevelopment Commission (“Commission”) in the financing, construction, development and operating of local public improvements and economic development projects located within the Town, all pursuant to Indiana Code 36-7-14 and 14.5 (collectively, the “Act”); and

WHEREAS, the Lessee intends to finance and construct (i) additions and improvements to Perry Worth Road, including improvements related thereto (the “Road Project”), and (ii) municipal utility maintenance facilities (the “Municipal Facilities Project”), on the real estate described in Exhibit A attached hereto and incorporated herein by reference (such real estate, the “Real Estate”); and

WHEREAS, the Lessee will finance the Road Project and the Municipal Facilities Project (collectively, the “Projects”) through the issuance of its Lease Rental Revenue Bonds, Series 2014, in the aggregate principal amount not to exceed \$ \_\_\_\_\_ (the “Bonds”); and

WHEREAS, in connection with the Projects and the financing thereof, the Lessee intends to lease the Real Estate, as improved, to the Commission pursuant to a Lease Agreement between the Authority and the Commission (the “Financing Lease”) whereby the Commission will pay annual lease rentals to the Authority for the use of Projects in such amounts as will be sufficient to cover the debt service on the Bonds, all in accordance with the Act; and

WHEREAS, the Lessor owns or will own the Real Estate and desires to lease to the Lessee any and all interest it may have in the Real Estate pursuant to the terms and conditions of this Lease to facilitate the financing and construction of the Projects by the Lessee; and

WHEREAS, pursuant to Indiana Code 36-1-11-8 and 36-7-14.5-18, the Lessor may, with the approval of the Commission, lease the Real Estate to the Authority pursuant to this Lease upon such terms and conditions as may be agreed upon by the Lessor and the Lessee; and

WHEREAS, this Lease has been approved by the Town Council of the Town, the Board of Directors of the Authority and the Commission.

NOW THEREFORE, in consideration of the above recitals and the covenants contained in this Lease, the parties agree as follows:

1. Real Estate and Lessor Right To Terminate. Subject to the terms and conditions set forth in this Lease, Lessor hereby leases any and all rights and interests it now has or may hereafter acquire in the Real Estate to Lessee for its exclusive use during the term hereof. Lessee acknowledges and agrees that the Real Estate is accepted by Lessee, in "AS IS, WHERE IS" condition and "WITH ALL FAULTS," and with no representations or warranties of any type being made by Lessor whatsoever, other than as expressly set forth in this Lease.

2. Term. The term of this Lease shall commence on the Effective Date (also referred to herein as the "Commencement Date") and shall terminate at 11:59:59 p.m. on \_\_\_\_\_, 20\_\_ (the "Term") unless sooner terminated as provided herein. Notwithstanding the foregoing, in the event that the Financing Lease is terminated prior to the expiration of the initial term of this Lease (or any applicable renewal period), then this Lease will terminate.

3. Rent And Expenses. Beginning on the date hereof (the "Rent Commencement Date"), Lessee shall pay Lessor annual rent ("Rent") during the Term in accordance with the provisions of this section 3 (the twelve month period starting on the Rent Commencement Date and each calendar year during the Term thereafter is a "Lease Year"). So long as the Financing Lease remains in effect, Rent shall be and remain One Dollar (\$1.00) per year.

4. Liens And Encumbrances.

(a) Except as expressly permitted in this Lease, Lessee shall not permit any liens to encumber the Real Estate or its interest in this Lease, nor shall Lessee pledge or otherwise convey to any third party any interest in any of the foregoing, except that Lessee shall be permitted to lease the Real Estate pursuant to the Financing Lease. Except for liens and encumbrances permitted in this Section 4 or otherwise caused or approved by Lessor, Lessee shall promptly pay and discharge or cause to be paid and discharged, any lien or other encumbrance on the Real Estate. Other than in connection with the Financing Lease, Lessee may not secure any other obligations with its interest in the Real Estate or this Lease without the prior consent of Lessor, which consent may be given or withheld in Lessor's sole and absolute discretion.

(b) During the term of this Lease, without the prior consent of the Lessee, Lessor shall not dispose of, or permit any liens, security interests, charges or encumbrances to be placed on the Real Estate.

