

ROAD RELOCATION AGREEMENT

County Road 500 South

THIS ROAD RELOCATION AGREEMENT (“Agreement”) is made and entered into this _____ day of March, 2019 (“Effective Date”), by and between the TOWN OF WHITESTOWN, INDIANA, an Indiana political subdivision and municipality (“Whitestown”), and WHITESTOWN 65 COMMERCE PARK, L.L.C., a Delaware limited liability company (“Developer”) (and, collectively with Whitestown, the “Parties”).

RECITALS

A. Developer is undertaking a project to extend Anson Boulevard to County Road 500 South, relocate a portion of County Road 500 South, and construct a new connector road between the Anson Boulevard extension and Perry-Worth Road, as generally depicted in the attached Exhibit A (the “Project”).

B. The Project will relocate and reconfigure the intersection of County Road 500 South and Perry-Worth Road and provide a new vehicular connection from the southernmost portion of Anson Boulevard to County Road 500 South.

C. Developer has filed a petition with Whitestown to vacate portions of County Road 500 South affected by the Project, a copy of which is attached hereto as Exhibit B (the “Vacation”), which includes a request to vacate certain areas of existing right of way prior to the completion of the Project.

D. Whitestown desires to ensure that in the event the Vacation is approved, Developer timely completes the Project.

E. The Parties desire to enter into this Agreement confirming Developer’s commitment and obligation to timely complete the Project, and additional terms related thereto.

AGREEMENT

In consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

Section 1. Vacation Proceedings. Whitestown has or will follow the procedures for considering the Petition as set forth in Indiana Code § 36-7.

Section 2. Construction of the Project. Upon approval of the Vacation, Developer agrees and commits that it will undertake the Project as generally depicted in Exhibit A, and in accordance with the following additional requirements:

- a. Developer will use commercially reasonable efforts to complete the Project by December 1, 2019.
- b. The Project will be designed and constructed at Developer's cost and responsibility. It is anticipated by the Town that all or a portion of the proceeds of the Town of Whitestown Economic Development Revenue Bonds (Strategic Capital Partners Project) (the "Bonds") to be issued by the Town pursuant to its Ordinance No. 2018-39 (the "Bond Ordinance") will be used, directly or indirectly, to pay for a portion of the design and construction of the Project. The Town reserves the right to require that any proceeds of the Bonds disbursed under the terms of the financing documents for such Bonds (e.g., Trust Indenture and Financing Agreement) be subject to the prior written consent of the Town and that the initial disbursements of such proceeds be expended first on costs of the Project before disbursements on any other costs as may be permitted by the Bond Ordinance and the financing documents for the Bonds.
- c. Developer will construct the project in accordance with Whitestown's specifications and standards. Prior to initiating construction of the Project, Developer must provide the plans and specifications to Whitestown for review and approval or rejection, which approval shall not be unreasonably, conditioned, withheld, or delayed. Upon approval by Whitestown, Developer will construct the project according to all applicable laws, ordinance, rules, regulations, government standards, and the reasonable directives of Whitestown pertaining to public roads within its jurisdiction.
- d. Developer will be responsible for obtaining and providing all applicable rights of way, permits, approvals, and consents required and in a form approved by Whitestown for the construction of the Project.
- e. Upon completion of the Project (as approved and accepted by Whitestown, which approval and acceptance shall not be unreasonably conditioned, withheld or delayed), Developer will provide a three (3) year maintenance bond covering material and labor in an amount equal to twenty percent (20%) of the total cost of the Project with a surety and terms that are reasonably acceptable to Whitestown. To the extent any repairs to correct defects in the construction of the Project are not covered by the maintenance bond, Developer shall be responsible for the expense of such repair, replacement, and/or maintenance that occurs, either prior to acceptance of the Project by Whitestown or within the three (3) years the maintenance bond is in effect.
- f. Developer must: (i) provide Whitestown with certificate showing that Whitestown is an additional insured on a commercial general liability policy insuring Whitestown, as its interests may appear, against any and all claims for personal injury or property damage to the extent resulting from construction of the Project; (ii) defend and hold harmless Whitestown against any and all such claims (subject to any limitations on the liability of

Whitestown under applicable law); and (iii) indemnify Whitestown for all reasonable costs, including but not limited to reasonable attorneys' fees, incurred by Whitestown as a result of any and all such claims.

Notwithstanding anything to the contrary, nothing in this Agreement shall be interpreted as restricting in any way Whitestown's authority to improve, maintain, or control the Project, right-of-way, or existing or new streets or roads to the extent such construction or use is within Whitestown's authority pursuant to applicable law.

