ECONOMIC DEVELOPMENT AGREEMENT

Academy E Mixed Use Development

This ECONOMIC DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into this _____ day of November, 2021 (the "**Effective Date**") by and among the TOWN OF WHITESTOWN, INDIANA, a municipality and a political subdivision organized and existing under the laws of the State of Indiana (the "**Town**"), the WHITESTOWN REDEVELOPMENT COMMISSION (the "**Commission**" and collectively with the Town, the "**Town Parties**"), a redevelopment commission organized and existing under the provisions of Indiana Code 36-7-14 and Indiana Code 36-7-25, each as amended (the "**Act**"), ACADEMY E, LLC, an Indiana limited liability company ("**Academy E**"), and MILHAUS DEVELOPMENT, LLC, an Indiana limited liability company ("**Milhaus**") and collectively with Academy E, the "**Developers**"), to facilitate the development of a mixed use development in the Town.

W I T N E S S E T H:

WHEREAS, the Commission is the owner of a parcel of land more fully described on the attached Exhibit A (the "**Property**"); and

WHEREAS, the Commission previously conducted a public offering of the Property, pursuant to Indiana Code 36-7-14-22, in order to attract investment, economic development, and redevelopment opportunities to the Property and Town; and

WHEREAS, Milhaus and Academy E seek to acquire and redevelop respective portions of the Property, in phases, into a mixed-use development (the "**Project**") consisting of the following uses and/or other uses as may be established pursuant to this Agreement (each, a "**Component Project**" and, collectively, the "**Component Projects**"): an approximately 200,000 square foot Academy E youth sports complex and performance center, including at least one adjacent outdoor field, to be constructed and operated by Academy E (the "**Academy E Project**"); a flagged hotel with at least 105 rooms (the "**Hotel**"); at least 50,000 square feet of medical office building use (the "**MOB Project**"); an outdoor water sports and entertainment venue (the "**Water Park**"); approximately 50,000 square of potential commercial and/or retail uses (the "**Commercial Project**"); an approximately 250-unit market rate apartment project (the "**Multifamily Project**"); the possibility for approximately 75 for-sale residential units (the "**For-Sale Multifamily Project**") and associated site work and infrastructure; and

WHEREAS, subject to the right of Milhaus and the Town Parties to agree upon alternate uses as provided in this Agreement, the parties desire for the development the Property in phased Component Projects, with the first phase to include the Hotel, MOB Project, approximately 25,000 square feet of the Commercial Project, and certain public infrastructure (each, a "**Phase I Project**" and, collectively, the "**Phase I Projects**") as well as the Academy E Project and the Water Park; and

WHEREAS, the Phase I Projects will be developed by Milhaus or approved Component Project Developers (as defined in Section 2.02(a)) on that portion of the Property (the "**Phase I**

Property") preliminarily identified for such purposes on the attached Exhibit B (the "**Master Site Plan**"); and

WHEREAS, Milhaus represents that the real property assessed value of the Phase I Projects is expected to equal or exceed Fifty Million Dollars ($50,000,000) when completed (the "**Phase I Projects Investment**"); and

WHEREAS, the Academy E Project will be developed by Academy E on that portion of the Property (the "**Academy E Property**") preliminarily identified for such purpose on the Master Site Plan; and

WHEREAS, Academy E represents that the real property assessed value of the Academy E Project is expected to equal or exceed Forty Million Dollars ($40,000,000) when completed (the "**Academy E Project Investment**"); and

WHEREAS, following substantial progress on the construction of the Phase I Projects and the Academy E Project, the Water Park will be developed on that portion of the Property (the "**Water Park Property**") preliminarily identified for such purpose on the Master Site Plan; and

WHEREAS, the parties further desire to provide for the framework for the potential transfer and development of the remainder of the Property (the Property, excluding the Phase I Property, Academy E Property, and Water Park Property, the "**Phase II Property**") and Project not included in the first phase of development; and

WHEREAS, Milhaus and Academy E have requested certain economic development assistance from the Town for the Project, without which Milhaus and Academy E would not proceed with the Project; and

WHEREAS, the Town Parties have a public interest in encouraging development and redevelopment of the Property, and desires that Milhaus and Academy E proceed with the Project in order to stimulate, promote, and further the general and economic welfare of the Town; and

WHEREAS, the Project will (i) benefit the public health, safety, morals, and welfare for the Town; (ii) increase the economic well-being of the Town and the State of Indiana by creating jobs and employment opportunities; (iii) serve to protect and increase property values in the Town and the State of Indiana; and (iv) attract a major new business enterprise to the Town; and

WHEREAS, as an inducement to the Milhaus and Academy E to construct the Project and make the respective project investments, the Commission finds that the economic development incentives set forth herein should be provided in order to provide for the development, redevelopment, and rehabilitation of the Property and the Projects.

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Milhaus, Academy E, and the Town Parties agree as follows:

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II. MUTUAL ASSISTANCE; PLANNING

2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including, but not limited to, the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Town Parties, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, the parties to this Agreement agree to use their best efforts to cooperate with each other and act in good faith to effectuate the intent of this Agreement.

2.02 General Planning Considerations.

(a) Master Development; Component Project Developers. As to each respective portion of the Property/Project transferred to Milhaus or Academy E under this Agreement, Milhaus shall serve as master developer for the Project and shall be primarily responsible for the layout, design and development of the Project, including infrastructure, in accordance with, and subject to, the terms and conditions of this Agreement. Milhaus shall be entitled to designate one or more third-party developers (each, a "**Component Project Developer**") to develop Component Projects, provided that all such Component Project Developers shall be subject to the approval requirements of Section 9.06. Academy E shall have no approval rights relating to layout, design and development of the Project under this Agreement, other than the Academy E Project. The Town Parties acknowledge that Milhaus and Academy E may elect to enter into a separate development agreement to formalize their respective rights and obligations regarding the Academy E Project and other matters relating to the Project and that Milhaus may elect to enter into similar development agreements regarding Component Projects with approved Component Project Developers.

(b) Phase I Project Components. The parties acknowledge that each proposed Phase I Project use is preliminary. Prior to and as a condition to the Phase I Closing, Milhaus and the Commission will finalize and agree upon the final Phase I Component Projects.

(c) Master Schedule/Master Site Plan.

(i) The parties recognize that the Master Site Plan attached to this Agreement is preliminary. Milhaus and the Commission shall finalize the Master Site Plan and the legal descriptions for the Phase I Property, the Academy E Property, the Water Park Property and the Phase II Property prior to and as a condition of the Phase I Closing and the Phase II Closing. The legal description of the Academy E Property shall also be subject to approval by Academy E and the Commission as a condition of the Academy E Closing.

(ii) Following agreement by the parties on the final Master Site Plan, if Milhaus and the Commission approve a revision and/or amendment to the Master Site Plan, then the parties shall memorialize in writing any resulting reasonably necessary revisions and/or amendments to this Agreement.

2.03 Milestone Schedule. A preliminary Milestone Schedule for the construction of the Phase I Projects, the Academy E Project and the Water Park Project is attached hereto as Exhibit I (the "**Milestone Schedule**"). Milhaus and the Commission shall agree upon a final Milestone Schedule prior to and as a condition to the Phase I Closing, which, upon such agreement, shall replace the preliminary Milestone Schedule. Portions of the Milestone Schedule specifically relating to the Academy E Project shall also be subject to approval by Academy E and the Commission as a condition to the Academy E Closing. Following agreement by the parties on the final Milestone Schedule, if the parties approve a revision and/or amendment to the Milestone Schedule, then the parties shall memorialize in writing any resulting reasonably necessary revisions and/or amendments to the Milestone Schedule To the extent that revisions and/or amendments to the Milestone Schedule pursuant to this Section 2.03 result in the need for conforming revisions and/or amendments to this Agreement and/or any component of the Master Site Plan, the parties shall also memorialize such revisions and/or amendments in writing.

2.04 Declarations. Milhaus shall be entitled, but not obligated, to prepare and record in connection with or following the Phase I Closing an agreement encumbering the Phase I Property Water Park Property, and Academy E Property (the "**Master Declaration**") pursuant to which: (a) easements determined by Milhaus to be necessary or appropriate for the construction and/or use of the Project are granted, which easements may include, without limitation and as warranted: (i) temporary easements for the construction and/or installation of infrastructure improvements (which may include utility, drainage, and other facilities), public greenspace amenities, lighting, and signage; (ii) permanent easements to use and maintain all of the foregoing; (iii) vehicular and pedestrian access, ingress, and egress; and (iv) parking; (b) covenants, restrictions, and obligations are imposed with respect to the use and maintenance of the Project, which may include the obligation to make contribution payments in certain circumstances provided that the Town Parties may not be obligated to make any such contribution payments, except as hereinafter provided; and (c) such other matters determined by Milhaus to be necessary or appropriate are addressed. Milhaus shall also be entitled, but not obligated, to prepare and record one or more additional agreements (each, a "**Component Project Declaration**") similar in nature to the Master Declaration, but applicable only to one or more Component Projects, which agreement shall be consistent with the Master Declaration. A Component Project Declaration may include: (a) the obligation to make contribution payments in certain circumstances (except for the Town Parties, unless otherwise hereinafter provided); (b) the further allocation of any costs or expenses allocated or charged to such Component Projects pursuant to the Component Project Declaration; and (c) such other matters determined by Developer to be necessary or appropriate. In connection with or following the Phase II Closing, Milhaus may encumber the Phase II Property with the Master Declaration and/or applicable Component Project Declaration. Notwithstanding any of the foregoing, in no event shall the Master Declaration or any Component Project Declaration obligate the Town Parties without the Town Parties' written consent. The forms of Master Declaration and each Component Project Declaration shall be subject to approval by the Commission, which approval shall not be unreasonably withheld, conditioned or delayed. In the event a Town Party

takes title to the Water Park pursuant to an exercise of remedies under the Note and Mortgage, whether through foreclosure, deed in lieu or other conveyance, the Town Party in title shall be responsible for contribution payments assessed with respect to the Water Park pursuant to the Master Declaration or a Component Project Declaration during such period of ownership.

2.05 Title and Survey Review. Milhaus shall have a period of thirty (30) days from and after the Effective Date within which to order an ALTA commitment for an owner's policy of title insurance with respect to the Property (the "**Title Commitment**") and an ALTA/NSPS Minimum Standard Detail Survey of the Property (the "**Survey**") certified as of a current date by a surveyor or engineer licensed in the State of Indiana (the "**Surveyor**"). Prior to the expiration of the period: (a) commencing upon the date on which Milhaus receives the last of the Title Commitment and the Survey; and (b) ending on the date that is thirty (30) days thereafter (the "**Title/Survey Objection Period**"), Milhaus shall notify the Town Parties in writing of any matters reflected in or on the Title Commitment or the Survey to which Milhaus objects (the "**Objection Matters**"). Within ten (10) days after receipt by the Town Parties of a notice of Objection Matters, the Town Parties shall notify Milhaus as to whether the Town Parties agrees to cure the Objection Matters in a manner satisfactory to Milhaus. The Town Parties shall have no obligation to cure the Objection Matters. If the Town Parties fail to notify Milhaus that the Town Parties will cure one or more of the Objection Matters, then Milhaus, as its sole remedy, may elect to terminate this Agreement by delivery of written notice to the Town Parties within ten (10) days after receipt of such notice from the Town Parties or expiration of the ten (10) day notice period for the Town Parties to agree to cure Objection Matters. If Milhaus does not elect to terminate this Agreement within such ten-day period, then: (i) Milhaus shall be deemed to have waived the Objection Matters that the Town Parties have declined to cure; and (ii) such Objection Matters shall become "**Permitted Exceptions**". Permitted Exceptions shall also include: (a) those matters disclosed by the Title Commitment and the Survey to which Milhaus does not object within the Title/Survey Objection Period; (b) the lien of current real estate taxes not delinquent; (c) matters specifically designated as Permitted Exceptions in other sections of this Agreement; and (d) such other matters that Milhaus agrees in writing to accept. If, at any time prior to the Phase I Closing: (i) the Title Commitment or the Survey is revised; and (ii) the revisions: (A) include matters not previously disclosed on the Title Commitment or the Survey, respectively; and/or (B) do not cure to Milhaus's satisfaction any Objection Matters that the Town Parties have agreed to cure; then, notwithstanding that the Title/Survey Objection Period may have expired, the foregoing process shall apply with respect to the revisions, with: (i) the Title/Survey Objection Period commencing on the date that Milhaus receives the revised Title Commitment or Survey, as applicable; and (ii) Milhaus having the right to terminate this Agreement during the ten (10) day period following the non-receipt of written notice from the Town Parties that they will cure one or more of the revisions that are Objection Matters. Nothing in this Section shall be deemed to prohibit Milhaus from working directly with the Title Insurer to address any Objection Matters (regardless of whether identified to the Town Parties in a Title/Survey Objection notice).

ARTICLE III. FIRST PHASE PROJECT DEVELOPMENT

3.01. First Phase Property Transfer.

(a) To provide for the completion of the Phase I Projects, the Water Park, and the Academy E Project, subject to the procedures required by law including the Act and the terms and conditions hereof and unless otherwise agreed to by the parties in writing, the Commission will sell the Phase I Property, the Water Park Property, and Academy E Property as follows:

(i) the Phase I Property and Water Park will be conveyed to Milhaus under a closing (the "**Phase I Closing**") to occur on the date that Academy E closes on construction loan financing for the Academy E Project. That portion of the Phase I Property to be developed into the Medical Office Building and the Hotel (or such substituted Phase I Project Components as are approved by the Commission), the Water Park Property, and all right-of-way and public parks and public greenspace amenities contemplated by the final Master Site Plan approved by the Commission to be located within the Phase I Property, (the "**Dedicated Property**"), will be sold to Milhaus for a purchase price of One Dollar ($1). The remainder of the Phase I Property (the "**Purchased Property**") will be sold to Milhaus for a purchase price of Ninety Thousand Dollars ($90,000) per acre. The final purchase price of the Purchased Property will be determined based upon the actual acreage of Purchased Property conveyed at the Phase I Closing. If Milhaus, with the approval of the Commission, substitutes the Medical Office Building or Hotel with an alternate Component Project pursuant to Section 2.02(b), the portion of the Property upon which the alternate Component Project is located shall be considered Purchased Property.

(ii) the Academy E Property will be conveyed to Academy E under a closing (the "**Academy E Closing**") to occur contemporaneous with the Phase I Closing. The Academy E Property will be sold to Academy E for a purchase price of One Dollar ($1).

Unless otherwise agreed to by the Commission in writing, all portions of the Property transferred under this Agreement will be conveyed "as is" through execution and delivery by the Commission of a special warranty deed consistent with the form of Special Warranty Deed attached hereto as Exhibit E (the "**Deed**"), and subject to (a) building and zoning ordinances; (b) Permitted Exceptions; and (c) the terms, conditions and restrictions of this Agreement.

(b) Within thirty (30) days following execution of this Agreement, the Town Parties will provide to Milhaus and Academy E any environmental surveys, prior title work, and feasibility studies prepared with respect to the Property and identified by the Town Parties in their possession. Milhaus or Academy E shall be responsible for any further environmental surveys and any title work or policies to be completed at their respective discretion on the Property and such items shall, if completed, be completed at the sole cost of Milhaus or Academy E.

(c) In connection with the Phase I Closing, Milhaus and the Commission, as applicable, shall execute and deliver the following items:

(A) the Deed conveying to Milhaus fee simple title to the Phase I Property and the Water Park Property;

(B) payment of the purchase price for the Purchased Property to the Commission by wire transfer in immediately available funds;

(C) if necessary, a vendor's affidavit in form and substance such that any title company providing title insurance in connection with the applicable closing (the "**Title Company**") agrees to delete the standard exceptions for non-survey matters;

(D) if necessary, an affidavit that the Commission is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

(E) a certification by the Commission that all of the material representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Phase I Closing and that, to the Commission's knowledge, there is no existing material breach of this Agreement by any of the Town Parties;

(F) a certification by Milhaus that all of the representations and warranties set forth in this Agreement remain true and accurate in all material respects as of the Phase I Closing and that, to Milhaus' knowledge, there is no existing breach of the material provisions of this Agreement by Milhaus;

(G) a promissory note and a real estate mortgage executed by Water Park Developer (as defined in Section 3.05) in the forms attached hereto as Exhibit F (collectively, the "**Note and Mortgage**"), to be recorded in the chain of title of the Water Park Property, securing the interests of the Town Parties in the Water Park Payment, if any, that would be due by Milhaus to the Town Parties as provided in Section 3.05(n) hereof;

(H) a recordable memorandum of this Agreement, to be recorded in the chain of title for the Phase I Property and the Water Park Property;

(I) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, Milhaus or the Title Company reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Phase I Property and Water Park Property to Milhaus in accordance with the terms and conditions of this Agreement, have been properly authorized by the signatories thereto; and

(I) such other customary documents or instruments as the Commission, Milhaus or the Title Company may request in connection with the transfer of the Phase I Property and Water Park Property (including, for example, a Sales Disclosure Form and a closing statement).

Following the Phase I Closing, Milhaus assumes and agrees to pay all real estate taxes and assessments then existing or becoming a lien against the Phase I Property and Water Park Property, and there shall be no pro-ration of taxes or assessments. Notwithstanding the foregoing, it is anticipated that because the Town Parties are tax exempt entities, there will not be property tax assessments against the Phase I Property or Water Park Property for the periods that the Phase I Property or Water Park Property was owned by the Town.

(d) In connection with the Academy E Closing, Academy E and the Commission, as applicable, shall execute and deliver the following items:

(A) the Deed conveying to Academy E fee simple title to the Academy E Property;

(B) if necessary, a vendor's affidavit in form and substance such that the Title Company agrees to delete the standard exceptions for non-survey matters;

(C) if necessary, an affidavit that the Commission is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

(D) a certification by the Commission that all of the material representations and warranties set forth in this Agreement remain true and accurate in all respects as of the dated of the Academy E Closing and that, to the Commission's knowledge, there is no existing material breach of this Agreement by any of the Town Parties;

(E) a certification by Academy E that all of the material representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Academy E Closing and that, to Academy E's knowledge, there is no existing material breach of this Agreement by Academy E;

(F) a recordable memorandum of this Agreement, to be recorded in the chain of title for the Academy E Property;

(G) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, Academy E or the Title Company reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Academy E Property to Academy E in accordance with the terms and conditions of this Agreement, have been properly authorized by the signatories thereto; and

(H) such other customary documents or instruments as the Commission, Academy E or the Title Company may request in connection with the transfer of the Academy E Property (including, for example, a Sales Disclosure Form and a closing statement).

Following the Academy E Closing, Academy E assumes and agrees to pay all real estate taxes and assessments then existing or becoming a lien against the Academy E Property, and there shall be no pro-ration of taxes or assessments. Notwithstanding the foregoing, it is anticipated that because the Town Parties are tax exempt entities, there will not be property tax assessments against the Academy E Property for the periods that the Academy E Property was owned by the Town.

(e) The parties acknowledge and agree that Milhaus, in its discretion, may subdivide the Phase I Property into multiple parcels at or following the Phase I Closing (each such parcel being a "**Phase I Parcel**") in order to facilitate the separate financing and development of each Phase I Project. Subject to Section 9.06, each Phase I Parcel may be owned by a separate entity, which may or may not be an affiliate entity of Milhaus, and each of the Phase I Parcels shall be conveyed to the respective separate entity and such entity shall be entitled to the rights and bound by the obligations under this Agreement with respect to such Phase I Parcel only. Prior to the Phase I Closing, Milhaus and the Town Parties shall allocate the total Phase I Projects Investment among each of the Phase I Project and shall agree upon the amount of projected tax increment for each Phase I Parcel. Any guaranty by a Phase I Parcel owner of tax increment to be paid to the Town Parties shall be limited to the agreed upon projected tax increment for such Phase I Parcel.