5. Limitation Of Liability; Indemnification.

(a) Lessor shall have no liability to Lessee or any third party for loss or damage to Lessee's property therein, except to the extent caused by Lessor's intentional acts, its gross negligence or its willful misconduct or that of any of its agents or employees.

(b) Lessee shall indemnify, protect, defend and hold Lessor and Lessor's affiliates, officers, directors, members, employees, advisors, bond-holders, lenders, representatives and agents harmless from and against any and all injuries, losses, claims, demands, liabilities, causes of action, suits, judgments, damages (excluding consequential

damages), and expenses (including disbursements and reasonable attorney's fees incurred by Lessor) actually or allegedly arising from, related to, or in any way connected with the use or occupancy of the Real Estate or the conduct or operation of Lessee's business on the Real Estate or in any way connected to Lessee's failure to perform or observe any of the obligations on Lessee's part to be performed or observed pursuant to this Lease.

(c) Subject to the limitations set forth in Section 5(b) above, Lessor hereby indemnifies Lessee from and against any and all claims, damages, costs, expenses, including reasonable legal fees, resulting from (i) any damage to person or property caused by Lessor or anyone acting through or under Lessor (each, a "Lessor Party"); or (ii) any breach of this Lease by any Lessor Party.

6. Quiet Possession. Lessor warrants and covenants that, so long as Lessee faithfully performs all of its obligations under this Lease, Lessor will not interfere with Lessee's quiet and peaceable possession and enjoyment of the Real Estate, subject, however, to the terms and provisions of this Lease.

7. Default; Remedies; Termination Obligations.

(a) Any failure by Lessee to timely comply with its obligations under this Lease shall constitute a default hereunder.

(b) If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; or (b) in the observance of any other covenant, agreement or condition hereof, and such default shall continue for ninety (90) days after written notice to correct such default; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Real Estate and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

8. Eminent Domain. If title to or the temporary use of the Real Estate, or any part thereof, shall be taken under the exercise or the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by the Trustee (as defined in the Financing Lease).

Such proceeds shall be applied in one or more of the following ways:

(a) The restoration of the Real Estate to substantially the same condition as it existed prior to the exercise of that power of eminent domain, or

(b) The acquisition, by construction or otherwise, of other improvements suitable for Lessee's operations on the Real Estate and which are in furtherance of the purposes of the Act (the improvements shall be deemed a part of the Real Estate and available for use and occupancy by the Lessee without the payment of any rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby).

Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, Lessee shall direct the Lessor in writing as to which of the ways specified in this Section it elects to have the net proceeds of the condemnation award applied. Any balance of the net proceeds of the award in such eminent domain proceedings not required to be applied for the purposes specified in subsections (a) or (b) above shall become the property of the Lessee and applied to the repayment of the Bonds.

The Lessee shall cooperate fully with Lessor in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Real Estate or any part thereof. In no event will the Lessee voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Real Estate or any part thereof without the written consent of Lessor, which consent shall not be unreasonably withheld.

9. Notices. All notices, demands or other writings in this Lease provided to be given or made or sent will be deemed to have been fully given or made or sent, on the day personally delivered, on the next business day if sent by overnight courier or five business days after being deposited in the United States mail, certified, with postage prepaid, and addressed as follows:

To the Lessor:

Town of Whitestown  
6320 South Cozy Lane  
Whitestown, Indiana 46075  
Attn: Town Manager

With a copy to:

Steve Unger, Esq.  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204

To the Lessee:

Whitestown Redevelopment Authority  
6320 South Cozy Lane  
Whitestown, Indiana 46075  
Attn: President, Board of Directors

With a copy to:

Steve Unger, Esq.  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204

The address to which any notice, demand or other writing may be given or made or sent to any party, as above provided, may be changed by written notice given by the party as above provided.

10. No Relationship Of The Parties. This Lease does not create the relationship of principal and agent or of partnership or joint venture or association between the parties or any other relationship whatsoever (except lessor and lessee), or render either party liable for any of the debts or obligations of the other party. Lessor and Lessee are independent contractors in relation to their respective obligations under this Lease.

11. No Waiver. No covenant, term or condition of this Lease will be deemed waived unless the waiver is in writing signed by the party against whom enforcement of any waiver is sought. The waiver of any provision or breach of this Lease by either party shall not operate or be construed as a waiver of any future breach of the same provision of any other provision or breach.