Section 3. In the event of a material default by Developer and after written notice of such material default and ten (10) business days in which to cure (or such longer period of time as may be necessary, provided that Developer commences to cure such default within said ten (10) business day period and thereafter diligently pursues the same to completion), and in addition to any other legal and equitable remedies available to Whitestown, Whitestown may (i) take over and complete the Project, in which event Developer shall also be responsible for paying all costs and expenses incurred by Whitestown in taking over and completing the Project (the "Town Completion Costs"), and Whitestown may place a lien on all property owned by Developer to secure reimbursement by developer for all such Town Completion Costs, and (ii) deny continuing tax abatement on any real or personal property owned or controlled by Developer or any of its affiliates, and (iv) withhold any payments or disbursements to which Developer may have a claim from Whitestown, including but not limited to disbursements from an allocation area under IC 36-7-14 and/or IC 36-7-25 by Developer. Whitestown is further entitled to recover its actual costs, including but not limited to reasonably attorneys' fees and court costs, in any action brought to enforce the terms of this Agreement.

Section 4. If any party to this Agreement is delayed or prevented from performing any act required by this Agreement (including, without limitation, Developer's obligation to complete the Project on or before December 1, 2019, as set forth in Section 2(a) of this Agreement) by reason of acts of God, strikes, lockouts, mass labor disruption, inability to procure materials, denial of any permit or approval, or governmental regulations, without fault and beyond the reasonable control of the party obligated (financial inability excepted), the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Changes in laws or regulations enacted by Whitestown will not be deemed a force majeure event to the detriment of Developer. Each party shall diligently make efforts to perform any obligations delayed under this Section immediately upon the event of force majeure no longer preventing such obligation from being performed.

Section 5. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties, as well as their grantees, successors, and assigns.

Section 6. This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties pertaining to the subject matter hereof.

Section 7. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument. Failure to insist upon

strict adherence to any term of this Agreement shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

Section 8. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as part of this Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 9. This Agreement and the Parties' relationship shall be governed by and construed under the laws of the State of Indiana. The Parties recognize and acknowledge that Whitestown is a municipality and political subdivision of the State of Indiana, subject to various statutory procedures, restrictions, and appeals, which are binding on Whitestown and/or the Parties, and this Agreement is subject thereto.

Section 10. This Agreement may be executed in several counterparts, which may be facsimiles or original signatures, all of which shall constitute one (1) agreement, binding on all parties hereto, notwithstanding that all the parties are not signatories to the same counterpart.

Section 11. By signing this Agreement Whitestown and Developer represent and warrant that: (a) they are authorized to enter into and execute this Agreement and have the authority to perform the same, except as provided in Section 10; (b) the information furnished in this Agreement is true and accurate; (c) they understand the terms and conditions of this Agreement; (d) they have knowingly and voluntarily entered into this Agreement; (e) this Agreement shall inure to the benefit of and be binding upon Whitestown and Developer, and their successors and assigns; and (f) they each consent and agree that following full execution hereof, this Agreement may be recorded by Whitestown following receipt of consent of the holder of the first lien mortgage currently encumbering the real estate owned by Developer, which Developer shall use commercially reasonable efforts to obtain within forty-five (45) days of execution of this Agreement. In the event Whitestown records the Agreement, Developer may record a Termination of Agreement upon completion of the Project and Whitestown's acceptance of the same.

The Parties have caused this Agreement to be executed by their proper duly authorized officials as of the dates indicated below.

[Remainder of Page Intentionally Left Blank - Signature Pages Follow]

**TOWN OF WHITESTOWN,
INDIANA**, an Indiana political
subdivision and municipality

By: Jason Lawson, Town Manager

Date: _____

State of Indiana)
)SS:
County of _____)

Before me, a Notary Public in and for said County and State, personally appeared Jason Lawson, by me known to be the Town Manager of the Town of Whitestown, Indiana, who acknowledged the execution of the foregoing "Road Relocation Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____,
2019.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

**WHITESTOWN 65 COMMERCE PARK,
L.L.C., a Delaware limited liability company**

By: _____

Printed: _____

Its: _____

Date: _____

State of Indiana)
)SS:
County of _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of WHITESTOWN 65 COMMERCE PARK, L.L.C., a Delaware limited liability company, who acknowledged the execution of the foregoing "Road Relocation Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, 2019.

Notary Public

(Printed Signature)

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. Stephen C. Unger

This instrument prepared by Stephen C. Unger, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204.

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EXHIBIT A