3.02. First Phase Contingencies and Pre-Closing Access to the Property.

(a) Milhaus and Academy E shall have up until the Phase I Closing to satisfy any concerns they may have relative to zoning or land use, drainage, permits, environmental conditions, access, utilities, or any other matters related to the feasibility or desirability of the Phase I Projects, the Water Park, and/or Academy E Project (collectively, "**First Phase Contingencies**"). The First Phase Contingencies include, but are not limited to, the following:

i. Permits. Milhaus shall have obtained all necessary documentation to secure all required permits and approvals for construction and installation of the Project infrastructure. Academy E shall have obtained all necessary documentation to secure all required permits and approvals for construction and installation of the Academy E Project.

ii. Title and Survey Conditions. The Developers shall have reasonably determined that there are no exceptions or matters of record reflected in the Title Commitment or Survey that are unacceptable to the Developers. The Developers shall be responsible, at their cost, for obtaining the policy of title insurance contemplated pursuant to the Title Commitment, together with any endorsements that they deem to be necessary or appropriate.

iii. Environmental Condition. Developers, at their expense, shall have determined that: (i) they are satisfied with the environmental condition of the Property, the Remediation Agreement obligations and the Restrictive Covenants; and (ii) there are no underground storage tanks located on the Property. To the extent deemed necessary or appropriate by the Developers, the Developers shall have obtained a comfort letter issued by the Indiana Department of Environmental Management through the Indiana Brownfields Program ("IDEM") confirming, among other things, IDEM's opinion that the Developers meets the requirements to be considered a bona fide prospective purchaser of the Property. The Certificate of Completion and Covenant Not-to-Sue described in Section 3.12 shall have been issued.

iv. Physical Condition. The Developers, in their sole and absolute discretion and at their expense, shall have determined that no test, inspection, examination, study,

or investigation of the Property establishes that there are conditions that would interfere materially with the construction and use of the Project, in accordance with the terms and conditions of this Agreement.

v. Zoning. The Developers shall have (i) received all zoning approvals and variances necessary for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including the rezoning of the Property to Planned Unit Development as provided in Section 3.07; and (ii) determined that the Property is subject only to commitments and restrictions that are acceptable to the Developers in their reasonable discretion.

vi. Utility Availability. Prior to Closing, the Developers, at their expense, shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Property at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.

vii. Financial Ability. The Developers shall have reasonably determined that Academy E has adequate funding to construct the Academy E Project.

viii. No Breach. There shall be no breach of this Agreement by the Town Parties that the Town Parties have failed to cure as of the Phase I Closing.

In the event Milhaus or Academy E determines that they are not satisfied as to any First Phase Contingencies prior to the Phase I Closing and Academy E Closing, Milhaus or Academy E shall notify the Commission and such notice shall terminate their rights to the Property and obligations to carry out the Project under this Agreement. Upon the Phase I Closing and Academy E Closing, all First Phase Contingencies shall be deemed waived by Milhaus and Academy E, and thereafter Milhaus shall be obligated to complete or cause to be completed the Phase I Projects and Water Park, and Academy E shall be obligated to complete the Academy E Project, under the terms of this Agreement. The Town Parties may further terminate this Agreement if both the Phase I Closing and Academy E Closing has not occurred within one (1) year after execution of this Agreement.

(b) Prior to and as a condition of any party's obligation to proceed with the Phase I Closing and Academy E Closing:

i. the Commission and Milhaus shall have each mutually approved and agreed upon the final Component Projects for Phase I, the final Phase I Projects, the final Master Site Plan for Phase I (including the location of the Water Park) and the Academy E Project, the final allocation of the total Phase I Projects Investment among each of the Phase I Project, the final location of the Dedicated Property and Purchased Property, the final Milestone Schedule for construction of the Phase I Projects and the Academy E Project, and the final Phase I Parameters (as defined below) (collectively, the "**Approved Phase I Plans**"); and

ii. the Commission and Academy E shall have each mutually approved and agreed upon the final Master Site Plan for the Academy E Project, the final location of the Academy E Property, the final Milestone Schedule for construction of the Academy E Project, and the final Academy E Parameters (as defined below) (collectively, the "**Approved Academy E Plans**").

(c) To allow Milhaus and Academy E to conduct preliminary site development work on the Property, the Commission, Milhaus, and/or Academy E will execute a Site Access Agreement to the Property in the form attached hereto as Exhibit G ("**Access Agreement**"). As is also set forth in the Access Agreement, Milhaus or Academy E: (i) are responsible for any damages or liability that occurs as a result of its activities under the Access Agreement and will release and indemnify the Town Parties for the same, (ii) subject to any representations or warranties set forth in this Agreement or in the applicable Deeds, accepts the Property "AS IS", (iii) will comply with all applicable laws, rules, and regulations related to its activities, and (iv) will maintain comprehensive general liability insurance acceptable to the Commission and listing the Town Parties as additional insured while the Commission still holds title to the Property.

3.03. Construction and Operation of the Academy E Project.

(a) Following the Academy E Closing, Academy E shall complete the Academy E Project on the Academy E Property in accordance with the Approved Academy E Plans and all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town building department). The total cost of the Academy E Project shall equal or exceed the Academy E Project Investment. The Academy E Project shall be substantially completed within three (3) years following the Academy E Closing, or such later date as may be agreed to by the Commission in writing (the "**Academy E Completion Date**"), subject to extension for force majeure as provided for in Section 9.12. Substantial completion of the Academy E Project shall be achieved when Academy E obtains an occupancy permit for the Academy E Project. Except as specifically provided in this Agreement, Academy E is responsible for providing or arranging to provide for the funding of all costs to complete the Academy E Project. The Academy E Project shall consist of the items and/or parameters attached as Exhibit H as may be required by the Commission (the "**Academy E Parameters**"), including but not limited to minimum amounts of property usage types and space. The total additional assessed value of the Academy E Project Investment is anticipated to be not less than $40,000,000.

(b) Academy E shall commence physical construction of the Academy E Project by no later than one hundred eighty (180) days of the Academy E Closing and shall substantially complete the Academy E Project by the Academy E Completion Date, subject to extension for force majeure as provided for in Section 9.12. Academy E shall further develop, construct, improve and complete (as evidenced by a certificate of occupancy) the Academy E Project in accordance with the Milestone Schedule and Approved Academy E Plans.

(c) Exterior elevations and the site plan for the Academy E Project shall be submitted by Academy E to the Commission, or the Commission's designee, in accordance with the Milestone Schedule which shall include detailed schematic design drawings, detailed design development documents for the Academy E Project, and detailed construction schedule (the elevation and site plan, the "**Academy E Design**"). The Commission shall have a period of thirty

(30) days to review and provide any input and approval on the Academy E Design. Unless objected to by the Commission (or its designee) by written notice to Academy E within thirty (30) days of receipt, the parties hereby agree that the Academy E Design shall be deemed approved. In the event the Commission should have any objections to the Academy E Design, the parties agree to work in good faith to reach a mutually agreeable Academy E Design. The development, construction, improvement and completion of the Academy E Project shall be accomplished by Academy E substantially in accordance with such final Academy E Design as approved by the Commission. The provisions of this Section 3.03(c) are subject in all cases to applicable governmental entity review, including but not limited zoning and building approvals and requirements.

(d) For a period of twenty-five (25) years after the Town issues a certificate of occupancy for the Academy E Project, Academy E (i) shall operate and maintain the Academy E Project as a youth sports complex and performance center consistent with the Academy E Parameters and this Agreement, and (ii) may not change the primary use of the Academy E Project without the written consent of the Commission. The provisions of this Section will be included in the memorandum of this Agreement recorded in the chain of title of the Academy E Property.

(e) For a period of twenty-five (25) years after the Town issues a certificate of occupancy for the Academy E Project, Academy E shall not transfer the Academy E Property (as improved) without the written consent of the Commission. The Commission may not unreasonably withhold or delay consent to the transfer of the Academy E Property provided that (i) the transferee demonstrates the financial resources, technical expertise and experience, and provides adequate commitments and assurances to continually maintain and operate the Academy E Project consistent with this Agreement, (ii) the Town Parties have determined to not exercise their Academy E First Option as provided in Section 3.03(1) below, and (iii) Academy E has materially complied with this Agreement. The provisions of this Section will be included in the memorandum of this Agreement recorded in the chain of title of the Academy E Property.

(f) Academy E, its successors and assigns, shall be responsible to maintain, repair, replace and operate the Academy E Project in good condition and repair in a commercially reasonably and workmanlike manner and consistent with this Agreement.

(g) Upon the Town's request, Academy E agrees to permit the Whitestown Town Manager and/or his or her designee, at the Town's sole cost and expense, to review and inspect copies of any and all (i) construction loan draw requests (as well as any revised draw requests) relating to construction of the Academy E Project; and (ii) any inspections, reports, records, documents, and permits related to the Academy E Project.

(h) Academy E shall obtain or shall have determined that it is able to obtain all necessary permits, licenses, approvals and consents required by law for the construction and use of the Academy E Project prior to the Academy E Closing.

(i) Academy E agree to: (i) identify the Academy E Project and Academy E Property and all buildings thereon as located in or a part of the Whitestown community, in any advertisement or literature in which the location of the Academy E Project is provided; (ii) participate in a Whitestown chamber of commerce, or similar organization promoting business

specific to the Whitestown community, if organized in the future; and (iii) work with the Town Parties in reasonable partnerships or opportunities, where available to the mutual benefit of all parties, to use the Academy E Project and Academy E Property in a manner that furthers Whitestown economic development.

(j) Academy E, for and on behalf of themselves and any successor owner of the Academy E Project, agrees that no portion of the Academy E Property shall be leased or used for any of the following prohibited uses: tattoo parlor; piercing studio; nail salon; massage parlor; alternative financial services; sexually oriented-business; tobacco shop, cigar lounge, hookah, head or other smoke shop; store the principal business of which is the sale of alcoholic beverages for consumption off premises; second hand or government surplus store; non-profit or institutional use by any entity which is exempt from property taxation and causes any portion of the Academy E Property to be exempt from property taxes; or gambling facility.

(k) Academy E will have the right to impose user fees for use of the Academy E Project facilities, in Academy E's discretion, based on admissions, tournament registrations, and membership fees ("**Academy E User Fees**"). Academy E acknowledge and agree that as a result of the Development Incentives and other incentives provided by the Town Parties in connection with the Academy E Project, the Town Parties may require that with respect to all or any portion of Academy E User Fees to be imposed for all or any portion of the Academy E Project, a commercially reasonable discount be afforded to the residents of the Town. For purposes of this Agreement, a discount to Town residents of fifteen percent (15%) or more on Academy E User Fees for facilities open to the public, but only during such times as such facilities are actually available for public use, shall constitute a commercially reasonable discount, unless a different Academy E User Fees pricing arrangement or discount for Town residents is approved by the Commission.

(l) For a period of twenty-five (25) years after the Town issues a certificate of occupancy for the Academy E Project, in the event that Academy E (or any successor) desires at any time to sell the Academy E Property, Academy E shall provide and the Town Parties shall have a right of first purchase ("**Academy E First Option**") to acquire the Academy E Property at its fair market value as demonstrated by the average of two (2) independent appraisals provided by appraisers selected by the Town Parties, with the cost of the appraisals split between the Town Parties and Academy E. After receipt of both appraisals, the Town Parties shall have thirty (30) days to notify Academy E of its intention to exercise its Academy E First Option. If the Town Parties so notify Academy E, then Academy E and the Town Parties shall proceed with closing on the sale of the Academy E Property within sixty (60) days under the same procedures set forth in Section 3.01, except that the roles of the parties are reversed. If the Town Parties fail to notify Academy E within thirty (30) days of the Town Parties' decision to exercise its First Option, then Academy E shall be free to sell the Academy E Property to a third party subject to the other terms of this Agreement. If the proposed selling price is decreased by more than five percent (5%) of the average of the two (2) appraisals obtained under this Section, then Academy E shall reoffer the Academy E Property to the Town Parties and the Town Parties shall have fifteen (15) days to notify Academy E of acceptance of the lesser price. The provisions of this Section will be included in the memorandum of this Agreement recorded in the chain of title of the Academy E Property.

(m) Upon reasonable written notice delivered to Academy E, the Town, or its inspector, may perform an inspection of the Academy E Project. Following identifying any Academy E Material Defect, the Town may deliver to Academy E a notice (the "**Academy E Non-Compliance Notice**") that identifies a Academy E Material Defect (for purposes of this provision, a "**Academy E Material Defect**" is any item or component of the Academy E Project that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Academy E Project; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town delivers a Academy E Non-Compliance Notice, then Academy E shall correct, or cause to be corrected, as soon as is practicable, all Academy E Material Defects identified in the Academy E Non-Compliance Notice, except and to the extent that any such Academy E Material Defects previously have been accepted by the Town in writing. This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

(n) If Academy E delivers to the Town a written request for a final inspection of the Academy E Project, then, on or before the later of the date that is thirty (30) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the Town shall: (1) conduct the final inspection; and (2) deliver a Academy E Non-Compliance Notice (if applicable) to Academy E (a **"Academy E Final Inspection Non-Compliance Notice"**). Upon receipt of a Academy E Final Inspection Non-Compliance Notice, Academy E shall correct, or cause to be corrected, as soon as is practicable, all Academy E Material Defects identified in the Academy E Final Inspection Non-Compliance Notice. All then-completed items or components of the Academy E Project with respect to which no Academy E Material Defects are identified in a timely Academy E Final Inspection Non-Compliance Notice shall be deemed to be accepted by the Town for purposes of this Agreement. Upon: (i) correction of all Academy E Material Defects identified in the Academy E Final Inspection Non-Compliance Notice; or (ii) deemed acceptance pursuant to this section; the Academy E Project shall be deemed for purposes of this Agreement to be materially constructed in accordance with the terms and conditions of this Agreement. Within thirty (30) business days after receipt of a written request from Academy E, the Town shall certify to any lender of the Academy E Project or purchaser of the Academy E Project the status of the final inspection and whether any Academy E Material Defects identified in any Academy E Final Inspection Non-Compliance Notice, if any, have been remedied. Notwithstanding the foregoing, no acceptance or deemed acceptance by the Town under this Agreement shall constitute a waiver or acceptance of the Town for purposes of applicable laws relating the construction or maintenance of property, including but not limited to applicable building codes.

3.04. Construction and Operation of the Phase I Projects.

(a) Following the Phase I Closing, Milhaus (directly or through one or more Component Project Developers approved pursuant to Section 9.06) shall complete or cause to be completed each of the Phase I Projects on the Phase I Property in accordance with the Approved Phase I Plans and all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town building department). The total cost of the Phase I Projects shall equal or exceed the Phase I Projects Investment. The Phase I Projects shall be substantially completed within forty-two (42) months following the Phase I Closing, or such later date as may

be agreed to by the Commission in writing (the "**Phase I Completion Date**"), subject to extension for force majeure as provided for in Section 9.12. Substantial completion of the Phase I Projects shall be achieved upon completion of each of the following: (i) when occupancy permits have been issued for all Phase I Projects, and (ii) when Milhaus completes the Phase I Projects public infrastructure to the Town's applicable standards. Except as specifically provided in this Agreement, Milhaus is responsible for providing or arranging to provide (directly or through third parties) for the funding of all costs to complete the Phase I Projects. The Phase I Projects shall consist of the items and/or parameters attached as Exhibit J as may be required by the Commission (the "**Phase I Parameters**"), including but not limited to minimum amounts of property usage types and space. The total additional assessed value of the Phase I Project Investment is anticipated to be not less than $50,000,000.

(b) The Phase I Projects shall include the public infrastructure and facilities identified and described on Exhibit K and attached hereto ("**Phase I Infrastructure**"). All public infrastructure completed on the Property shall be completed to the Town's standards and specifications for such public infrastructure.

(c) Milhaus shall commence physical construction of the Phase I Projects by no later than one hundred eighty (180) days of the Phase I Closing and shall substantially complete the Phase I Projects by the First Phase Completion Date. Milhaus shall further develop, construct, improve and complete (as evidenced by a certificate of occupancy) the respective Phase I Projects in accordance with the Milestone Schedule and Approved Phase I Plans.

(d) Exterior elevations and the site plan for each of the Phase I Projects shall be submitted by Milhaus to the Commission, or the Commission's designee, in accordance with the Milestone Schedule which shall include detailed schematic design drawings, detailed design development documents for the Phase I Projects, and a detailed construction schedule (each elevation and site plan, a "**Phase I Design**"). The Commission shall have a period of thirty (30) days to review and provide any input and approval on each Phase I Design. Unless objected to by the Commission (or its designee) by written notice to Milhaus within thirty (30) days of receipt, the parties hereby agree that the Phase I Design for the relevant Phase I Project shall be deemed approved. In the event the Commission should have any objections to the Phase I Design for a Phase I Project, the parties agree to work in good faith to reach mutually agreeable Phase I Design. The development, construction, improvement and completion of the Phase I Projects shall be accomplished by Milhaus substantially in accordance with such final Phase I Design as approved by the Commission. The provisions of this Section 3.04(d) are subject in all cases to applicable governmental entity review, including but not limited zoning and building approvals and requirements.

(e) Each owner of a Phase I Project, and its successors and assigns, shall be responsible to maintain, repair, replace and operate such owner's Phase I Project in good condition and repair in a commercially reasonably and workmanlike manner and consistent with this Agreement.

(f) Upon the Town's request, Milhaus agrees to permit the Town Manager and/or his or her designee, at the Town's sole cost and expense, to review and inspect copies of any and all (i) construction loan draw requests (as well as any revised draw requests) relating to construction

of the Phase I Projects; and (ii) any inspections, reports, records, documents, and permits related to the Phase I Projects.

(g) Reserved.

(h) Milhaus agree to: (i) identify the Phase I Project and Phase I Property and all buildings thereon as located in or a part of the Whitestown community, in any advertisement or literature in which the location of the Phase I Project is provided; (ii) participate in a Whitestown chamber of commerce, or similar organization promoting business specific to the Whitestown community, if organized in the future; and (iii) work with the Town Parties in reasonable partnerships or opportunities, where available to the mutual benefit of all parties, to use the Phase I Project and Phase I Property in a manner that furthers Whitestown economic development.

(i) Milhaus, for and on behalf of themselves and any successor owner of the Phase I Projects, agrees that no portion of the Phase I Property shall be leased or used for any of the following prohibited uses: tattoo parlor; piercing studio; nail salon; massage parlor; alternative financial services; sexually oriented-business; tobacco shop, cigar lounge, hookah, head or other smoke shop; store the principal business of which is the sale of alcoholic beverages for consumption off premises; second hand or government surplus store; non-profit or institutional use by any entity which is exempt from property taxation and causes any portion of the Phase I Property to be exempt from property taxes (except to the extent dedicated to the Town Parties); or gambling facility.

(j) Upon reasonable written notice delivered to Milhaus, the Town, or its inspector, may perform an inspection of the Phase I Projects. Following identifying any Phase I Material Defect, the Town may deliver to Milhaus a notice (the "**Phase I Non-Compliance Notice**") that identifies a Phase I Material Defect (for purposes of this provision, a "**Phase I Material Defect**" is any item or component of the Phase I Projects that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Phase I Projects; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town delivers a Phase I Non-Compliance Notice, then Milhaus shall correct, or cause to be corrected, as soon as is practicable, all Phase I Material Defects identified in the Phase I Non-Compliance Notice, except and to the extent that any such Phase I Material Defects previously have been accepted by the Town in writing. This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

(k) If Milhaus delivers to the Town a written request for a final inspection of the Phase I Projects, then, on or before the later of the date that is thirty (30) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the Town shall: (1) conduct the final inspection; and (2) deliver a Phase I Non-Compliance Notice (if applicable) to Milhaus (a **"Phase I Final Inspection Non-Compliance Notice"**). Upon receipt of a Phase I Final Inspection Non-Compliance Notice, Milhaus shall correct, or cause to be corrected, as soon as is practicable, all Phase I Material Defects identified in the Phase I Final Inspection Non-Compliance Notice. All then-completed items or components of the Phase I Project with respect to which no Phase I Material Defects are identified in a timely Phase I Final Inspection Non-Compliance Notice shall be deemed to be accepted by the Town for purposes of

this Agreement. Upon: (i) correction of all Phase I Material Defects identified in the Phase I Final Inspection Non-Compliance Notice; or (ii) deemed acceptance pursuant to this section; the Phase I Projects shall be deemed for purposes of this Agreement to be materially constructed in accordance with the terms and conditions of this Agreement. Within thirty (30) business days after receipt of a written request from Milhaus, the Town shall certify to any lender of the Phase I Projects or purchaser of the Phase I Projects the status of the final inspection and whether any Phase I Material Defects identified in any Phase I Final Inspection Non-Compliance Notice, if any, have been remedied. Notwithstanding the foregoing, no acceptance or deemed acceptance by the Town under this Agreement shall constitute a waiver or acceptance of the Town for purposes of applicable laws relating the construction or maintenance of property, including but not limited to applicable building codes.

3.05 Construction and Operation of the Water Park.

(a) Following the Town Party's Water Project TIF Bonds Project Fund Deposit (as defined below) ("**Water Bond Closing**"), Milhaus or a third-party developer agreed upon by the Commission and Milhaus in writing (the "**Water Park Developer**") shall complete the Water Park on the Water Park Property in accordance with the plans and specifications agreed upon by the Commission and Water Park Developer and all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town building department). The total construction costs of the Water Park shall equal or exceed $15,000,000. The Water Park shall be substantially completed within twenty-four (24) months following the Water Bond Closing, or such later date as may be agreed to by the Commission in writing (the "**Water Park Completion Date**"). Substantial completion of the Water Park shall be achieved when Water Park Developer obtains an occupancy permit for the Water Park. Except as specifically provided in this Agreement, Water Park Developer is responsible for providing or arranging to provide for the funding of all costs to complete the Water Park. The Water Park shall consist of the items and/or parameters attached as Exhibit L as may be required by the Commission (the "**Water Park Parameters**"), including but not limited to minimum amounts of property usage types and space. The total additional assessed value of the Water Park is anticipated to be not less than $15,000,000.