12. Force Majeure. If either party is delayed or hindered in or prevented from the performance of any act required under this Lease (which does not include the payment of any monetary amounts) by reason of any strike, lock out, labor trouble, inability to procure materials or energy, failure of power, restrictive governmental laws, riot, insurrection, picketing, sit in, war, acts of foreign or domestic terrorism, civil unrest, or other unavoidable reason of a like nature not attributable to the negligence or fault of the party delayed in performing or doing any act required under the terms of this Lease, then the performance of the work or action will be excused for the period of the unavoidable delay and the period for performance of any action will be extended for an equivalent period.

13. Invalid Provisions; Change In Law. If any provision of this Lease is illegal, invalid or unenforceable under any present or future law, that provision will no longer be effective, but the remaining terms and conditions of this Lease will remain in full force and effect to the extent permitted by law and as contemplated by this Lease. It is the intent and agreement of the parties that this Lease will be deemed amended by modifying the provision to the minimum extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting another provision that is legal and enforceable and achieves the same objective. If the remainder of this Lease will not be affected by the declaration or finding and is capable of substantial performance, then each provision not so affected will be enforced to the extent permitted by law.

14. Interpretation. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Lease and shall not negate or invalidate any provision of this Lease.

15. Section Captions. The captions appearing under the Section number designations of this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

16. Binding Effect. The terms, conditions and covenants of this Lease apply to and bind the parties and their respective successors, heirs, legal representatives and permitted assigns, subject to the restrictions contained in this Lease.

17. Time Of The Essence. TIME IS OF THE ESSENCE AS TO ALL DATES AND TIME PERIODS SET FORTH HEREIN.

18. Survival. The terms and provisions of this Lease which have not been fully performed or completed upon the expiration or termination of this Lease, including without limitation, Lessee's obligations with respect to environmental matters, shall survive the expiration or termination of this Lease.

19. Counterpart Execution. This Lease may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Governing Law. This Lease is executed and intended to be performed in the State of Indiana and the laws of the State of Indiana govern their interpretation and effect. Any litigation related to this Lease must be venued in the state or federal courts in the State of Indiana.

[Signature Page to Lease follows]

LESSOR:

TOWN OF WHITESTOWN, INDIANA

By: \_\_\_\_\_  
Eric Miller, Town Council President

ATTEST:

By: \_\_\_\_\_  
Amanda Andrews, Clerk-Treasurer

LESSEE:

WHITESTOWN  
REDEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
\_\_\_\_\_, President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary





## **EXHIBIT A**

### ***Legal Description***

#### **Perry Worth Road**

##### ***Parcel 1***

A part of the East Half of the Northeast Quarter of Section 1, Township 17 North, Range 1 East and a part of the Northwest Quarter of Section 6, Township 17 North, Range 2 East, Boone County, Indiana, being a part of Block "E" of Anson Development Phase I South, Revision 7, recorded as Instrument No. 200800010192 in Plat Book 19, page 60 in the Office of the Recorder of Boone County, Indiana, described as follows:

Commencing at the northeast corner of said Northeast Quarter; thence South 88 degrees 24 minutes 01 second West (basis of bearings is said Anson Development plat) 1339.05 feet along the north line of said Northeast Quarter to the northwest corner of the East Half of said Northeast Quarter; thence South 00 degrees 07 minutes 28 seconds East 165.29 feet along the west line of said Half-Quarter Section to the southwestern line of said Anson Development Block "E"; thence South 44 degrees 43 minutes 15 seconds East 419.51 feet along said southwestern line to the southwest corner of the tract of land conveyed by the Limited Warranty Deed recorded as Instrument No. 200800000404 in the Office of said Recorder and the Point of Beginning; thence North 73 degrees 03 minutes 03 seconds East 113.66 feet along the southeastern line of said tract of land; thence South 43 degrees 41 minutes 10 seconds East 847.55 feet to the point of curvature of a curve to the left having a radius of 450.00 feet and subtended by a long chord having a bearing of South 67 degrees 45 minutes 40 seconds East and a length of 367.14 feet; thence Southeasterly and Easterly along said curve an arc distance of 378.17 feet to the point of tangency of said curve; thence North 88 degrees 09 minutes 50 seconds East 1411.33 feet to the point of curvature of a curve to the right having a radius of 383.00 feet and subtended by a long chord having a bearing of South 70 degrees 40 minutes 27 seconds East and a length of 276.53 feet; thence Easterly and Southeasterly along said curve an arc distance of 282.92 feet to the south line of said Block "E"; thence South 88 degrees 29 minutes 32 seconds West 92.69 feet along said south line to an east line of said Block "E"; thence South 00 degrees 40 minutes 53 seconds East 53.16 feet along said east line to a point on a curve to the left having a radius of 283.00 feet and subtended by a long chord having a bearing of North 74 degrees 06 minutes 46 seconds West and a length of 172.30 feet; thence Northwesterly and Westerly along said curve an arc distance of 175.08 feet to the point of tangency of said curve; thence South 88 degrees 09 minutes 50 seconds West 1411.33 feet to the point of curvature of a curve to the right having a radius of 550.00 feet and subtended by a long chord having a bearing of North 74 degrees 56 minutes 30 seconds West and a length of 319.67 feet; thence Westerly and Northwesterly along said curve an arc distance of 324.35 feet to the southwestern line of said Block "E"; thence North 44 degrees 43 minutes 15 seconds West 1035.27 feet along said southwestern line to the point of beginning and containing 6.509 acres, more or less.

*Parcel II*

A part of the Northwest Quarter of Section 6, Township 17 North, Range 2 East, Boone County, Indiana, described as follows:

Commencing at the southeast corner of said Northwest Quarter; thence North 00 degrees 25 minutes 47 seconds West (basis of bearings is a Warranty Deed recorded as Instrument No. 201300000935 in the Office of the Recorder of Boone County, Indiana) 1247.92 feet along the east line of said Northwest Quarter; thence South 89 degrees 34 minutes 13 seconds West 466.20 feet perpendicular to said east line to a 5/8 inch capped rebar found on the northern right of way line of Whitestown Parkway (formerly State Road 334) at the southeast corner of the tract of land conveyed by said Warranty Deed, said point being on a curve concave southerly having a radius of 3338.16 feet and subtended by a long chord having a bearing of South 82 degrees 07 minutes 07 seconds West and a length of 630.19 feet: thence along said northern right of way line Westerly along said curve an arc distance of 631.13 feet to the Point of Beginning, said point being on a curve concave southeasterly having a radius of 3338.16 feet and subtended by a long chord having a bearing of South 75 degrees 50 minutes 39 seconds West and a length of 100.01 feet; thence along said northern right of way line Southwesterly along said curve an arc distance of 100.01 feet; thence North 14 degrees 48 minutes 42 seconds West 88.35 feet to the point of curvature of a curve concave southwesterly having a radius of 283.00 feet and subtended by a long chord having a bearing of North 35 degrees 21 minutes 28 seconds West and a length of 198.65 feet; thence Northwesterly along said curve an arc distance of 202.97 feet to the west line of the tract of land conveyed by said Warranty Deed; thence North 00 degrees 12 minutes 33 seconds West 53.16 feet along said west line to the northwest corner of said tract of land; thence North 88 degrees 57 minutes 52 seconds East 92.69 feet along a north line of said tract of land to a point on a curve concave southwesterly having a radius of 383.00 feet and subtended by a long chord having a bearing of South 31 degrees 55 minutes 14 seconds East and a length of 225.35 feet; thence Southeasterly along said curve an arc distance of 228.74 feet to the point of tangency of said curve; thence South 14 degrees 48 minutes 42 seconds East 89.49 feet to the point of beginning, containing 0.755 acres, more or less.

Municipal Facilities

Parcel III

Part of the Northeast Quarter of Section Nineteen (19), Township Eighteen (18) North, Range Two (2) East, more particularly described as follows:

Commencing 16 ½ feet south from the southwest corner of Lot No. 8 in Trout's Addition to the Town of Whitestown, Indiana, thence running east 70 feet to a point of beginning, thence south 171 feet and nine (9) inches to the right of way of the Big Four Railroad, thence south easterly direction along the said Big Four Railroad to a point where the said Big Four Railroad intersects with the interurban railroad, thence in a northwesterly direction running along the right of way of said interurban railway to a certain alley thence west running 136 feet and 9 inches to the place of beginning, containing 1 2/5 acres, more or less.