(b) Water Park Developer shall commence physical construction of the Water Park by no later than one hundred twenty (120) days of the Water Park Closing and shall substantially complete the Water Park by the Water Park Completion Date, subject to extension for force majeure as provided in Section 9.12. Water Park Developer shall further develop, construct, improve and complete (as evidenced by a certificate of occupancy) the Water Park in accordance with the Milestone Schedule and Approved Phase I Plans.

(c) Exterior elevations and the site plan for the Water Park shall be submitted by Water Park Developer to the Commission in accordance with the Milestone Schedule which shall include detailed schematic design drawings, detailed design development documents for the Water Park, and detailed construction schedule (the elevation and site plan, the "**Water Park Design**"). The Commission shall have a period of ninety (90) days to review and provide any input and approval on the Water Park Design. In the event the Commission should have any objections to the Water Park Design, the parties agree to work in good faith to reach a mutually agreeable Water Park Design. The development, construction, improvement and completion of the Water Park shall be accomplished by Water Park Developer substantially in accordance with such final Water Park

Design as approved by the Commission. The provisions of this Section 3.05(c) are subject in all cases to applicable governmental entity review, including but not limited zoning and building approvals and requirements.

(d) For a period of twenty-five (25) years after the Town issues a certificate of occupancy for the Water Park, Water Park Developer (i) shall operate and maintain the Water Park as an outdoor water sports and entertainment venue consistent with the Water Park Parameters and this Agreement, and (ii) may not change the primary use of the Water Park without the written consent of the Commission. The provisions of this Section will be included in the memorandum of this Agreement recorded in the chain of title of the Water Park Property.

(e) For a period of twenty-five (25) years after the Town issues a certificate of occupancy for the Water Park, Academy E shall not transfer the Water Park Property without the written consent of the Commission. The Commission may not unreasonably withhold or delay consent to the transfer of the Water Park Property provided that (i) the transferee demonstrates the financial resources, technical expertise and experience, and provides adequate commitments and assurances to continually maintain and operate the Water Park consistent with this Agreement, (ii) the Town Parties have determined to not exercise their Water Park First Option as provided in Section 3.05(l) below, (iii) Water Park Developer has materially complied with this Agreement, and (iv) the Town Parties are paid an amount sufficient to pay all remaining amounts of principal and interest owned for the Water Project TIF Bonds (as defined below). The provisions of this Section will be included in the memorandum of this Agreement recorded in the chain of title of the Water Park Property.

(f) Water Park Developer, its successors and assigns, shall be responsible to maintain, repair, replace and operate the Water Park in good condition and repair in a commercially reasonably and workmanlike manner and consistent with this Agreement. While the Water Project TIF Bonds are still outstanding, in the event the Commission shall at any time determine that Water Park Developer is not so maintaining, repairing, replacing or operating the Water Park, subject to the right of Water Park Developer to cure any such deficiencies within sixty (60) days of written notice from the Commission, which such period shall be extended as long as Water Park Developer is diligently pursuing the cure of any such deficiency, the Commission may, but is not required to do so, undertake any necessary maintenance, repairs, replacements, or operations of the Water Park and Water Park Developer shall upon receipt of an invoice of the costs of the same from the Commission within ten (10) days reimburse the Commission for all such costs.

(g) Upon the Town's request, Water Park Developer agrees to permit the Whitestown Town Manager and/or his or her designee, at the Town's sole cost and expense, to review and inspect copies of any and all (i) construction loan draw requests (as well as any revised draw requests) relating to construction of the Water Park; and (ii) any inspections, reports, records, documents, and permits related to the Water Park.

(h) Water Park Developer shall obtain or shall have determined that it is able to obtain all necessary permits, licenses, approvals and consents required by law for the construction and use of the Water Park prior to the Phase I Closing.

(i) Water Park Developer agree to: (i) identify the Water Park and Water Park Property and all buildings thereon as located in or a part of the Whitestown community, in any advertisement or literature in which the location of the Water Park is provided; (ii) make unoccupied space on the Water Park Property available to the Town Parties under reasonable terms and conditions; and (iii) work with the Town Parties in reasonable partnerships or opportunities, where available to the mutual benefit of all parties, to use the Water Park and Water Park Property in a manner that furthers Whitestown economic development.

(j) Water Park Developer, for and on behalf of themselves and any successor owner of the Water Park, agrees that no portion of the Water Park Property shall be leased or used for any of the following prohibited uses: tattoo parlor; piercing studio; nail salon; massage parlor; alternative financial services; sexually oriented-business; tobacco shop, cigar lounge, hookah, head or other smoke shop; store the principal business of which is the sale of alcoholic beverages for consumption off premises; second hand or government surplus store; non-profit or institutional use by any entity which is exempt from property taxation and causes any portion of the Water Park Property to be exempt from property taxes; or gambling facility.

(k) Water Park Developer will have the right to impose user fees for use of the Water Park facilities, in Water Park Developer's discretion, based on admissions at or use of the Water Park ("**Water Park User Fees**"). Milhaus acknowledge and agree that as a result of the Development Incentive and other incentives provided by the Town Parties in connection with the Water Park, the Town Parties may require that with respect to all or any portion of Water Park User Fees to be imposed for all or any portion of the Water Park, a commercially reasonable discount be afforded to the residents of the Town. For purposes of this Agreement, a discount to Town residents of fifteen percent (15%) or more on Water Park User Fees for facilities open to the public shall constitute a commercially reasonable discount, unless a different Water Park User Fees pricing arrangement or discount for Town residents is approved by the Commission.

(l) For a period of twenty-five (25) years after the Town issues a certificate of occupancy for the Water Park, in the event that Water Park Developer (or any successor) desires at any time to sell the Water Park, Academy E shall provide and the Town Parties shall have a right of first purchase ("**Water Park First Option**") to acquire the Water Park at their fair market value as demonstrated by the average of two (2) independent appraisals provided by appraisers one of which shall be selected by the Town Parties and the other by Water Park Developer, less an amount sufficient to pay all remaining amounts of principal and interest owned for the Water Project TIF Bonds (as defined below). The cost of the appraisals shall be split between the Town Parties and Water Park Developer. After receipt of both appraisals, the Town Parties shall have thirty (30) days to notify Water Park Developer of its intention to exercise its Water Park First Option. If the Town Parties so notify Water Park Developer, then Water Park Developer and the Town Parties shall proceed with closing on the sale of the Water Park within sixty (60) days under the same procedures set forth in Section 3.01, except that the roles of the parties are reversed. If the Town Parties fail to notify Water Park Developer within thirty (30) days of the Town Parties' decision to exercise its Water Park First Option, then Water Park Developer shall be free to sell the Water Park to a third party subject to the other terms of this Agreement. If the proposed selling price is decreased by more than five percent (5%) of the average of the two (2) appraisals obtained under this Section, then Water Park Developer shall reoffer the property to the Town Parties and the Town Parties shall have fifteen (15) days to notify Water Park Developer of acceptance of the

lesser price. The provisions of this Section will be included in the memorandum of this Agreement recorded in the chain of title of the Water Park Property.

(m) Upon reasonable written notice delivered to Academy E, the Town, or its inspector, may perform an inspection of the Water Park. Following identifying any Water Park Material Defect, the Town may deliver to Water Park Developer a notice (the "**Water Park Non-Compliance Notice**") that identifies a Water Park Material Defect (for purposes of this provision, a "**Water Park Material Defect**" is any item or component of the Water Park that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Water Park; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town delivers a Water Park Non-Compliance Notice, then Water Park Developer shall correct, or cause to be corrected, as soon as is practicable, all Water Park Material Defects identified in the Water Park Non-Compliance Notice, except and to the extent that any such Water Park Material Defects previously have been accepted by the Town in writing. This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

(n) In addition to any other available remedies of the Town Parties, if the Commission determines during the term of the Water Park TIF Bonds (as defined below) that the Water Park Developer have breached this Agreement by (a) failing to construct, operate, and maintain the Water Park as required by Section 3.05, or (b) transferring the Water Park during the term of the Water Project TIF Bonds in violation of Section 3.05, then Water Park Developer shall be obligated to pay to the Town Parties within thirty (30) days of the mailing of notice from the Commission an amount equal to the then-outstanding principle and interest owed for the Water Park TIF Bonds (the "**Water Park Payment**"). The obligation to pay the Water Park Payment herein shall be further evidenced by and be enforceable by the Town Parties in accordance with the Note and Mortgage, which Note and Mortgage shall be first priority over the Developer's construction loan or any other financing property interest in the Water Park. Within thirty (30) days of the payoff of the Water Park TIF Bonds, the Commission shall file a release of the Mortgage in the Boone County Recorder's Office. In any event, the obligation to make the Water Park Payment shall expire once the Water Park TIF Bonds expire.

(o) If Water Park Developer delivers to the Town a written request for a final inspection of the Water Park, then, on or before the later of the date that is thirty (30) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the Town shall: (1) conduct the final inspection; and (2) deliver a Water Park Non-Compliance Notice (if applicable) to Water Park Developer (a **"Water Park Final Inspection Non-Compliance Notice"**). Upon receipt of a Water Park Inspection Non-Compliance Notice, Water Park Developer shall correct, or cause to be corrected, as soon as is practicable, all Water Park Material Defects identified in the Water Park Final Inspection Non-Compliance Notice. All then-completed items or components of the Water Park with respect to which no Water Park Material Defects are identified in a timely Water Park Final Inspection Non-Compliance Notice shall be deemed to be accepted by the Town for purposes of this Agreement. Upon: (i) correction of all Water Park Material Defects identified in the Water Park Inspection Non-Compliance Notice; or (ii) deemed acceptance pursuant to this section; the Water Park shall be deemed for purposes of

this Agreement to be materially constructed in accordance with the terms and conditions of this Agreement. Within thirty (30) business days after receipt of a written request from Water Park Developer, the Town shall certify to any lender of the Water Park or purchaser of the Water Park the status of the final inspection and whether any Water Park Material Defects identified in any Water Park Final Inspection Non-Compliance Notice, if any, have been remedied. Notwithstanding the foregoing, no acceptance or deemed acceptance by the Town under this Agreement shall constitute a waiver or acceptance of the Town for purposes of applicable laws relating the construction or maintenance of property, including but not limited to applicable building codes.

(p) If the Water Bond Closing has not occurred and construction of the Water Park has not commenced within forty-two (42) months following the Phase I Closing, either the Commission or Milhaus may terminate this Agreement as to the Water Park Property and Water Park by providing notice of such termination to the other party ("**Water Park Termination**"), and upon such Water Park Termination no party (nor the Water Park Developer) shall have any further rights or obligations with respect to the construction, financing, or operation of the Water Park. Within sixty (60) days following the Water Park Termination, Milhaus shall convey the Water Park Property back to the Commission at no cost to the Commission by warranty deed subject only to (a) building an zoning ordinances and (b) the Permitted Exceptions.

3.06 Public Park Facilities. Milhaus may, as a part of the Project, construct public open space amenities. By separate agreement, Milhaus and the Town may provide for the transfer of any such agreed upon public amenities to the Town Parks Department in exchange for park impact fee credits equal to the value of such property as determined by the average of two (2) appraisals, or other terms and conditions mutually agreed upon by the parties.

3.07 Development Standards and Zoning. The Property is currently zoned General Business. Milhaus and Academy E consent to the rezoning of the Property to Planned Unit Development (the "PUD"), under terms and conditions as may be agreed upon by Milhaus and the Commission. All site standards relating to the PUD shall be subject to review and approval of Milhaus and the Commission, and subject to applicable zoning procedures and approvals. Each of Milhaus and the Town Parties shall attend such meetings, and execute such plats, petitions, requests, and/or other documentation, as reasonably may be requested by the other party; provided that Milhaus' shall be responsible for leading all zoning efforts (with the Town Parities' cooperation and assistance) and be the applicant on all applications and submissions related to the zoning efforts.

3.08 Project Records, Reporting. For purposes of demonstrating the economic development guaranteed by the Project, for a period up to and including ten (10) year(s) following the completion date of any respective portion of the Project, Milhaus and Academy E shall keep and maintain in their offices complete and accurate records and supporting documents relating to the receipt and expenditures related to the construction and completion of the Project, and will cooperate with and permit any duly authorized representative of the Town Parties, upon not more than ten (10) days' prior written notice, to have access to and the right to examine the records and supporting documents required to be kept and maintained under this Agreement.

3.09 Building Approvals. The Town Parties shall hold such meetings and assist Milhaus and Academy E with all necessary permit applications and other submittals to each and any other applicable board, commission or office of the Town to facilitate procurement, by Milhaus and Academy E, of all necessary and appropriate authorizations, approvals, permits and other entitlements required or otherwise associated with the Projects to accommodate the timely construction of the Projects.

3.10 Public Infrastructure. Milhaus will, with the use of some of the proceeds from the Development Incentives to be funded from the Bonds as described below, design, develop and construct the public infrastructure reasonably required to serve the Project. The Town shall have the right to review and approve any such public infrastructure prior to its construction and such public infrastructure shall in all instances be designed and constructed in accordance with Town standards.

3.11 Project Entitlements. Milhaus and Academy E will submit (or cause to be submitted) all necessary applications for appropriate Property planning and zoning designations in order to accommodate the uses proposed by the Project. The Town will consider and review all such applications in a prompt, timely manner.

3.12 Environmental. The parties acknowledge that a degree of environmental conditions exists on the Property as contemplated in the Environmental Restrictive Covenant executed by the Commission (11/8/2019) and attached as Exhibit M (the "**Restrictive Covenants**"), and the Remediation Agreement by and between the Redevelopment Commission and Wrecks, Inc. (12/28/2018) attached as Exhibit N (the "**Remediation Agreement**"). As between the Town Parties and the Developers, the Town Parties will be responsible for ensuring the implementation of the IDEM-approved remediation of the Chlorinated Solvent Contamination as outlined in the Remediation Agreement, which the parties understand and acknowledge will be accomplished by the Town Parties by requiring Wrecks, Inc. to comply with the Remediation Agreement, and which shall be deemed complete when IDEM issues of Certificate of Completion through its VRP and when the State of Indiana issues a Covenant Not-to-Sue as to the Chlorinated Solvent Contamination. However, notwithstanding Wrecks, Inc.'s responsibilities under the Remediation Agreement, in the event the Town Parties are unsuccessful in requiring Wrecks, Inc. to comply with the Remediation Agreement following the Phase I Closing, the Town Parties will still be responsible under this Section 3.12 for reaching regulatory closure as it relates to the Chlorinated Solvent Contamination. Milhaus will accept the Phase I Property and Academy E will accept the Academy E Property subject to the Restrictive Covenants and Other Known Environmental Conditions (as set forth and defined in the Remediation Agreement), and will be responsible for any costs incurred in order to comply with the Restrictive Covenants or address Other Known Environmental Conditions in Milhaus and Academy E's development or use of the Property. The Town Parties will be responsible for Unknown Condition Costs (as set forth and defined in the Remediation Agreement), or will otherwise hold Wrecks, Inc. responsible for its allocable portion of such Unknown Conditions Costs; provided, however, than any obligations of the Town Parties as to Unknown Condition Costs shall expire on September 30, 2022.

ARTICLE IV. SECOND PHASE OPTION & PROJECT DEVELOPMENT

4.01. Second Phase Project Option. For a period of five (5) years following the Effective Date of this Agreement, and subject to and contingent upon the Commission's approval of the Phase II Proposal (as defined below) for such portions of the Phase II Property as provided below, and contingent upon the completion of the Phase I Closing and provided that Milhaus is not otherwise in default of any material provision of this Agreement, Milhaus shall have the option to purchase some or all of the Phase II Property at a base purchase price of Ninety Thousand Dollars ($90,000) per acre, which base purchase price per acre for the Phase II Property will increase by five percent (5%) on each anniversary date of the Effective Date **("Phase II Property Option")**, under the terms and conditions of this Agreement.

4.02. Second Phase Project Components. In the event that Milhaus desires to exercise the Phase II Property Option with respect to any portion of the Phase II Property, Milhaus shall first submit a detailed proposal to the Commission for the development of the portion of the Phase II Property on which Milhaus desires to exercise a Phase II Property Option (each such proposal, a "**Phase II Proposal**"). Each Phase II Proposal shall include such information as may be required by the Commission in its discretion concerning the use, design, aesthetics, component, size, investment commitments, and any other matters concerning the economic development of and impact on the Property, the Town, and the community, including but not limited to elevations, schematic design, site plans, public infrastructure, construction costs, assessed value, investment commitments, construction schedule, and milestone schedule. In the event the Commission should have any objections to the Phase II Proposal, the parties agree to work in good faith to reach a mutually agreeable Phase II Proposal. Milhaus shall not be entitled to exercise the Phase II Property Option, nor shall the Town Parties be required to transfer any of the Phase II Property to Milhaus, unless and until the Commission provides written approval of an agreed upon Phase II Proposal in its sole but reasonable discretion. The Commission shall have a period of one hundred twenty (120) days to review and provide any input and approval on the Phase II Proposal. Unless objected to by the Commission by written notice to Milhaus within one hundred twenty (120) days of receipt, the parties hereby agree that the Phase II Proposal shall be deemed approved. In the event the Commission declines to approve the Phase II Proposal, the Commission and Milhaus agree to work in good faith to reach a mutually agreeable Phase II Proposal. Academy E shall have no rights to review or approve the Phase II Proposal. Notwithstanding the foregoing, the Commission shall not be entitled to withhold approval of the Phase II Proposal if, in the reasonable determination of the Commission, (a) the development of the Phase II Property contemplated by the Phase II Proposal complies with the development, design, component, timing, aesthetic, and investment requirements of the Commission and PUD; (b) the TIF Revenues generated from the amount of the investment commitment contemplated by the Phase II Proposal will be sufficient to provide adequate coverage on any required Second Phase Project TIF Bonds, and (c) the Phase II Proposal includes all of the Phase II Property or otherwise does not leave the Commission with property not suitable for future independent economic development of the Commission. The Town Parties shall further have no obligation to transfer the Phase II Property to Milhaus for any portion of the Phase II Property of which the Phase II Closing (as defined below) has not occurred within five (5) years of the Effective Date.

4.03 Second Phase Property Transfer. Following the Commission's written approval of a Phase II Proposal, Milhaus may notify the Commission that it is exercising the Phase II Property Option with respect to any portion of the Property included in such approved Phase II Proposal ("**Approved Phase II Property**"). The Approved Phase II Property will be conveyed to Milhaus

under a closing (each, a "**Phase II Closing**") to occur on a date mutually agreed upon by the Commission and Milhaus within sixty (60) days following written notice by Milhaus. In connection with any Phase II Closing, Milhaus and the Commission, as applicable, shall execute and deliver the following items:

(A) the Deed conveying fee simple title to the Approved Phase II Property;

(B) payment of the purchase price for the Approved Phase II Property to the Commission by wire transfer in immediately available funds;

(C) if necessary, a vendor's affidavit in form and substance such that the Title Company agrees to delete the standard exceptions for non-survey matters;

(D) if necessary, an affidavit that the Commission is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

(E) a certification by the Commission that all of the material representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Phase II Closing and that, to the Commission's knowledge, there is no existing material breach of this Agreement by any of the Town Parties;

(F) a certification by Milhaus that all of the material representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Phase II Closing and that, to Milhaus' knowledge, there is no existing material breach of this Agreement by Milhaus;

(G) a recordable memorandum of this Agreement, to be recorded in the chain of title for the Approved Phase II Property;

(H) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, Milhaus or the Title Company reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Approved Phase II Property to Milhaus in accordance with the terms and conditions of this Agreement, have been properly authorized by the signatories thereto; and

(J) such other customary documents or instruments as the Commission, Milhaus or the Title Company may request in connection with the transfer of the Approved Phase II Property (including, for example, a Sales Disclosure Form and a closing statement).

Following any Phase II Closing, Milhaus assumes and agrees to pay all real estate taxes and assessments then existing or becoming a lien against the Approved Phase II Property, and there shall be no pro-ration of taxes or assessments. Notwithstanding the foregoing, it is anticipated that because the Town Parties are tax exempt entities, there will not be property tax assessments against

the Approved Phase II Property for the periods that the Approved Phase II Property was owned by the Town.

4.04. Construction and Operation of the Phase II Projects.

(a) Following the Phase II Closing, Milhaus shall complete the development of the Approved Phase II Property in accordance with the Phase II Proposal approved by the Commission ("**Phase II Projects**") and in accordance with all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town building department). The Phase II Projects shall be completed in accordance with the timelines, parameters, requirements, infrastructure, minimum investment commitments, minimum assessed values, milestone schedules, and design as set forth in the Phase II Proposal approved by the Commission. Except as specifically provided in this Agreement, Milhaus will responsible for providing or arranging to provide for the funding of all costs to complete the Phase II Projects. The Phase II Projects are subject in all cases to applicable governmental entity review, including but not limited zoning and building approvals and requirements.

(b) Milhaus, its successors and assigns, shall be responsible to maintain, repair, replace and operate the Phase II Projects in good condition and repair in a commercially reasonably and workmanlike manner and consistent with this Agreement.

(c) Upon the Town's request, Milhaus agrees to permit the Town Manager and/or his or her designee, at the Town's sole cost and expense, to review and inspect copies of any and all (i) construction loan draw requests (as well as any revised draw requests) relating to construction of the Phase II Projects; and (ii) any inspections, reports, records, documents, and permits related to the Phase II Projects.

(d) Milhaus shall obtain or shall have determined that it is able to obtain all necessary permits, licenses, approvals and consents required by law for the construction and use of the Phase II Projects prior to any Phase II Closing.

(e) Milhaus agree to identify the Phase II Projects and Approved Phase II Property and all buildings thereon as located in or a part of the Whitestown community, in any advertisement or literature in which the location of the Phase II Project is provided.

(f) Milhaus, for and on behalf of itself and any successor owner of any Phase II Projects, agrees that no portion of any Approved Phase II Property shall be leased or used for any of the following prohibited uses: tattoo parlor; piercing studio; nail salon; massage parlor; alternative financial services; sexually oriented-business; tobacco shop, cigar lounge, hookah, head or other smoke shop; store the principal business of which is the sale of alcoholic beverages for consumption off premises; second hand or government surplus store; non-profit or institutional use by any entity which is exempt from property taxation and causes any portion of the Approved Phase II Property to be exempt from property taxes (except to the extent dedicated to the Town Parties); or gambling facility.

(g) Upon reasonable written notice delivered to Milhaus, the Town, or its inspector, may perform an inspection of the Phase II Projects. Following identifying any Phase II Material

Defect, the Town may deliver to Milhaus a notice (the "**Phase II Non-Compliance Notice**") that identifies a Phase II Material Defect (for purposes of this provision, a "**Phase II Material Defect**" is any item or component of the Phase II Projects that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Phase II Projects; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town delivers a Phase II Non-Compliance Notice, then Milhaus shall correct, or cause to be corrected, as soon as is practicable, all Phase II Material Defects identified in the Phase II Non-Compliance Notice, except and to the extent that any such Phase II Material Defects previously have been accepted by the Town in writing. This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

(h) If Milhaus delivers to the Town a written request for a final inspection of the Phase II Projects, then, on or before the later of the date that is thirty (30) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the Town shall: (1) conduct the final inspection; and (2) deliver a Phase II Non-Compliance Notice (if applicable) to Milhaus (a **"Phase II Final Inspection Non-Compliance Notice"**). Upon receipt of a Phase II Final Inspection Non-Compliance Notice, Milhaus shall correct, or cause to be corrected, as soon as is practicable, all Phase II Material Defects identified in the Phase II Final Inspection Non-Compliance Notice. All then-completed items or components of the Phase II Project with respect to which no Phase II Material Defects are identified in a timely Phase II Final Inspection Non-Compliance Notice shall be deemed to be accepted by the Town for purposes of this Agreement. Upon: (i) correction of all Phase II Material Defects identified in the Phase II Final Inspection Non-Compliance Notice; or (ii) deemed acceptance pursuant to this section; the Phase II Projects shall be deemed for purposes of this Agreement to be materially constructed in accordance with the terms and conditions of this Agreement. Within thirty (30) business days after receipt of a written request from Milhaus, the Town shall certify to any lender of the Phase II Projects or purchaser of the Phase II Projects the status of the final inspection and whether any Phase II Material Defects identified in any Phase II Final Inspection Non-Compliance Notice, if any, have been remedied. Notwithstanding the foregoing, no acceptance or deemed acceptance by the Town under this Agreement shall constitute a waiver or acceptance of the Town for purposes of applicable laws relating the construction or maintenance of property, including but not limited to applicable building codes.

ARTICLE V. ECONOMIC DEVELOPMENT INCENTIVES

5.01. Project Economic Development Area. The Town Parties shall, subject to further proceedings required by law, establish a new economic development area and allocation area for the Property in accordance with Indiana Code 36-7-14, as amended in order to collect tax increment revenue generated from the Project (the "**TIF Revenues**"). The term of the allocation area shall extend for the maximum term permitted by Indiana Code 36-7-14-39. The Developers agree to attend and participate in meetings and hearings of the Town Parties, and provide such documentation as may be necessary, for the establishment of the new economic development area and allocation area for the Property.

5.02. F&B Taxes. The Town parties shall, subject to further proceedings required by law, establish a one percent (1%) Food & Beverage Tax in accordance with Indiana Code 6-9-52 (the "**F&B Tax**"). The F&B Tax shall be maintained by the Town for so long as the Bonds (as defined below) are outstanding. The Developers agree to attend and participate in meetings and hearings of the Town Parties, and provide such documentation as may be necessary, in support of the establishment and maintenance of the F&B Tax.

5.03. Economic Development Revenue Bonds.

(a) The Town Parties shall each, subject to further proceedings required by law, issue, or cause to be issued four or more series of economic development revenue bonds pursuant to Indiana Code 36-7-12 (the "**Bonds**"), which Bonds may or may not be issued as tax-exempt based on a determination of the Town Parties at the time of issuance of the Bonds upon the advice of the Town Parties' bond counsel. The Bonds for the first phase of the Project (the "**First Phase Project TIF Bonds**") may, at the election of Milhaus, be issued in two or more series and shall be issued in a principal amount sufficient to provide for the deposit to a project fund the total sum not to exceed $25,000,000 (the "**First Phase Project TIF Bonds Project Fund Deposit**"). The Bonds for the Water Park (the "**Water** Park **Project TIF Bonds**") shall be issued in a principal amount sufficient to provide for the deposit to a project fund the total sum not to exceed $15,000,000 (the "**Water Project TIF Bonds Project Fund Deposit**"). The Bonds for the second phase of the Project (the "**Second Phase Project TIF Bonds**") may, at the election of Milhaus, be issued in two or more series and shall be issued in a principal amount to be set forth in the Phase II Proposal approved by the Commission based upon the amount of the investment commitment set forth in the Phase II Proposal, of up to a total potential principal amount sufficient to provide for a deposit to a project fund not to exceed $18,000,000 (the "**Second Phase Project TIF Bonds Project Fund**," together with the First Phase Project TIF Bonds Project Fund Deposit and the Water Project TIF Bonds Project Fund Deposit, collectively, the "**Development Incentives**"). The parties anticipate that the Second Phase Project TIF Bonds Project Fund will be sized based upon the Town's municipal advisor determining that Milhaus' commitment as to the Phase II Projects' assessed value is sufficient to provide at least 120% coverage on the Second Phase Project TIF Bonds from the TIF Revenues generated from the Approved Phase II Property. The actual par amount of the Bonds will be sized to ensure sufficient proceeds to provide, in addition to the Development Incentives, the cost of issuance including (a) funding a debt service reserve for the Bonds, (b) funding capitalized interest on the Bonds through and including _____, and (c) the legal, financial advisory, and planning consultant expenses incurred by the Town Parties in connection with the issuance of the Bonds. The final sizing of the Bonds will be determined by the Town Parties with the advice of the Town's municipal advisor.

(b) In connection with the issuance of the Bonds, the Town Parties agree to pledge the following sources of funds to the payment of the Bonds (note, no other sources of funds of the Town Parties will be pledged to the Bonds):

i. First Phase Project TIF Bonds

A. First Phase Project TIF Revenues. 90% of the TIF Revenues from the Phase I Projects, the Academy E Project, and the Water Park will be pledged to the payment of the First Phase Project TIF Bonds. The remaining 10% of the TIF

Revenues from the Phase I Projects, Academy E Project, and the Water Park will be retained by the Commission and available for use by the Commission for any purpose permitted by Indiana law. The 90% of pledged TIF Revenues will be the first position revenue source pledged to the payment of the First Phase Project TIF Bonds, followed then, if necessary, by the First Phase Project-Specific F&B Tax Revenue and Hotel Tax Sharing Revenue, further described below.

B. First Phase Project-Specific F&B Tax. 100% of the revenue generated from the F&B Tax levied by the Town and collected from the Phase I Projects, the Academy E Project, and the Water Park will be pledged to the payment of the First Phase Project TIF Bonds (the "**First Phase Project-Specific F&B Tax**"). To the extent that excess First Phase Project-Specific F&B Tax revenues exist after First Phase Project TIF Bond debt service payments are made in each year, the excess thereof will be used to redeem the First Phase Project TIF Bonds. F&B Taxes levied and collected by the Town on all other areas of the Town exclusive of the Phase I Property, Academy E Property, and the Water Park Property will not be pledged to the payment of the First Phase Project TIF Bonds.

C. County Inkeeper Tax Sharing Revenue. 100% of the county inkeeper tax revenue generated from the Hotel and made available to the Town by the Boone County Convention & Visitors Bureau or such other governing body in control of the disposition of such tax revenue will be pledged to the payment of the First Phase Project TIF Bonds (such pledge revenue, herein the "**Inkeeper Tax Sharing Revenue**"). To the extent that excess Inkeeper Tax Sharing Revenue exists after the First Phase Project TIF Bond debt service payments are made in each year, the excess thereof will be used to redeem the First Phase Project TIF Bonds.

ii. Water Project TIF Bonds

The Town Parties will pledge sufficient available revenues, excluding the First Phase Project TIF Revenues, to ensure payment of the Water Project TIF Bonds. The payment of the Water Project TIF Bonds shall not be dependent upon the First Phase Project TIF Revenues from the Phase I Projects, Academy E Project, or Water Park as a source of payment but shall be payable from other sources of revenues available to the Town Parties to ensure such Water Project TIF Bonds will be fully paid from such sources.

iii. Second Phase Project TIF Bonds.

A. Second Phase Project TIF Revenues. 90% of the TIF Revenues from the Phase II Projects will be pledged to the payment of the Second Phase Project TIF Bonds. The remaining 10% of the TIF Revenues from the Phase II Projects will be retained by the Commission and available for use by the Commission for any purpose permitted by Indiana law. The 90% of pledged TIF Revenues will be the first position revenue source pledged to the payment

of the First Phase Project TIF Bonds, followed then, if necessary, by the Second Phase Project-Specific F&B Tax Revenue further described below.

B. Second Phase Project-Specific F&B Tax. 100% of the revenue generated from the F&B Tax levied by the Town and collected from the Phase II Projects will be pledged to the payment of the Second Phase Project TIF Bonds (the "**Second Phase Project-Specific F&B Tax**"). To the extent that excess Second Phase Project-Specific F&B Tax revenues exist after Second Phase Project TIF Bond debt service payments are made in each year, the excess thereof will be used to redeem the Second Phase Project TIF Bonds. F&B Taxes levied and collected by the Town on all other areas of the Town exclusive of the Approved Phase II Property will not be pledged to the payment of the Second Phase Project TIF Bonds.

(c) Milhaus acknowledge that the ability of the Town Parties to pay debt service on the First Phase Project TIF Bonds is directly related to the assessed value of Phase I Projects, Academy E Project, and Water Park. To facilitate the financing of the cost of the projects, Milhaus shall either (i) purchase the First Phase Project TIF Bonds directly through Milhaus, an affiliate thereof, and/or one or more third parties provided by Milhaus, or (ii) cause the increment expected to be generated in connection with the First Phase Project TIF Bonds to be guaranteed by Milhaus, an affiliate thereof, and/or one or more third-parties provided by Milhaus provided such guaranty shall be reasonably sufficient to enable the marketing of the First Phase Project TIF Bonds to a financial institution or other purchaser. In connection herewith, Milhaus agrees to execute, or cause its affiliates or third parties provided by Milhaus to execute, any such purchase agreements and or guaranty agreements as may be necessary and appropriate in connection with the marketing and sale of the First Phase Project TIF Bonds. Subject to any conditions or requirements of the purchaser of the First Phase Project TIF Bonds, the Town Parties will not independently require subsequent owners of the Property to guarantee the payment of the First Phase Project TIF Bonds.

(d) Milhaus acknowledge that the ability of the Town Parties to pay debt service on the Second Phase Project TIF Bonds is directly related to the assessed value of the Phase II Projects. To facilitate the financing of the cost of the projects, Milhaus shall either (i) purchase the Second Phase Project TIF Bonds directly through Milhaus, an affiliate thereof, and/or one or more a third-parties provided by Milhaus, or (ii) cause the increment expected to be generated in connection with of the Second Phase Project TIF Bonds to be guaranteed by Milhaus, an affiliate thereof, and/or one or more third party provided by Milhaus provided such guaranty shall be reasonably sufficient to enable the marketing of the Second Phase Project TIF Bonds to a financial institution or other purchaser. In connection herewith, Milhaus agrees to execute, or cause its affiliates or third parties provided by Milhaus to execute, any such purchase agreements and or guaranty agreements as may be necessary and appropriate in connection with the marketing and sale of the Second Phase Project TIF Bonds. Subject to any conditions or requirements of the purchaser of the Second Phase Project TIF Bonds, the Town Parties will not independently require subsequent owners of the Property to guarantee the payment of the Second Phase Project TIF Bonds.

(e) Milhaus and Town Parties agree that the Bonds shall be used primarily for the cost of the construction of the Project and for the cost of the acquisition of the Property, Project site

development and infrastructure work, Project foundations and all other costs of the construction of the Project as set forth in this Agreement.

(f) So long as the Bonds remain outstanding, the Developers covenant and agrees to not seek any property tax abatements (real or personal) on the Property and/or appeals against the assessed value of any applicable portion of Project or Property that would: (i) decrease the actual tax assessment of the Phase I Property to an amount that is less than 110% of the Phase I Projects Investment, (ii) decrease the actual tax assessment of the Academy E Property to an amount that is less than 110% of the Academy E Project Investment, (iii) decrease the actual tax assessment of the Water Park Property to an amount that is less than $16,500,000, or (iv) decrease the actual tax assessment of the Approved Phase II Property to an amount that is less than 110% of the project investment set forth in the Phase II Proposal approved by the Commission.

(g) The Town Parties shall commence with all preliminary actions and approvals that may be necessary to proceed with the bond sale process as to the First Phase Project TIF Bonds and Water Project TIF Bonds.

(h) As soon as reasonably possible after the Academy E Phase I and Academy E Closings (but in any event on or before 60 days after such Phase I Closing date), the Town Parties will complete the sale of the First Phase Project TIF Bonds and will make proceeds available to Milhaus for a period of two (2) years after closing on the sale of the First Phase Project TIF Bonds subject to the hereinafter described disbursement conditions. The funds held in the First Phase Project TIF Bonds Project Fund will be made available to the Milhaus to pay for any and all costs of the Phase I Projects or Academy E Project that are eligible for payment under Indiana law. The ability of Milhaus to access the proceeds of the First Phase Project TIF Bonds shall be subject to (i) the approval by the Commission of a final Academy E Project and Phase I Projects budget (the "**First Phase Project Budget**") provided by Milhaus and acceptable by the Commission, which acceptance shall not be unreasonably withheld or delayed, and (ii) the prior written consent of the Town in accordance with commercially reasonable disbursement conditions to ensure that the proceeds of the First Phase Project TIF Bonds are used for capital costs of the Academy E Project and Phase I Projects and drawn on a pro-rata basis with other financing for the First Phase Project Budget, and otherwise in accordance with this Agreement and the First Phase Project Budget. Prior to the issuance of the First Phase Project TIF Bonds, Milhaus shall have secured such other funds to the Commission's satisfaction in an amount sufficient to cover all costs of the Academy E Project and Phase I Projects to completion, to the extent not funded from the First Phase Project TIF Bond proceeds.

(i) Reserved.

(j) On or before 60 days after 50% completion of the physical construction of the Hotel and Academy E Project, the Town Parties will complete the sale of the Water Project TIF Bonds and will make proceeds available to Milhaus for a period of two (2) years after closing on the sale of the Water Park Bonds subject to the hereinafter described disbursement conditions. The funds held in the Water Project TIF Bonds Project Fund will be made available to the Milhaus to pay for any and all costs of the Water Park that are eligible for payment under Indiana law. The ability of Milhaus to access the proceeds of the Water Project TIF Bonds shall be subject to (i) the approval

by the Commission of a final Water Park budget (the "**Water Park Project Budget**") provided by Milhaus and acceptable by the Commission, which acceptance shall not be unreasonably withheld or delayed, and (ii) the prior written consent of the Town in accordance with commercially reasonable disbursement conditions to ensure that the proceeds of the Water Project TIF Bonds are used for capital costs of the Water Park and drawn on a pro-rata basis with other financing for the Water Park Project Budget, and otherwise in accordance with this Agreement and the Water Park Project Budget. Prior to the issuance of the Water Park Project TIF Bonds, Milhaus shall have secured such other funds to the Commission's satisfaction in an amount sufficient to cover all costs of the Water Park to completion, to the extent not funded from the Water Park TIF Bond proceeds.

(k) Following the Commission's approval of the Phase II Proposal, the Town Parties will commence with all preliminary actions and approvals that may be necessary to proceed with the bond sale process as to the Second Phase Project TIF Bonds.

(l) As soon as reasonably possible after the Phase II Closing (but in any event on or before 60 days after such Phase II Closing date), the Town Parties will complete the sale of the Second Phase Project TIF Bonds and will make proceeds available to Milhaus for a period of two (2) years after the closing on the sale of the Second Phase Project TIF Bonds subject to the hereinafter described disbursement conditions. The funds held in the Second Phase Project TIF Bonds Project Fund will be made available to Milhaus to pay for any and all costs of the Phase II Projects that are eligible for payment under Indiana law. The ability of Milhaus to access the proceeds of the Second Phase Project TIF Bonds shall be subject to (i) the approval by the Commission of a final Phase II Projects budget (the "**Second Phase Project Budget**") provided by Milhaus and acceptable by the Commission, which acceptance shall not be unreasonably withheld or delayed, and (ii) the prior written consent of the Town in accordance with commercially reasonable disbursement conditions to ensure that the proceeds of the Second Phase Project TIF Bonds are used for capital costs of the Phase II Projects and drawn on a pro-rata basis with other financing for the Second Phase Project Budget, and otherwise in accordance with this Agreement and the Second Phase Project Budget. Prior to the issuance of the Second Phase Project TIF Bonds, Milhaus shall have secured such other funds to the Commission's satisfaction in an amount sufficient to cover all costs of the Phase II Projects to completion, to the extent not funded from the Second Phase Project TIF Bond proceeds.

(m) Milhaus and Town Parties agree to execute such agreements as may be necessary to effectuate the sale and security of the Bonds. In the event the Town Parties determine that a lease financing structure is needed in connection with the issuance of the Water Project TIF Bonds, the Milhaus agree to execute such lease documents as the Town Parties determine are necessary or appropriate in connection with such lease financing, including but not limited to a lease of the Water Park. Notwithstanding the foregoing, any such lease shall not impair or restrict the ability of the Milhaus to own and operate the Water Park for its intended purpose.

5.04 Developer Construction Loans. The Town Parties understand that the Developers will obtain developer construction loan(s) for portions of the Project. Upon request by a Developer's lender, the Town Parties agree to negotiate in good faith with the Developer's lenders to memorialize one or more agreements (the "**Intercreditor Agreement**") between the

Commission (and any other Town Parties), the Developer, and the Developer's lender to, among other things, (i) provide notice to the other party in the event of a default by the Developers under the developer construction loan documents and this Agreement (and related Bond transaction documents), (ii) allow the lender to cure any default by the Developer under such Project documents, and (iii) address how any remedies will proceed against the Developer in the event of a default by the Developer under this Agreement or the developer construction loan documents. The Developers' and the Town Parties' obligations to close on any portion of the Property and the Bonds shall be subject to the Commission (and any other Town Parties) and the Developer's lender agreeing upon a commercially reasonable agreement pursuant to this Section.

5.05 Alternative Financing. If the Town Parties and Milhaus agree that a form of financing other than the issuance of the Bonds would better accomplish the purposes of this Agreement, the terms of this Agreement will be amended to provide for such alternative financing.

ARTICLE VI. [Reserved]

ARTICLE VII. AUTHORITY

7.01 Actions. Each of the Town Parties represents and warrants that it has taken or will take (subject to further proceedings required by law and the Developers' performance of their agreements and obligations hereunder) such action(s) as may be required and necessary to enable each of the respective Town Parties to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

7.02 Powers. Each of the parties represent and warrant that each has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

ARTICLE VIII. DEFAULTS

8.01 Milhaus Events of Default. Each of the following events is an "event of default" by Milhaus hereunder:

(a) If Milhaus fails to perform any obligation under this Agreement within ninety (90) days after Milhaus' receipt of written notice from the Town Parties of its failure to perform such obligations, and provided that the Town Parties have fulfilled any applicable obligations relating to such Milhaus obligation; or

(b) Failure by Milhaus to make or cause to be made the Phase I Projects Investment or complete or cause to be completed the Phase I Projects by the Phase I Completion Date, subject to extension for force majeure as provided for in Section 9.12; or

(c) Failure by Milhaus to complete or cause to be completed the Water Park by the Water Park Completion Date, subject to extension for force majeure as provided for in Section 9.12; or

(d) Failure by Milhaus to complete or cause to be completed the Phase II Projects in accordance with the timing and investment obligations in the Phase II Proposal approved by the Commission, subject to extension for force majeure as provided for in Section 9.12; or

(e) Failure by the Milhaus to construct the Phase I Projects, Water Park, or Phase II Projects in accordance with terms of this Agreement; or

(f) Cessation of all construction work of a material nature with respect to the Phase I Projects, Water Park, or Phase II Projects for a period of at least sixty (60) days or for more than ninety (90) days during any one hundred eighty (180) day period, other than as a result of force majeure as provided for in Section 9.12; or

(g) The commencement by Milhaus of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Milhaus or of any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the failure of Milhaus generally to pay its debts as such debts become due, or the taking of corporate action by Milhaus in furtherance of any of the foregoing; or

(h) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Milhaus in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of Milhaus or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty (30) days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law.

8.02 Academy E Events of Default. Each of the following events is an "event of default" by Academy E hereunder:

(a) If Academy E fails to perform any obligation under this Agreement within ninety (90) days after Academy E's receipt of written notice from the Town Parties of its failure to perform such obligations, and provided that the Town Parties have fulfilled any applicable obligations relating to such Academy E obligation; or

(b) Failure by Academy E to make the Academy E Project Investment or complete the Academy E Project by the Academy E Completion Date, subject to extension for force majeure as provided for in Section 9.12; or

(c) Failure by the Academy E to construct the Academy E Project in accordance with terms of this Agreement, subject to extension for force majeure as provided for in Section 9.12; or

(d) Cessation of all construction work of a material nature with respect to the Academy E Project for a period of at least sixty (60) days or for more than ninety (90) days during any one hundred eighty (180) day period, other than as a result of force majeure as provided for in Section 9.12; or

(e) The commencement by Academy E of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Academy E or of any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the failure of Academy E generally to pay its debts as such debts become due, or the taking of corporate action by Academy E in furtherance of any of the foregoing; or

(f) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Academy E in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of Academy E or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty (30) days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law.

8.03 Special Remedies.

(a) Phase I or Phase II. In addition to any other remedies available to the Town Parties at law or equity, if, after the Phase I Closing or applicable Phase II Closing, Milhaus falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule, subject to extension for force majeure as provided for in Section 9.12, then:

(i) the Commission, by delivery of written notice to Milhaus, may require Milhaus to submit, within fifteen (15) days, a catch-up plan for the Commission's approval, which approval shall not be withheld unreasonably. At such time as the Commission has approved a catch-up plan, Milhaus shall implement, and diligently pursue the application of, such catch-up plan. For purposes of this Section 8.03(a), catch-up plan means a plan pursuant to which Milhaus will (a) avoid falling further behind the date set forth in the Milestone Schedule for construction of the Phase I Projects or Phase II Project and (b) complete the Phase I Projects or Phase II Project in accordance with (and in no event more than two hundred forty (240) days behind) the applicable dates set forth in the Milestone Schedule.

(ii) if Milhaus: (A) fails to timely submit a catch-up plan; (B) submits a catch-up plan that is rejected by the Commission; (C) fails to implement an approved catch-up plan; (D) implements an approved catch-up plan, but fails to diligently pursue the application thereof; or (E) implements an approved catch-up plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the catch-up plan, again falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule; then the Commission may:

(A) develop a reasonable catch-up plan and require Milhaus to implement, and diligently pursue the application of, such catch-up plan;

(B) complete the Phase I Projects or Phase II Project for and on behalf of Milhaus; or

(C) purchase the developer construction loan, if acceptable to the lender provider thereof;

provided that, if the Commission elects either the option in clause (B) or the option in clause (C), then Milhaus shall be obligated to pay to the Commission (or to reimburse the Commission for) all costs of completing the Phase I Projects or Phase II Project that are in excess of the proceeds of the developer construction loan that are disbursed to the Commission. Notwithstanding the foregoing, if the Commission rejects a catch-up plan, the Commission shall: (i) specify the part or parts that the Commission is rejecting; and (ii) include the specific basis for such rejection; then Milhaus shall revise and resubmit the catch-up plan to the Commission within fourteen (14) days of such notice, and the parties shall work in good faith to develop a reasonable catch-up plan.

Milhaus shall be responsible for all costs and expenses to prepare and implement a catch-up plan (including the reasonable out of pocket costs and expenses incurred by the Town Parties pursuant to this Subsection). Milhaus' liability for such costs and expenses shall survive termination of this Agreement.

(b) Academy E. In addition to any other remedies available to the Town Parties at law or equity, if, after the Academy E Closing, Academy E falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule, subject to extension for force majeure as provided for in Section 9.12, then:

(i) the Commission, by delivery of written notice to Academy E, may require Academy E to submit, within fifteen (15) days, a catch-up plan for the Commission's approval, which approval shall not be withheld unreasonably. At such time as the Commission has approved a catch-up plan, Academy E shall implement, and diligently pursue the application of, such catch-up plan. For purposes of this Section 8.03(b), catch-up plan means a plan pursuant to which Academy E will (a) avoid falling further behind the date set forth in the Milestone Schedule for construction of the Academy E Project and (b) complete the Academy E Project in accordance with (and in no event more than two hundred forty (240) days behind) the applicable dates set forth in the Milestone Schedule.

(ii) if Academy E: (A) fails to timely submit a catch-up plan; (B) submits a catch-up plan that is rejected by the Commission; (C) fails to implement an approved catch-up plan; (D) implements an approved catch-up plan, but fails to diligently pursue the application thereof; or (E) implements an approved catch-up plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the catch-up plan, again falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule; then the Commission may:

(A) develop a reasonable catch-up plan and require Academy E to implement, and diligently pursue the application of, such catch-up plan;

(B) complete the Academy E Project for and on behalf of Academy E; or

(C) purchase the developer construction loan, if acceptable to the lender provider thereof;

provided that, if the Commission elects either the option in clause (B) or the option in clause (C), then Academy E shall be obligated to pay to the Commission (or to reimburse the Commission for) all costs of completing the Academy E Project that are in excess of the proceeds of the developer construction loan that are disbursed to the Commission. Notwithstanding the foregoing, if the Commission rejects a catch-up plan, the Commission shall: (i) specify the part or parts that the Commission is rejecting; and (ii) include the specific basis for such rejection; then Academy E shall revise and resubmit the catch-up plan to the Commission within fourteen (14) days of such notice, and the parties shall work in good faith to develop a reasonable catch-up plan.

Academy E shall be responsible for all costs and expenses to prepare and implement a catch-up plan (including the reasonable out of pocket costs and expenses incurred by the Town Parties pursuant to this Subsection). Academy E's liability for such costs and expenses shall survive termination of this Agreement.

(c) Water Park. In addition to any other remedies available to the Town Parties at law or equity, if, after the Water Bond Closing, Water Park Developer falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule, subject to extension for force majeure as provided for in Section 9.12, then:

(i) the Commission, by delivery of written notice to Water Park Developer, may require Water Park Developer to submit, within fifteen (15) days, a catch-up plan for the Commission's approval, which approval shall not be withheld unreasonably. At such time as the Commission has approved a catch-up plan, Water Park Developer shall implement, and diligently pursue the application of, such catch-up plan. For purposes of this Section 8.03(c), catch-up plan means a plan pursuant to which Water Park Developer will (a) avoid falling further behind the date set forth in the Milestone Schedule for construction of the Water Park and (b) complete the Water Park in accordance with (and in no event more than two hundred forty (240) days behind) the applicable dates set forth in the Milestone Schedule.

(ii) if Water Park Developer: (A) fails to timely submit a catch-up plan; (B) submits a catch-up plan that is rejected by the Commission; (C) fails to implement an approved catch-up plan; (D) implements an approved catch-up plan, but fails to diligently pursue the application thereof; or (E) implements an approved catch-up plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the catch-up plan, again falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule; then the Commission may:

(A) develop a reasonable catch-up plan and require Water Park Developer to implement, and diligently pursue the application of, such catch-up plan;

(B) complete the Water Park for and on behalf of Water Park Developer; or

(C) purchase the developer construction loan, if acceptable to the lender provider thereof;

provided that, if the Commission elects either the option in clause (B) or the option in clause (C), then Water Park Developer shall be obligated to pay to the Commission (or to reimburse the Commission for) all costs of completing the Water Park that are in excess of the proceeds of the developer construction loan that are disbursed to the Commission. Notwithstanding the foregoing, if the Commission rejects a catch-up plan, the Commission shall: (i) specify the part or parts that the Commission is rejecting; and (ii) include the specific basis for such rejection; then Water Park Developer shall revise and resubmit the catch-up plan to the Commission within fourteen (14) days of such notice, and the parties shall work in good faith to develop a reasonable catch-up plan.

Water Park Developer shall be responsible for all costs and expenses to prepare and implement a catch-up plan (including the reasonable out of pocket costs and expenses incurred by the Town Parties pursuant to this Subsection). Water Park Developer's liability for such costs and expenses shall survive termination of this Agreement.

(d) No delay or failure by the Town Parties to enforce any of the covenants, conditions, reservations and rights contained in this Agreement, or to invoke any available remedy with respect to a breach of this Agreement by Milhaus or Academy E shall under any circumstances be deemed or held to be a, waiver by the Town Parties of the right to do so thereafter, or an estoppel of the Town Parties to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder. For purposes of this Agreement, commencement of construction shall mean material and substantial work on the respective Property related to the construction of the respective Project such as installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work.

8.04 Default of Town Parties. Upon the occurrence of any default on the part of the Town Parties hereunder, Milhaus or Academy E shall give the Town Parties written notice (a "**Town Default Notice**") of the circumstances constituting that default and the Town Parties shall have thirty (30) days following its receipt of such Town Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that the Town Parties commence such cure within that thirty (30) day period and diligently and continuously pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, Milhaus or Academy E may commence the dispute resolution procedures as provided in Section 8.05 below. An event of default by the Town Parties includes, but is not limited to the Town Parties' obligations as to the Remediation Agreement as set forth in Section 3.12. No cure period shall be available to the Town Parties with respect to the Town Parties' failure to complete the Phase I Closing or any Phase II Closing by the applicable outside date.

8.05 Dispute Resolution. Any lawsuit arising out of or relating to this Agreement must be brought in a state court of appropriate jurisdiction situated in the State of Indiana, Boone County. The Town Parties and Milhaus consent to the jurisdiction of such court and irrevocably

waive any objections they may have to such jurisdiction or venue. In addition to other remedies that may be available to Developers at law or in equity, if the Town Parties default in their obligation to convey any portion of the Property as required under this Agreement, each Developer may sue for specific performance of the conveyance of such portion of the Property in accordance with the terms of this Agreement.

ARTICLE IX. MISCELLANEOUS

9.01 Nondiscrimination. Developers and their respective officers, agents, and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability or United States military service veteran status.

9.02 Information Reporting. The Developers shall cooperate in all reasonable ways and provide necessary and reasonable information to the Town Parties or any other applicable governmental authority to enable the Town Parties to review such Developer's performance of its obligations under this Agreement, assure its compliance with the terms of this Agreement, prepare any reports required by applicable law, and to comply with any other reporting requirements of the Act and/or this Agreement.

9.03 Cooperation. The Town Parties covenant and agree to take or cause to be taken (and shall cooperate with Developers to enable Developers to take or cause to be taken) all actions necessary or desirable under statutes, regulations and rules applicable to the Project and the Development Incentives, and to execute and deliver or cause to be executed and delivered (and shall cooperate with Developers to enable Developers to execute and deliver or cause to be executed and delivered) such agreements, instruments, documents, indentures, applications and other papers as may be necessary or desirable under such statutes, regulations and rules to assist and permit Developers to undertake and complete the Projects and enable the Town Parties to undertake and provide the Developments Incentives.

9.04 Certificates. On either Developer's request, the Town Parties shall each execute and deliver a certificate stating: (a) that this Agreement is in full force and effect or will provide a written explanation of why this Agreement is not in full force and effect; (b) that the respective Developers are not in default under the terms of this Agreement or specifying why the Developers are in default; or (c) any other matters which the Developer reasonably requests. When Milhaus has satisfied all of its obligations under this Agreement then, on Milhaus' request, the Town Parties shall each execute an instrument in recordable form evidencing the termination of this Agreement and releasing the covenants as to Milhaus. When Academy E has satisfied all of their obligations under this Agreement then, on Academy E's request, the Town Parties shall each execute an instrument in recordable form evidencing the termination of this Agreement and releasing the covenants as to Academy E.

9.05 Agreement Binding on the Town Parties. No covenant, obligation or other agreement in this Agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future member, official, officer, agent or employee of the Town Parties, other than

in his or her official capacity, and neither the officers of the governing bodies of the respective Town Parties executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Town Parties under this Agreement.

9.06 Assignment. Milhaus and Academy E may not assign their respective interests, rights and responsibilities under this Agreement without the prior written consent of the Town Parties, provided that each Developer shall be entitled to assign rights and obligations to affiliated special purpose entities created for structuring purposes without the consent of the Town Parties. The Commission is hereby authorized to grant or deny any such written consent on behalf of the Town Parties. In addition, and without limitation, the Town Parties acknowledge and agree that Milhaus and Academy E may encumber their interest in the Property with a mortgage or similar instrument or indenture, which instruments shall in all cases be subject to the rights of the Town Parties outlined in this Agreement. Academy E's consent shall not be required to any assignment by Milhaus. In connection with any assignment hereunder, the assignee party shall assume all obligations of the assigning party under this Agreement with respect to the rights and obligations assigned. Except for an assignment to an affiliated special purpose entity, the assigning party shall have no further responsibility with respect to the assigned rights and obligations arising after such assignment. In the event Milhaus desires to assign its rights and obligations under this Agreement with respect to a Component Project to an unaffiliated Component Project Developer, the Commission shall be entitled to require, as a condition precedent to giving his/her consent on behalf of the Town Parties to such assignment, reasonable information regarding the business and financial capabilities of the proposed Component Project Developer, and may require as a condition to any such assignment terms and conditions as the Town Parties determine to be necessary or appropriate to ensure that the assigned Component Project will be completed in compliance with this Agreement. The Town Parties acknowledge that Harris Kite Property Group, LLC ("Kite Harris") may be an approved Component Project Developer for all Phase I Projects.

9.07 Binding Effect. This Agreement shall inure to the benefit of and be binding upon Milhaus, Academy E, the Commission, the Town and their respective legal representatives, and permitted successors and assigns.

9.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

9.09 Notices. Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement (the "**Notice**") shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the Notice is delivered by personal delivery; (b) on the date the Notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any Notice sent by certified mail, postage prepaid, return receipt requested; (d) on the date received by electronic mail, so long as in each case, the Notice is delivered at the addresses set forth below, or to any other address for which notice is given as provided in this Section:

If to Academy E: 460 Virginia Avenue
Indianapolis, Indiana 46203
Attn: Tadd M. Miller

Notice email: Tadd.Miller@milhaus.com

If to Milhaus:

Milhaus Development, LLC
460 Virginia Avenue
Indianapolis, Indiana 46203
Attn: Tadd M. Miller
Notice email: Tadd.Miller@milhaus.com

With a copy to:

Dinsmore & Shohl LLP
211 North Pennsylvania Street
One Indiana Square, Suite 1800
Indianapolis, Indiana 46204
Attn: E. Joseph Kremp
Notice email: Joe.Kremp@dinsmore.com

If to Commission and/or Town:

Town of Whitestown
6210 Veterans Drive
Whitestown, Indiana 46075
Attention: Town Manager
Notice email: jlawson@whitestown.in.gov

With a copy to:

Stephen C. Unger
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
Notice email: sunger@boselaw.com

9.10 No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town Parties and the Developers or any affiliates thereof.

9.11 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the performance of their obligations (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation. The Town Parties agree that they will, in good faith, expedite the review and approval of matters relating to this Agreement that are under their respective jurisdiction. The Developers agree that whenever any provision of this Agreement provides for their review and/or approval, they will make a good faith effort to take such action as expeditiously as possible. In calculating any period of time provided for in this Agreement, the number of days allowed shall refer to calendar and not business days. If any day scheduled for performance of any obligation hereunder shall occur on a weekend or legal holiday, the time period allowed and day for performance shall be continued to the next business day.

9.12 Force Majeure. If any party is delayed or hindered in or prevented from the performance of any act required under this Agreement (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, pandemic, failure of power, 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 Agreement, 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. Any party claiming a force majeure event under this Section must notify the other parties within thirty (30) days of the event causing the delay, the extent of the delay, the time periods under this Agreement for which the force majeure event will cause a delay. Failure to provide timely notice constitutes a waiver of any claim to a delay cause by a force majeure event. In no event may any deadline in this Agreement be extended under this Section by a period of greater than one (1) total year.

9.13 Wording. Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto. All references to the Act, the Indiana Code, and codified ordinances, rules, or any other statute, regulation or ordinance are intended to refer to the provisions presently in effect and to all future amendments, modifications, replacements or successor provisions.

9.14 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. This Agreement shall constitute the entire agreement of Milhaus, Academy E, Town and Commission and no oral, verbal or implied agreement or understanding shall cancel, modify or vary the terms of this Agreement. No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the parties making such representations and promises. This Agreement may only be amended by a written instrument executed by each of the parties to this Agreement, or their permitted successors or assigns.

9.15 Governing Law. Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement.

9.16 No Waiver. Neither failure nor delay on the part of the Town Parties or Developers in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by Developers or the Town Parties therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town Parties or Developers by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the Town Parties or Developers shall entitle the Town Parties or Developers to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the Town Parties' or any Developer's right to take other or further action in any circumstances without notice or demand.

9.17 Reserved.

9.18 Binding of Successors, Assigns. Subject to the further provisions of this

Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Town Parties and Developers and their respective successors and assigns. The parties agree that the terms of this Agreement shall not merge into the respective deeds granted by the Commission under this Agreement.

9.19 Further Assurances. Subject to the further provisions of this Agreement, Developers and the Town Parties shall, at such party's expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perform or cause to be performed such further acts as may be reasonably necessary or proper in the reasonable opinion of the Town Parties or Developers to carry out the provisions and purposes of this Agreement.

9.20 Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions.

9.21 Headings. The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

9.22 Entire Agreement. This Agreement and the document incorporated by reference herein constitutes the entire agreement by and between the Town Parties and the Developers and supersedes all prior agreements, written or verbal, between the Town Parties and the Developers. No statements, promises or agreements whatsoever, in writing or verbally, in conflict with the terms of this Agreement have been made by the Town Parties or Developers that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement.

9.23 Interpretation. Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) the recitals, all schedules, attachments and exhibits identified herein form a part of this Agreement, (iii) the word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (iv) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Town Parties and Milhaus have executed this Agreement the day and year first written above.

TOWN OF WHITESTOWN, INDIANA

_____

Town Council President

Attest:

_____

Clerk-Treasurer

WHITESTOWN REDEVELOPMENT COMMISSION

_____

President

Attest:

_____

Secretary

ACADEMY E, LLC

_____

Tadd M. Miller, Manager

Attest:

_____

_____

MILHAUS DEVELOPMENT, LLC

_____

Tadd M. Miller, Manager

Attest:

_____

_____

4165074

EXHIBIT A
Property

Legal Description of Area C

A PART OF THE LAND DESCRIBED IN DEED BOOK 218, PAGE 598 IN THE OFFICE OF THE RECORDER, BOONE COUNTY, INDIANA AND A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 1 EAST AND THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 17 NORTH, RANGE 2 EAST OF THE 2ND PRINCIPAL MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 1 MARKED BY A REBAR PER BOONE COUNTY SURVEYOR REFERENCE TIES; THENCE SOUTH 87 DEGREES 11 MINUTES 19 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER (BASIS OF BEARINGS IS INDIANA EAST ZONE STATE PLANE COORDINATES ON SECTION CORNERS) A DISTANCE OF 2121.42 FEET; THENCE NORTH 32 DEGREES 52 MINUTES 26 SECONDS EAST A DISTANCE OF 25.92 FEET; THENCE NORTH 16 DEGREES 33 MINUTES 21 SECONDS EAST A DISTANCE OF 136.93 FEET; THENCE NORTH 26 DEGREES 25 MINUTES 35 SECONDS EAST A DISTANCE OF 15.65 FEET; THENCE NORTH 19 DEGREES 43 MINUTES 47 SECONDS EAST A DISTANCE OF 34.61 FEET; THENCE NORTH 14 DEGREES 08 MINUTES 40 SECONDS EAST A DISTANCE OF 280.29 FEET; THENCE NORTH 08 DEGREES 33 MINUTES 18 SECONDS EAST A DISTANCE OF 35.83 FEET; THENCE NORTH 87 DEGREES 06 MINUTES 52 SECONDS EAST A DISTANCE OF 1352.90 FEET; THENCE NORTH 31 DEGREES 55 MINUTES 39 SECONDS EAST A DISTANCE OF 382.57 FEET TO A REBAR; THENCE NORTH 50 DEGREES 52 MINUTES 55 SECONDS EAST A DISTANCE OF 722.20 FEET TO THE WEST RIGHT-OF-WAY LINE OF INDIANAPOLIS ROAD; THENCE NORTH 40 DEGREES 34 MINUTES 26 SECONDS WEST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 107.79 FEET TO THE NORTH LINE OF THE LAND DESCRIBED IN DEED BOOK 218, PAGE 598; THENCE NORTH 89 DEGREES 44 MINUTES 03 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 65.57 FEET TO THE CENTERLINE OF OLD U.S. HIGHWAY 52 AND THE EAST LINE OF SAID LAND, THE REMAINING COURSES ARE ALONG THE EAST AND SOUTH LINES OF SAID LAND; THENCE SOUTH 40 DEGREES 34 MINUTES 26 SECONDS EAST A DISTANCE OF 963.05 FEET; THENCE SOUTH 41 DEGREES 42 MINUTES 09 SECONDS EAST A DISTANCE OF 90.77 FEET; THENCE SOUTH 42 DEGREES 15 MINUTES 43 SECONDS EAST A DISTANCE OF 632.88 FEET; THENCE SOUTH 41 DEGREES 13 MINUTES 14 SECONDS EAST A DISTANCE OF 93.03 FEET; THENCE SOUTH 40 DEGREES 52 MINUTES 46 SECONDS EAST A DISTANCE OF 34.70 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 45 SECONDS WEST A DISTANCE OF 1331.75 FEET TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE NORTH 01 DEGREES 13 MINUTES 18 SECONDS WEST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER DISTANCE OF 30.36 FEET TO THE POINT OF BEGINNING, CONTAINING 51.107 ACRES, MORE OR LESS.

EXCEPT THE FOLLOWING THEREFROM:

A part of the land described in Deed Book 218, Page 598 in the Office of the Recorder, Boone County, Indiana and a part of the Southeast Quarter of Section 1, Township 17 North, Range 1 East and the Southwest Quarter of Section 6, Township 17 North, Range 2 East of the 2nd Principal Meridian more particularly described as follows:

COMMENCING at the Southeast Corner of said Section 1 marked by a rebar per Boone County Surveyor reference ties; thence South 87 degrees 11 minutes 19 seconds West along the south line of said Southeast Quarter (basis of bearings in Indiana West Zone state plane coordinates on section corners) a distance of 2121.42 feet; thence North 32 degrees 52 minutes 26 seconds East a distance of 25.92 feet; thence North 16 degrees 33 minutes 21 seconds East a distance of 136.93 feet; thence North 26 degrees 25 minutes 35 seconds East a distance of 15.65 feet; thence North 19 degrees 43 minutes 47 seconds East a distance of 34.61 feet; thence North 14 degrees 08 minutes 40 seconds East a distance of 280.29 feet; thence North 08 degrees 33 minutes 18 seconds East a distance of 35.83 feet; thence North 87 degrees 06 minutes 52 seconds East a distance of 1352.90 feet; thence North 31 degrees 55 minutes 39 seconds East a distance of 382.57 feet to a rebar; thence North 50 degrees 52 minutes 55 seconds East a distance of 258.80 feet to a point being South 50 degrees 52 minutes 55 seconds West a distance of 463.40 feet from the west right-of-way line of Indianapolis Road, said point being the **POINT OF BEGINNING**; thence continuing North 50 degrees 52 minutes 55 seconds East a distance of 463.40 feet to the west right-of-way line of Indianapolis Road; thence South 40 degrees 34 minutes 26 seconds East along said west right-of-way line of Indianapolis Road a distance of 470.00 feet; thence South 50 degrees 52 minutes 55 seconds West a distance of 463.40 feet; thence North 40 degrees 34 minutes 26 seconds West a distance of 470.00 feet to the **POINT OF BEGINNING**, containing 5.00 acres more or less.

Legal Description of Area D

A PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST, IN BOONE COUNTY, INDIANA, LYING SOUTHWEST OF THE CENTER OF U.S. HIGHWAY NO. 52, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE EAST ALONG THE NORTH LINE THEREOF TO THE CENTERLINE OF THE U.S. HIGHWAY NO. 52; THENCE SOUTHEAST ALONG SAID CENTERLINE TO THE EAST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER SECTION TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION TO THE POINT OF BEGINNING, CONTAINING 144 ACRES, MORE OR LESS.

EXCEPTING THEREFROM:

A PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST, BOONE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE NORTH 89 DEGREES 23 MINUTES 58 SECONDS WEST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 2917.71 FEET TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE NORTH 00 DEGREES 45 MINUTES 08 SECONDS WEST ALONG THE WEST LINE THEREOF A DISTANCE OF 30.08 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 12; THENCE NORTH 00 DEGREES 18 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION A DISTANCE OF 1430.90 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 48 SECONDS EAST A DISTANCE OF 2360.87 FEET TO THE CENTERLINE OF U.S. 52 (INDIANAPOLIS ROAD); THENCE SOUTH 42 DEGREES 13 MINUTES 01 SECONDS EAST ALONG THE CENTERLINE THEREOF A DISTANCE OF 849.44 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE SOUTH 00 DEGREES 23 MINUTES 48 SECONDS WEST ALONG THE EAST LINE THEREOF A DISTANCE OF 849.27 FEET TO THE POINT OF BEGINNING, CONTAINING 94.508 ACRES, MORE OR LESS.

EXHIBIT B
Master Site Plan

Program Summary

1. Fieldhouse
- 196,000 SF, 700 parking spaces

2. Aquatics
- 550 parking spaces

3. Hotel
- 250 rooms, 250 parking spaces

Retail
4. Entertainment Retail #1
- 32,000 SF, 128 parking spaces

5. Small Restaurant
- 5,000 SF

6. Ancillary Retail #1
- 18,000 SF, 72 parking spaces

7. Ancillary Retail #2
- 14,000 SF, 56 parking spaces

8. Ancillary Retail #3
- 19,000 SF, 76 parking spaces

Medical Office
9. Medical Office #1
- 30,000 SF (2 stories), 120 parking spaces

10. Medical Office #2
- 20,000 SF, 80 parking spaces

11. Flex MOB or Entertainment Retail
- 30,000 SF (2 stories), 80 parking spaces

12. Multifamily
- 270 DU, 560 parking spaces
- 2 buildings at 4 stories - 55 units
- 4 buildings at 3 stories - 40 units

13. Townhomes (12.51 ac)
- 60 units

14. Central Green/Amphitheater
-70 parking spaces

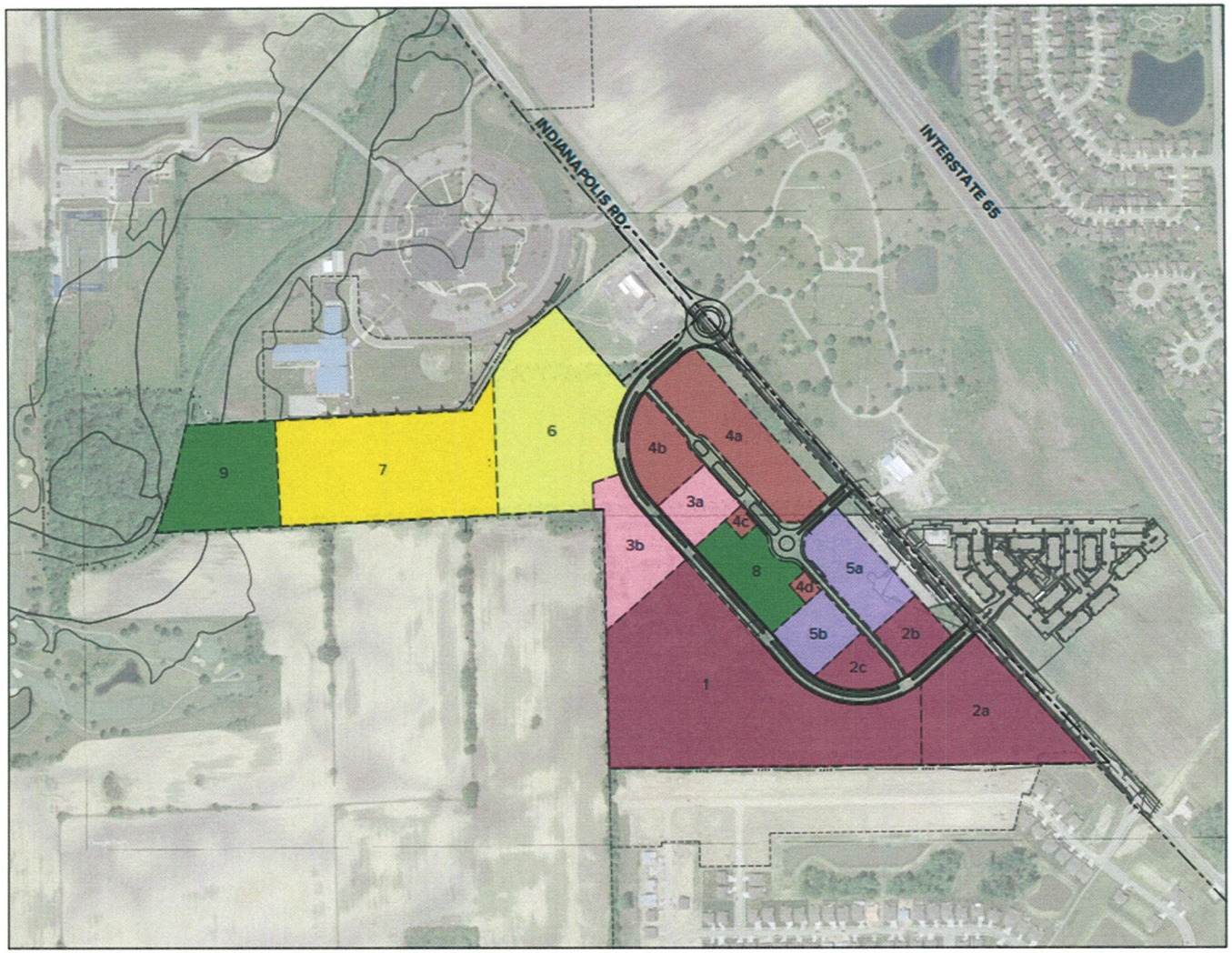
15. Green Retail Mall

0 200 400 600 feet
1" = 200'

Concept Master Plan

Maurer Commons | ZIM010 | April 9, 2021 | L101

browning day



Program Summary

1. Zoning - General Business
   Use - Arts, Recreation, Entertainment, Indoor & Outdoor
   Acreage - 19.61 ac, FAR .23

2a. Zoning - General Business
   Use - Arts, Recreation, Entertainment, Outdoor
   Acreage - 6.85 ac, FAR .05

2b. Zoning - General Business
   Use - Parking Lot
   Acreage - 1.6 ac

2c. Zoning - General Business
   Use - Parking Lot
   Acreage - 1.34 ac

3a. Zoning - General Business
   Use - Hotel
   Acreage - 1.79 ac, FAR 1.07

3b. Zoning - General Business
   Use - Parking Lot
   Acreage - 3.64 ac

4a. Zoning - General Business
   Use - Retail/Restaurant
   Acreage - 5.48 ac, FAR .21

4b. Zoning - General Business
   Use - Retail/Entertainment
   Acreage - 2.43 ac, FAR .30

4c. Zoning - General Business
   Use - Retail/Restaurant
   Acreage - 0.27 ac, FAR .41

4d. Zoning - General Business
   Use - Retail/Restaurant
   Acreage - 0.27 ac, FAR .41

5a. Zoning - General Business
   Use - Office
   Acreage - 3.40 ac, FAR .34

5b. Zoning - General Business
   Use - Office
   Acreage - 2.04 ac, FAR .34

6 Zoning - General Business
   Use - Dwelling, Multifamily
   Acreage - 10.54 ac, 25.62 du/ac

7. Zoning - General Business
   Use - Dwelling, Single Family (Townhome)
   Acreage - 12.07 ac, 4.97 du/ac

8. Zoning - General Business
   Use - Park
   Acreage - 3.16 ac

9. Zoning - General Business
   Use - Park
   Acreage - 5.72 ac

0 200 400 600 feet
1" = 200'

browning day

Concept Block Plan

Maurer Commons | 21M010 | April 28, 2021 | L101

EXHIBIT C

Reserved

EXHIBIT D
Reserved

EXHIBIT E
Form of Deed

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that the WHITESTOWN REDEVELOPMENT COMMISSION, an Indiana redevelopment commission and organized and existing under the provisions of I.C. § 36-7-14 and I.C. § 36-7-25 ("Grantor"), CONVEYS AND SPECIALLY WARRANTS to _____ ("Grantee") for the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, in the following described real estate in Boone County, Indiana:

_____

_____

("Property")

Subject to all applicable taxes and assessments, zoning restrictions, easements, rights-of-way, and other restrictions, covenants, or encumbrances of record, or matters that would be disclosed by an accurate survey or inspection of the premises.

The warranty of title of Grantor is limited to a warranty against the acts of Grantor and those claiming by, through or under Grantor, and not otherwise.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this _____ day of _____, 2021.

WHITESTOWN REDEVELOPMENT COMMISSION
an Indiana redevelopment commission

By:_____
Adam Hess, President

STATE OF INDIANA)
)SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said State and County, personally appeared Adam Hess, President of the Whitestown Redevelopment Commission, who acknowledged the execution of this Special Warranty Deed for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 2021.

My Commission Expires:

_____

Notary Signature

_____

My County of
Residence:_____

_____

Printed

This Instrument prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Ste. 2700, Indianapolis, IN 46204.

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

After recording return to
and send tax bill to: _____

_____

_____

EXHIBIT F

Promissory Note and Real Estate Mortgage

PROMISSORY NOTE

_____ ("Developer"), a _____, for value received, promises to pay to the order of the Town of Whitestown, Indiana and the Whitestown Redevelopment Commission (collectively, the "Town Parties"), upon demand, at the offices of the Town Parties, Whitestown, Indiana, under an Economic Development Agreement dated _____, 2021 (the "Agreement"), among the Town Parties and the Developer, any Water Park Payment (as defined in the Agreement) then due under the Agreement, in a total aggregate amount not exceeding $[par amount of Water Park Bonds]. Any Water Park Payment so due, upon demand in writing by the Town Parties in accordance with this Note and with the Agreement, not paid by the Developer within thirty (30) days' of demand shall bear interest at the rate of eight percent (8.0%) per annum from the date of demand. All such payments on this Note shall be payable in immediately available funds to the Town Parties in Whitestown, Indiana.

All of the terms and provisions of the Agreement shall be considered a part of this Note and shall govern the obligations of the Developer hereunder. In the event the Town Parties shall determine that an event of default has occurred by Developer under the Agreement such that Water Park Payment are due by the Developer to the Town Parties, the Town Parties shall tender written demand to the Developer that Water Park Payment are due, the sum due (as based upon the Agreement) and instructions as to where such sum should be paid. Upon receipt of such written demand, the Developer shall in accordance with this Note and the Agreement, cause such sum to be so paid to the Town Parties.

This Note is secured, among other things, by the Real Estate Mortgage, dated as of _____, 2021, from the Developer to the Town Parties (the "Mortgage"). The Developer hereby agrees to pay all costs of collection, including attorneys' fees and legal expenses in the event the principal sum of this Note is not paid when due, whether or not legal proceedings are commenced.

For the avoidance of doubt, the obligation of the Developer to pay under this Note is solely and exclusively conditioned upon the happening of the events under the Agreement that would give rise to the payment of Water Park Payment by the Developer to the Town Parties. Absent the occurrence of any such events, the Developer shall not be obligated hereunder to pay any sums to the Town Parties. The obligations of the Developer under this Note shall, in any event, be discharged and no longer in effect on the date which is one day following the payoff of the Water Park Bonds (as defined in the Agreement).

IN WITNESS WHEREOF, _____ has caused this Promissory Note to be duly executed, countersigned and delivered as of _____, 2021.

_____

By:_____

Attest:

By: _____

REAL ESTATE MORTGAGE

1. DATE AND PARTIES. The date of this Mortgage (the "Security Instrument") is _____, 2021, and the parties and their addresses are as follows:

MORTGAGOR:

_____
_____
_____

MORTGAGEE:

Town of Whitestown
6201 Veterans Drive
Whitestown, Indiana 46075

and

Whitestown Redevelopment Commission
6210 Veterans Drive
Whitestown, Indiana 46075

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys, mortgages and warrants to Mortgagee the following described property:

REFER TO EXHIBIT "A" WHICH IS ATTACHED HERETO
AND MADE A PART HEREOF.

The property is located in Boone County, Indiana.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, all water and riparian rights, wells, ditches, reservoirs, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate above (all referred to as the "Property").

3. OBLIGATION. This Security Instrument is given to secure the performance of the provisions hereof and the payment of that certain Promissory Note, dated _____, 2021, by Mortgagor in favor of Mortgagee in a total aggregate amount not to exceed $[par amount of Water Park Bonds] (the "Note"), which Note was delivered to Mortgagee pursuant to secure the payment of Water Park Payment, if any, from Mortgagor to Mortgagee under that certain Economic Development Agreement, dated _____, 2021, by and among Mortgagor and Mortgagee (the "Economic Development Agreement").

4. SECURED DEBT. The term "Secured Debt" is defined as follows:

A. Debt incurred by Mortgagor from Mortgagee as evidenced by the Note.

B. Any additional sums advanced and expenses incurred by Mortgagee for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Mortgagee under the terms of this Security Instrument.

5. PAYMENTS. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt, including the Note, the Economic Development Agreement and this Security Instrument.

6. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor has not encumbered the Property, except for encumbrances of record.

7. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security instrument or other lien document that created a prior security interest or encumbrance on the Property, if any, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Mortgagee any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Mortgagee's prior written consent and compliance with the terms and provisions of the resolution related thereto.

8. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Mortgagee may require Mortgagor to provide to Mortgagee copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Mortgagee, as requested by Mortgagee, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

9. DUE ON SALE. If all or any part of the Property, or any interest therein, is sold, transferred, assigned or otherwise disposed of, or further encumbered by mortgage or otherwise, excluding permitted encumbrances as set forth in EXHIBIT B hereto (the "Permitted Encumbrances"), without Mortgagee's prior written consent, Mortgagee, at its option, may declare all sums secured by this Security Instrument immediately due and payable. Any contract of sale of any kind including, without limitation, land contract, conditional sales contract, installment sales contract, lease with option to purchase (whether such option is oral or contained within such lease or in any other document) or any other transfer of interest in the Property shall be deemed a transfer requiring prior written consent of Mortgagee. Mortgagee reserves the right, in its unlimited discretion, on any basis deemed appropriate to Mortgagee, to refuse such consent and/or otherwise change the terms of this Security Instrument. If Mortgagee exercises its option to accelerate payment of the Secured Debt, all such Secured Debt shall become due and payable within thirty (30) days after the mailing of notice from Mortgagee to Mortgagor setting forth the total sums due. In the event of the failure of Mortgagor to pay such sums prior to expiration of such thirty (30) day period, Mortgagee may, without further notice or demand, invoke any remedy permitted hereunder for default.

10. ENTITY WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Mortgagee the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:

A. Mortgagor is a limited liability company duly organized and existing under the laws of the State of Indiana. Mortgagor has the power and authority to own the Property and to carry on the business operated by Mortgagor on said Property.

B. The execution, delivery and performance of this Security Instrument by Mortgagor and the obligations evidenced by the Secured Debt are within the power of Mortgagor, have been duly authorized by the Mortgagor and will not violate any provision of any existing agreement or obligation of the Mortgagor.

C. Mortgagor has not changed its name within the last five years and has not used any other trade or fictitious name. Without Mortgagee's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

11. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Mortgagee's prior written consent. Except with respect to Permitted Encumbrances, Mortgagor will not permit any change in any license, restrictive covenant or easement without Mortgagee's prior written consent. Mortgagor will notify Mortgagee of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Mortgagee's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security instrument or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor shall not partition or subdivide the Property without Mortgagee's prior written consent.

Subject to any conditions of the Economic Development Agreement to the contrary, Mortgagee or Mortgagee's agents may, at Mortgagee's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Mortgagee shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Mortgagee's benefit and Mortgagor will in no way rely on Mortgagee's inspection.

12. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Mortgagee may, without notice, perform or cause them to be performed. Mortgagor appoints Mortgagee as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Mortgagee's right to perform for Mortgagor shall not create an obligation to perform, and Mortgagee's failure to perform will not preclude Mortgagee from exercising any of Mortgagee's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Mortgagee may take all steps necessary to protect Mortgagee's security interest in the Property, including completion of the construction.

13. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Any party obligated on the Secured Debt fails to make payment when due;

B. A breach of any term or covenant in this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt, including the Note and the Economic Development Agreement;

C. The making or furnishing of any verbal or written representation, statement or warranty to Mortgagee that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt; and

D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any other person or entity obligated on the Secured Debt.

14. REMEDIES ON DEFAULT. In some instances, federal and state law will require Mortgagee to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Mortgagee may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Mortgagee, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Mortgagee shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents. All remedies are distinct, cumulative and not exclusive, and the Mortgagee is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Mortgagee of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Mortgagee's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Mortgagee does not waive Mortgagee's right to later consider the event a default if it continues or happens again.

15. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Mortgagee's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any reasonable amount incurred by Mortgagee for insuring, inspecting, preserving or otherwise protecting the Property and Mortgagee's security interest. These expenses will bear interest from the date of the payment until paid in full at the interest rate of eight percent (8%) per annum. Mortgagor agrees to pay all reasonable costs and expenses incurred by Mortgagee in collecting, enforcing or protecting Mortgagee's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

16. CONDEMNATION. Mortgagor will give Mortgagee prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Mortgagee to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Mortgagee the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument.

17. INSURANCE. Mortgagor agrees to maintain insurance as follows:

A. Mortgagor shall keep the Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Mortgagee requires. If Mortgagor fails to maintain the coverage described above, Mortgagee may, at Mortgagee's option,

obtain coverage to protect Mortgagee's rights in the Property according to the terms of this Security Instrument. All insurance policies and renewals shall be acceptable to Mortgagee and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Mortgagee of cancellation or termination of the insurance. If Mortgagee requires, Mortgagor shall immediately give to Mortgagee all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made immediately by Mortgagor.

B. All insurance proceeds shall be applied to restoration or repair of the Property or to the Secured Debt, whether or not then due. Any application of proceeds to principal shall not extend or postpone the due date of scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Mortgagee, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Mortgagee to the extent of the Secured Debt immediately before the acquisition.

18. ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Mortgagee funds for taxes and insurance in escrow.

19. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Mortgagee upon request, any financial statement or information Mortgagee may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Mortgagee may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Mortgagee's lien status on the Property.

20. SUCCESSORS AND ASSIGNS BOUND. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Mortgagee.

21. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Security Instrument is governed by the laws of the State of Indiana. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

22. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate address on paragraph 1 of this Security Instrument with respect to Mortgagor and Mortgagee, or to any other address designated in writing.

23. TERMINATION OF SECURITY INSTRUMENT. Mortgagee shall promptly, upon final satisfaction that any amounts owing the Mortgagee by the Mortgagor under the terms of the Economic Development Agreement have been so paid or satisfied in full, release and discharge the lien and security interest of this Security Instrument of record.

[Signature Page Follows]

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

_____

By: _____

_____, _____

ATTEST:

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

On this ___ day of _____, 2021, before me a notary public in and for said county and state, personally appeared _____, to me personally known and known to me to be the same person who executed the within and foregoing mortgage, who, being duly sworn, did depose, acknowledge and say: That he is the _____ of _____, the _____ described in and which executed the foregoing mortgage; that said instrument was signed on behalf of _____, and that _____, the _____of the _____, acknowledged the execution of said mortgage to be the voluntary act and deed of said _____.

Witness my hand and seal this ____ day of _____, 2021.

_____
Notary Public

_____
(Printed)

My Commission Expires:_____

County of Residence: _____

** This instrument prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204; Telephone (317) 684-5465. 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.

/s/ Stephen C. Unger
Printed Name of Declarant**

EXHIBIT A

Description of Property

EXHIBIT B

Permitted Encumbrances

"Permitted Encumbrances" means as of any particular time the following:

(1) this Mortgage and the Economic Development Agreement;

(2) liens for taxes and special assessments which are not then delinquent;

(3) (5) zoning laws and similar restrictions; liens arising in connection with workmen's compensation, unemployment insurance, statutory obligations or social security legislation; undetermined liens and charges incidental to the renovation or expansion of the Property, or other similar charges arising in the ordinary course of operation and not overdue; and such liens and charges at the time required by law as a condition precedent to the normal activities of _____ or the exercise of any privilege or license necessary to _____; and

(7) any exceptions to title as set forth in Schedule B-1 attached hereto.

SCHEDULE B-1

Exceptions to Title

EXHIBIT G
Site Access Agreement

SITE ACCESS AGREEMENT

This Site Access Agreement is made as of the ____ day of _____, 2021, by and between _____ ("_____") and the Town of Whitestown Redevelopment Commission (the "Commission") (collectively, the "Parties"), for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged.

PROPERTY. The Commission owns a certain parcel of real estate located at _____ Indianapolis Road in Whitestown, Boone County, Indiana (the "Property").

ECONOMIC DEVELOPMENT AGREEMENT. The Commission, _____, the Town of Whitestown, Indiana and _____, entered into an Economic Development Agreement dated _____, 2021 ("Economic Development Agreement"), wherein the Commission has agreed to allow _____ access to the Property in order to address site development and begin preliminary site development work for the development of the Property (as defined in the Economic Development Agreement).

SITE ACCESS. The Commission grants access from the date of this Agreement to _____ to address site development costs and begin preliminary site development work for the development of the Property until further direction from the Commission. This Agreement is intended and shall be construed only as a temporary grant of access until further notice from the Commission or transfer of the Property to _____, and not a grant of an easement or any other interest in the Property. _____ shall comply with all local, state, and federal laws, rules, and regulations applicable to any of its activities on the Property.

NOTICE. The Commission will provide notice to _____ if/when the Agreement is terminated. Notice may be provided via email or telephone to:

_____
_____
_____
_____

RESPONSIBILITY FOR ACTIVITIES AND DAMAGE. _____ shall be responsible for any and all its activities and/or damage that occurs on or about the Property caused by _____ or any of its equipment or activities on the Property, including but not limited to environmental damage, responsibility, or liability caused by _____ activities on or around the Property. Should _____ cause any damage or liability on or about the Property, then the Commission may at its option, at the sole cost and expense of _____, perform such repairs as are necessary, and _____ shall reimburse the Commission for said costs, expenses, and reasonable attorneys' fees.

RELEASE AND INDEMNIFICATION OF THE COMMISSION. _____, and its officers, owners, members, shareholders, or sole proprietors, jointly and severally, shall assume the risk of, be responsible for, and, to the fullest extent permitted under applicable laws, release, indemnify, defend and hold the Commission, and its officers, members, managers, agents, contractors, employees and invitees, harmless from any and all claims, actions, suits, damages, liabilities, responsibilities, remediation, mitigation, costs, and expenses, including but not limited to reasonable attorneys' fees and disbursements, relating to or arising out of: (i) _____ use of the access to the Property; (ii) activities to address site development costs and begin preliminary site development work; (iii) any default or failure of

_____ to perform its obligations under this Agreement; (iv) the condition of the Property; or (v) the acts or omissions of _____ or _____ employees, contractors, or agents on or about the Property. Milhaus shall bear the risk of any loss or damage to _____ personal property in, on or about the Property. _____ indemnification as described herein shall survive the termination of this Agreement.

CONDITIONS OF PROPERTY. _____ has personally inspected the Property and accepts the same **"AS IS"**, and it is understood and agreed that the Commission is not making and has not at any time made any representations or warranties of any kind or character, express or implied, with respect to the Property. The Commission assumes no obligation to make any improvements to, or to provide any security for, the Property, or to ensure that the Property complies with applicable ordinances or other laws and regulations. _____ agrees that all of _____ personal property of every kind or description which may at any time be on the Property shall be on the Property at _____ sole risk or at the risk of those claiming through or under _____, and in no event shall the Commission be liable for the same.

INSURANCE. _____ will add the Commission as an additionally named insured on their Comprehensive General Liability ("CGL") insurance policy. The CGL insurance policy shall provide coverage on an occurrence basis with a per occurrence limit of no less than two million dollars ($2MM) for bodily injury and broad form property damage. _____ shall furnish certificates of insurance provided by the insurer, and the certificates shall provide that such insured is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to the Commission.

REVOCATION. The Commission retains the right to terminate _____ access to the Property for any reason with twenty-four (24) hours advance notice to _____ by email. Upon the Commission giving notice of such revocation, _____ shall have forty-eight (48) hours to remove its equipment from the Property. If _____ fails to timely remove its equipment, the equipment shall be deemed abandoned. _____ shall be responsible for all costs, expenses, and reasonable attorneys' fees the Commission incurs as a result of _____ abandoning the equipment.

ENFORCEMENT. This Agreement is entered into in the State of Indiana and shall be construed in accordance with the laws of the State of Indiana. Any action to enforce the terms of this Agreement shall be brought in Boone County Court. The Commission shall be entitled to recover its reasonable and necessary costs, including attorney fees, in any action brought as a result of this Agreement.

EXECUTION OF AGREEMENT. Each of the undersigned Parties hereby represents and warrants that he is authorized to execute this Agreement on behalf of the respective Party to the Agreement and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect.

[Signature Page Follows]

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

Town of Whitestown Redevelopment Commission

By:_____

Print/Type Name:_____

Print/Type Title:_____

Date:_____

_____

By:_____

Print/Type Name:_____

Print/Type Title:_____

Date:_____

4008974

EXHIBIT H

Academy E Parameters

Academy E Project will be an approximately 140,000-200,000 SF under roof, multi-sport facility, with an optional outdoor turf field

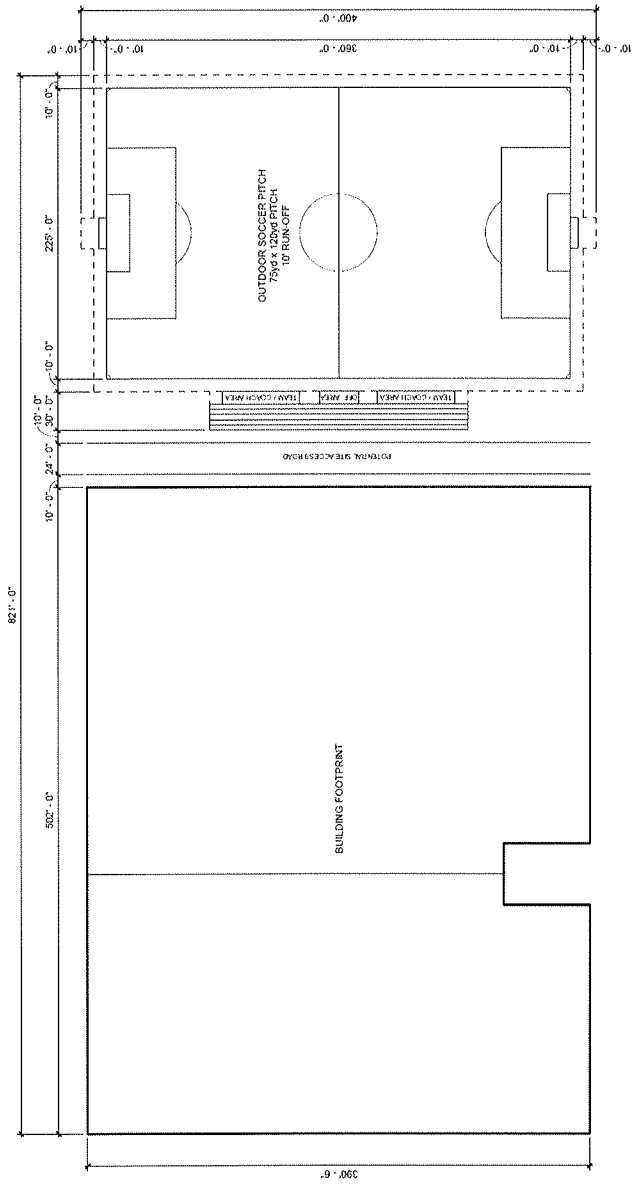


EXHIBIT I

Preliminary Milestone Schedule

PHASE I - Year 1 Construction Start

- Academy E
- Public Space + Infrastructure
- Hotel (1st Flag)
- MOB #1
- Entertainment Retail #1

PHASE IA – Year 2 Construction Start

- Waterpark
- Infrastructure

PHASE II – Year 2-3 Construction Start

- For Sale/ Purpose Built For-Rent Residential
- Stand Alone Retail #2
- MOB #2
- For Rent Multi-Family Apartments
- Infrastructure

PHASE II – Year 3-4 Construction Start

- Ancillary Retail
- Hotel (2nd Flag)

EXHIBIT J
Phase I Parameters

To be agreed upon prior to Phase I Closing.

EXHIBIT K
Phase I Infrastructure

Road generally depicted on the Property depicted below, as well as utility infrastructure to serve Property. Specifics to be agreed upon prior to Phase I Closing.

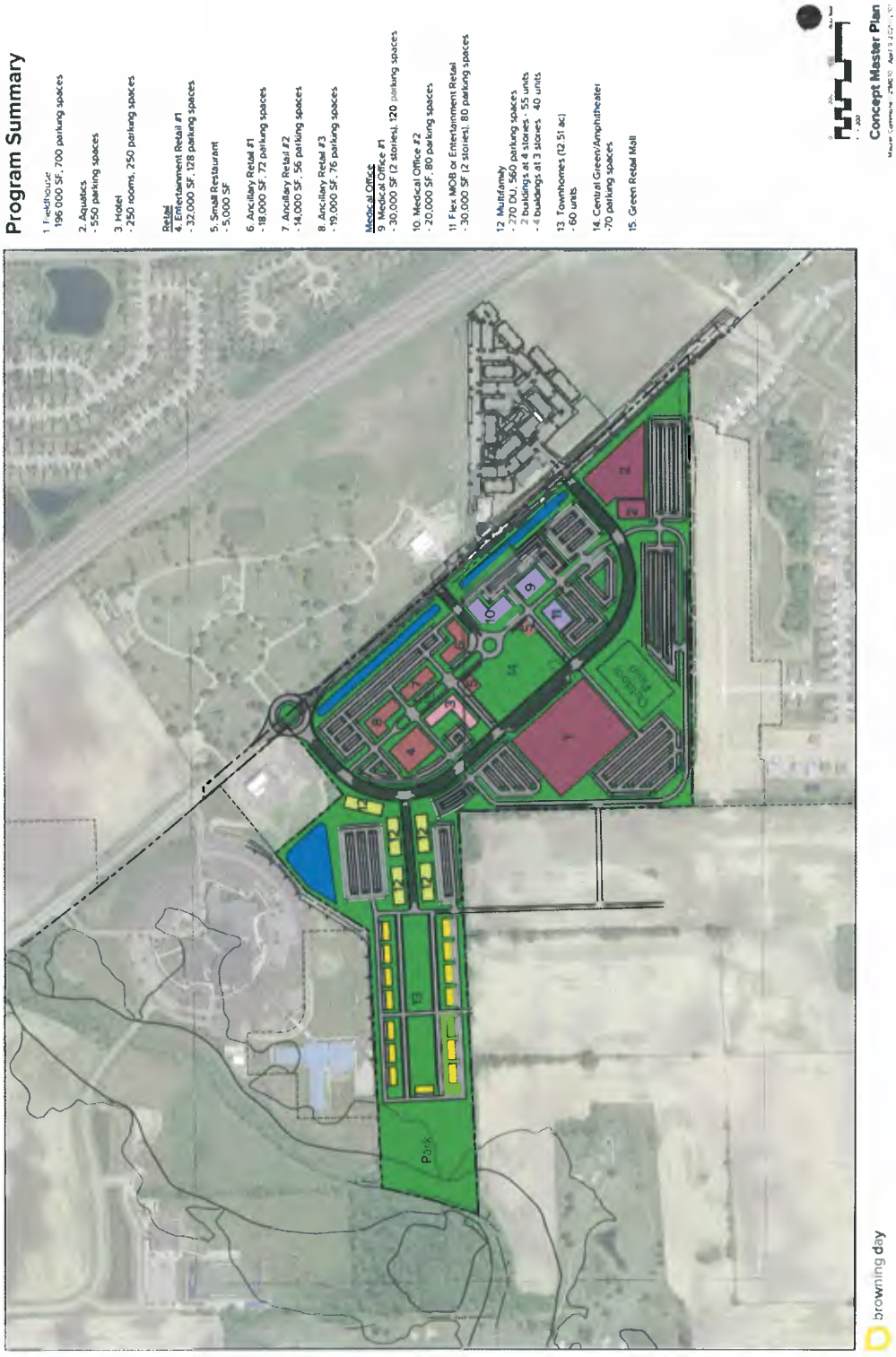


EXHIBIT L
Water Park Parameters

To be agreed upon prior to Water Park closing.

EXHIBIT M
Restrictive Covenants

(41) 25.00

2019012179 COVE $25.00
11/26/2019 11:49:28A 41 PGS
Nicole K. (Nikki) Baldwin
Boone County Recorder IN
Recorded as Presented

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 8th day of November, 2019, by Whitestown Redevelopment Commission ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Boone, Indiana, which is located at 7060 South Indianapolis Road in Whitestown and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on September 30, 2019, and recorded on October 2, 2019, as Deed Record 2019009866, in the Office of the Recorder of Boone County, Indiana. The Real Estate consists of approximately 49.49 acres and is identified by the State by parcel identification 06-04-07-000-005.000-021. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of the Owner to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances and petroleum products relating to historical operations on the Real Estate, Program site number BFD #4190506.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") remain in soil and ground water on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are arsenic, benzo(a)pyrene ("BAP"), lead, and trichloroethene ("TCE") in soil and total and dissolved arsenic, cis-1,2-dichloroethene ("cis-1,2-DCE"), TCE, and vinyl chloride ("VC") in ground water.

WHEREAS: Soil, ground water, and sediment on the Real Estate were sampled for volatile organic compounds ("VOCs"), polynuclear aromatic hydrocarbons ("PAHs"), semi-volatile organic compounds ("SVOCs"), polychlorinated biphenyls ("PCBs"), fuel oxygenates, methyl tertiary butyl ether ("MTBE"), mercury, and metals (total and dissolved). Investigations detected levels of COCs in soil and ground water above screening levels established by IDEM in the *Remediation Closure Guide* (March 22, 2012 and applicable revisions). Soil analytical results detected arsenic, BAP, lead, and TCE above their respective RCG residential direct contact screening levels ("RDCSLs"); and lead and TCE were detected at concentrations above their respective commercial/industrial direct contact screening levels ("IDCSLs") and/or excavation worker direct contact screening levels ("EX DCSLs"). Ground water analytical results detected total and dissolved arsenic, cis-1,2-DCE, TCE, and VC above their respective

RCG residential tap ground water screening levels ("Res TAP GWSLs"); and TCE and VC were detected above their respective residential vapor exposure ground water screening levels ("Res VE GWSLs") and/or commercial/industrial vapor exposure ground water screening levels ("Indus VE GWSLs"). Soil and ground water analytical results above applicable RCG screening levels are summarized on Tables 1, 2, and 3, attached hereto as **Exhibit "D"**. A site map, attached hereto as **"Exhibit E"**, depicts sample locations on the Real Estate at which the COCs were detected in soil and/or ground water above applicable RCG screening levels.

WHEREAS: Site investigation and remediation activities on the Real Estate are ongoing under the oversight of the Department's Voluntary Remediation Program (site #6050304).

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the Remediation Closure Guide. However, the Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for conditional residential, commercial/industrial and/or recreational use.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: http://www.in.gov/idem/4101.htm.

NOW THEREFORE, Whitestown Redevelopment Commission subjects the Real Estate to the following restrictions and provisions, which shall be binding on Whitestown Redevelopment Commission and all future owners:

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:

   (a) Shall prohibit any activity at the Real Estate that interferes with any ongoing response activities, long-term ground water monitoring, or measures necessary to assure the effectiveness and integrity of any response action or engineering control, or component thereof, implemented at the Real Estate.

   (b) Shall neither engage in nor allow drilling or excavation of soil on the Real Estate without first submitting a work plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from the Real Estate must be conducted in accordance with a Department-approved work plan, including all applicable requirements of IOSHA/OSHA.

      i. Soil in any area on the Real Estate on which standalone single-family or duplex residential housing will be constructed must be sampled down to 10

feet below ground surface ("bgs"). Any soil determined through such sampling to be contaminated above applicable RCG residential screening levels must be excavated, leaving only soil that meets RCG RDCSLs in place.

ii. Shall restore soil disturbed as a result of excavation and construction activities on the Real Estate in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels).

iii. Any soil that is removed, excavated or disturbed on the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

(c) (i) Shall not occupy any residential building(s) and/or commercial/industrial building(s) constructed on the Real Estate after the effective date of this Covenant without first completing one of the following: Option 1) Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air ("vapor intrusion") in any newly-constructed residential and/or commercial/industrial building(s) on the Real Estate; or, Option 2) Install, operate and maintain a vapor mitigation system (in accordance with *U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014)) within any newly-constructed residential and/or commercial/industrial building(s) on the Real Estate, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of the applicable IDEM RCG residential subslab soil gas screening levels ("Res SGss SLs") or commercial/industrial subslab soil gas screening levels ("Indus SGss SLs") and/or residential indoor air vapor exposure screening levels ("Res IA VESLs") or commercial industrial indoor air vapor exposure screening levels ("Indus IA VESLs") based upon then-current use of the Real Estate (residential and/or commercial/industrial) or site-specific action levels approved by the Department.

(ii) If Option 2 is selected from (c)(i) above, a detailed work plan must be submitted and approved by the Program outlining activities to be completed to evaluate vapor intrusion risk and to determine the effectiveness of any operating vapor mitigation system(s) after occupancy. Following Program approval, operate the vapor mitigation system(s) for the purpose of mitigating the COCs potentially impacting indoor air in any residential and/or commercial/industrial building on the Real Estate per the *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014) until the Department a) concurs that a vapor mitigation system(s) is no longer necessary based upon demonstrated achievement under an Program-

approved sampling work plan of the applicable IDEM RCG Res SGss SLs and/or Res IA VESLs OR Indus SGss SLs and/or Indus IA VESLs and/or site-specific action levels approved by the Department; and, b) makes a determination regarding acceptable risk under Paragraph No. 9 of this Covenant. The Department's determination shall be based upon RCG Res IA VESLs or Indus IA VESLs or site-specific action levels approved by the Department. The Department's determination in concert with Paragraph No. 9 shall not be unreasonably withheld. In the event that the vapor intrusion mitigation system(s) malfunction(s) or cease(s) operation, the Department shall afford the Owner a reasonable opportunity to repair or replace the vapor intrusion mitigation system(s) prior to the Department exercising whatever rights it may have under Paragraph No. 8.

(d) Shall not use or allow the use or extraction of ground water at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.

3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.

4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.

5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED_____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF BOONE COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.

7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.

10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner

shall record such amendment, modification, or termination with the Office of the Recorder of Boone County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.

12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.

13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.

14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
Whitestown Redevelopment Commission
6210 Veterans Drive
Whitestown, IN 46075
ATTN: Nathan Messer

To Department:
Indiana Brownfields Program
100 N. Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Kyle Hendrix

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, Whitestown Redevelopment Commission, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 8th day of November, 2019.

By Brady
Whitestown Redevelopment Commission
Brian Brackmeyer

STATE OF Indiana)
) SS:
COUNTY OF Boone)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian Brackmeyer, the President of the ~~Owner~~, Whitestown Red Comm., who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 8th day of November 2019.

Rhonda Lynn Drew-Johnson
Rhonda Lynn Drew-Johnson, Notary Public

Residing in Boone County, Indiana

My Commission Expires: 2/14/21

This instrument prepared by:

RHONDA LYNN DREW-JOHNSON
Notary Public, State of Indiana
Boone County
Commission # 642756
My Commission Expires
February 14, 2021

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 Unger (Printed Name of Declarant)

EXHIBIT A

Deed for the Real Estate

2019009886
Electronic Filing
From: First American - In
Thru: Simplifile

2019009886 DEED $25.00
10/02/2019 12:59:21PM 4 PGS
Nicole K. (Nikki) Baldwin
Boone County Recorder IN
Recorded as Presented

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, that **WRECKS, INC.**, an Indiana corporation ("Grantor"), CONVEYS AND SPECIALLY WARRANTS to **TOWN OF WHITESTOWN REDEVELOPMENT COMMISSION** ("Grantee"), for the sum of Ten and No/100 Dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, that certain real property located in Boone County, Indiana, which real property is more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Real Estate").

This conveyance is subject to those matters specifically described on Exhibit B, attached hereto and incorporated herein by reference (the "Permitted Encumbrances").

Send tax statements and return recording to Grantee's address at:

Whitestown Redevelopment Commission
6210 Veterans Drive
Whitestown, IN 46075
Attn: Town Manager

Grantor, as its sole warranty herein, specially covenants and warrants that the Real Estate is free of any encumbrance made or suffered by Grantor, except the Permitted Encumbrances, and that Grantor shall warrant and defend the same to Grantee and Grantee's successors and assigns forever against the claims and demands of all persons claiming by, through or under Grantor, but against none other.

The undersigned person executing this Limited Warranty Deed on behalf of Grantor represents and certifies that she has been fully empowered and duly authorized by all necessary action to execute and deliver this Limited Warranty Deed; that Grantor has full capacity to convey the Real Estate; and that all necessary action for the making of such conveyance has been taken or done.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]

NCS-926610-2-Indy
1081

DULY ENTERED
SUBJECT TO FINAL ACCEPTANCE
AUDITOR
BOONE COUNTY, INDIANA
Heather R. Myers
HEATHER R. MYERS
Oct 02 2019 - SL

IN WITNESS WHEREOF, Grantor has executed this Limited Warranty Deed to be effective this 30 day of September, 2019.

GRANTOR:

WRECKS, INC.,
an Indiana corporation

By: Stacy A. Maurer
Stacy A. Maurer, President

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Stacy A. Maurer, as President of Wrecks, Inc., an Indiana corporation, who acknowledged execution of the foregoing Limited Warranty Deed for and on behalf of said entity, and who, having been duly sworn, stated that the representations therein contained are true and accurate.

Witness my hand and Notarial Seal this 18th day of September, 2019.

Cathy McQueen
My Comm. Expires 01/04/2027
Comm. # NP0823315
NOTARY SEAL PUBLIC
HANCOCK COUNTY
STATE OF INDIANA

Cathy McQueen
(signature)

(printed name) Notary Public

My Commission Expires:

County of Residence:
Hancock

This instrument was prepared by *Matthew T. Troyer, Esq., Bingham Greenebaum Doll LLP, 2700 Market Tower, 10 W. Market St., Indianapolis, Indiana 46204.*

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. *Matthew T. Troyer, Esq.*

EXHIBIT A

Real Estate Legal Description

A PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST, IN BOONE COUNTY, INDIANA, LYING SOUTHWEST OF THE CENTER OF U.S. HIGHWAY NO. 52, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE EAST ALONG THE NORTH LINE THEREOF TO THE CENTERLINE OF THE U.S. HIGHWAY NO. 52; THENCE SOUTHEAST ALONG SAID CENTERLINE TO THE EAST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER SECTION TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION TO THE POINT OF BEGINNING, CONTAINING 144 ACRES, MORE OR LESS.

EXCEPTING THEREFROM:

A PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST, BOONE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE NORTH 89 DEGREES 23 MINUTES 58 SECONDS WEST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 2917.71 FEET TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE NORTH 00 DEGREES 45 MINUTES 08 SECONDS WEST ALONG THE WEST LINE THEREOF A DISTANCE OF 30.08 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 12; THENCE NORTH 00 DEGREES 18 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION A DISTANCE OF 1430.90 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 48 SECONDS EAST A DISTANCE OF 2360.87 FEET TO THE CENTERLINE OF U.S. 52 (INDIANAPOLIS ROAD); THENCE SOUTH 42 DEGREES 13 MINUTES 01 SECONDS EAST ALONG THE CENTERLINE THEREOF A DISTANCE OF 849.44 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE SOUTH 00 DEGREES 23 MINUTES 48 SECONDS WEST ALONG THE EAST LINE THEREOF A DISTANCE OF 849.27 FEET TO THE POINT OF BEGINNING, CONTAINING 94.508 ACRES, MORE OR LESS.

EXHIBIT B

Permitted Encumbrances

1. Real estate taxes for the year 2019 (payable 2020) which are a lien but not yet due and payable.

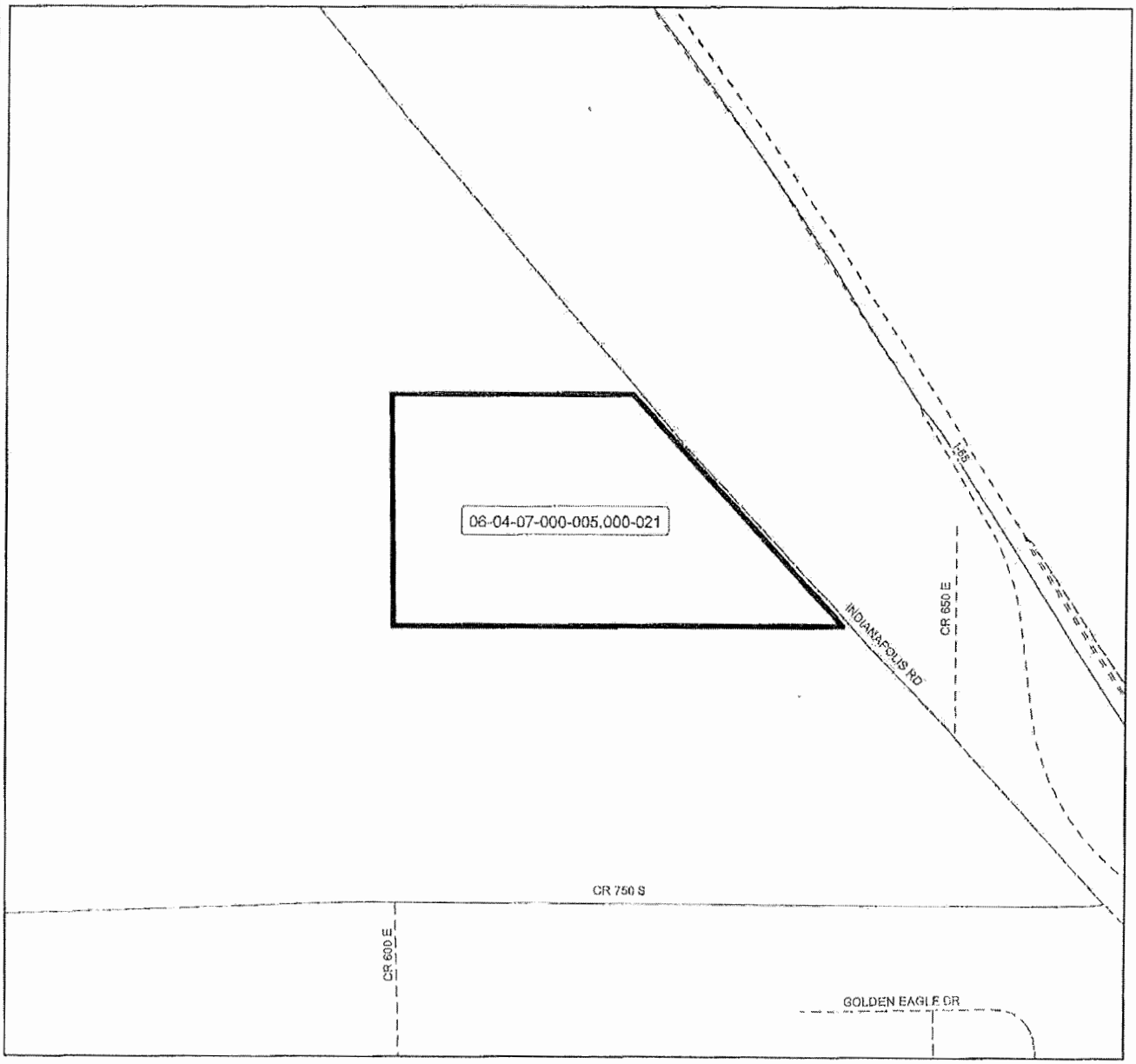
2. Right of Way Grant for road purposes in favor of the State of Indiana recorded January 14, 1953 in Book 172, Page 309, as plotted by James M. Fazekas upon a survey prepared by SEA Group Land Surveyors dated November 16, 2018 as Project Number C18-4464 (the "Survey").

3. Easement made by and between Wrecks, Inc. and Timberstone Development, LLC, recorded March 9, 2015 as document 201500002083, and the terms and provisions thereof, as plotted by James M. Fazekas upon the Survey.

EXHIBIT B

Map of the Real Estate

Indiana Brownfields Program # 4190506 - Real Estate



Mapped By:	Matt Canale, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, May 29, 2019
Deed Info:	Instrument # n/a Recorded: n/a
Parcel ID:	06-04-07-000-005.000-021
PLSS Info:	Section 7, T7N, R2E Eagle Township Boone County, Indiana
Property Info:	7600 South Indianapolis Road Zionsville, IN
Disclaimer:	This map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purposes.

Real Estate
Street

IDEM

N
W E
S

0 500 1,000 Feet
0 150 300 Meters

Boone County

Project Area

Zionsville

EXHIBIT C

Copy of Comfort Letter

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.
100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov
Eric J. Holcomb, *Governor*
Bruno L. Pigott, *Commissioner*

June 21, 2019

Nathan Messer
Whitestown Redevelopment Commission
6210 Veterans Drive
Whitestown, IN 46075

Re: **Comfort Letter-**
Bona Fide Prospective Purchaser
Wrecks Incorporated
7060 South Indianapolis Road
Whitestown, Boone County
VRP site #6050304
Brownfield #4190506

Dear Mr. Messer:

In response to the request by August Mack Environmental, Inc. (August Mack) on behalf of the Whitestown Redevelopment Commission (Prospective Purchaser) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 7060 South Indianapolis Boulevard, Whitestown (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and/or petroleum products found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Prospective Purchaser must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Prospective Purchaser undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

Site Description and History

The 49.49-acre Site is one parcel identified by the State by parcel 06-04-07-000-005.000-021. The Site is currently vacant and primarily covered with dense vegetation and small trees. The northeast portion of the Site is partially improved with a concrete

paved area. An automotive scale and an apparent oil/water separator (OWS) are located on the northeast portion of Site. Piles of tires, soil, and small automotive debris are located on various areas across the Site.

Historical records indicate that prior to 1955, the Site was primarily agricultural and wooded areas on the northwest portion, with a residence (which was demolished in the early 1980s) on the southeast corner. The Site was owned by Walter H. Harmon and/or Rush J. Harmon in 1955 and transferred in 1956 to Julius and Michael Maurer. From at least the late 1950s through 2004, the Site was used by Wrecks, Inc. (Wrecks) as part of its automotive salvage facility. Ownership of the Site was transferred to Wrecks in 1970. During its use by Wrecks, the Site contained three structures associated with salvage operations: a main office/workshop building located on the eastern portion of the Site; a building (Rear Building) containing the bailer/crusher machine located on the western-central portion of the Site, four OWSs, and a water/pump house; and, an engine building (Engine Building) with a truck scale and underground storage tank (UST) located on the eastern portion of the Site. All vehicles and larger debris associated with the Wrecks operations were removed from the Site in 2004 and 2005. The three commercial buildings were demolished in 2006 and the Site has remained vacant since. Two OWSs and the truck scale remain on-Site. The Prospective Purchaser plans to redevelop the Site for multiple uses including softball/baseball fields, a park, a farmers market plaza, ice arena, aquatic center, community center, amphitheater, office building, mixed-use building, and fire station.

The Site is surrounded by vacant and/or agricultural land. The vacant property adjoining the Site to the south is a proposed residential development (7238 S. Indianapolis Road) for which IDEM issued a Comfort & Closure Letter on August 6, 2014 approving conditional residential closure of the environmental conditions on the property. Lincoln Memorial Gardens (cemetery), located across Indianapolis Avenue to the northeast, is associated with IDEM leaking underground storage tank (LUST) incident #199111541, which received an unconditional no further action (NFA) determination in IDEM databases; however, an NFA letter was not issued for the incident.

Due Diligence

As part of this request, the Prospective Purchaser provided the Program with a *Phase I Environmental Site Assessment* dated October 25, 2018 (October 2018 Phase I ESA) and a *Phase I Environmental Site Assessment Update* dated April 19, 2019 (April 2019 Phase I ESA Update) prepared for the Town of Whitestown and Whitestown Redevelopment Commission by August Mack. These documents may be viewed electronically by searching online by Document #82781771 and #82789720 (p. 30), respectively, in IDEM's Virtual File Cabinet (VFC) available through IDEM's website. The October 2018 Phase I ESA and April 2019 Phase I ESA Update were conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312. In an effort for

the Prospective Purchaser to qualify as a BFPP, Mr. Nathan Messer,[1] Parks Director for the Town of Whitestown, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The October 2018 Phase I ESA and April 2019 Phase I ESA Update identified the following recognized environmental condition (REC) associated with the Site:

- Documented soil and ground water contamination associated with the historical auto salvage operations on the Site; ongoing remediation and monitoring activities are being completed under the oversight of the IDEM Voluntary Remediation Program (VRP).

In addition to the above-noted REC, the October 2018 Phase I ESA and April 2019 Phase I ESA Update identified the following Non-Scope Issues:

- Recommended the proper closure/removal of the remaining OWS, automotive debris, and tires and as part of Site remediation and redevelopment activities.

Pursuant to ASTM E1527-13, *Standard Practice for Environmental Site Assessment* and in general accordance with ASTM E2600-15 *Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions*, August Mack reviewed the database reports from the October 2018 Phase I ESA and April 2019 Phase I ESA Update and other readily available historical sources and regulatory documentation. August Mack identified several releases attributed to the long-term historical use of the Site as an automotive salvage yard. Based on the historical records review and a review of the most recent on-Site ground water data (discussed in detail below), August Mack identified the concentrations of trichloroethene (TCE) and vinyl chloride (VC) in ground water on the northeast and southeast portions of the Site above applicable IDEM residential and commercial/industrial ground water screening levels established by IDEM in the Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) as a vapor encroachment condition (VEC).

Voluntary Remediation Program – Site #6050304

A May 2004 IDEM automotive salvage inspection at the Site identified multiple violations related to the handling and disposal of hazardous substances and waste associated with the historical auto salvage operations. Based on the technical recommendation from IDEM's Office of Enforcement (IDEM Case No. 2004-14288-H), IDEM and Wrecks, the Site owner at that time, entered into an Agreed Order (AO) (Document #46509323) in July 2005 requiring Wrecks to enter the Site into VRP to complete investigation and remediation activities. In general, the AO required Wrecks to conduct the following actions:

[1] Mr. Messer completed the User Questionnaire as a duly authorized representative of both the Town of Whitestown and the Whitestown Redevelopment Commission.

- Remove and dispose of tires.
- Submit a site assessment plan to IDEM to investigate potential soil and ground water contamination in specific areas of concern, including a contingency plan to determine the nature and extent of soil and groundwater impacts above regulatory criteria.
- Submit a Remediation Work Plan (RWP) to IDEM to address identified soil or ground water contamination, including remediation methods and a confirmation sampling plan; and
- Implement the approved RWP.

Subsequently, on August 30, 2005, IDEM entered into a Voluntary Remediation Agreement (VRA) with Wrecks, with one of the VRA conditions being work completed under VRP guidance would satisfy the requirements of the AO. On January 30, 2013, IDEM approved the *Remediation Work Plan - Second Revision* dated August 21, 2012 prepared by BBJ Group, LLC (BBJ Group) (August 2012 Approved RWP) (Document #66693765). Over the subsequent three year period, of the items in the approved RWP, only a December 2014 baseline ground water monitoring event was completed. In a VRP Project Termination Warning letter to Wrecks dated November 2, 2015, IDEM stated that for the Site to remain in VRP, Wrecks must submit a detailed work schedule to complete the objectives identified in the RWP. The letter further stated that failure to do so would result in beginning formal action to withdraw approval of the RWP and terminate this Site's participation in the VRP.

In December 2015, IDEM granted Wrecks' request to submit a revised RWP in lieu of implementing the August 2012 Approved RWP and permitted Wrecks to remain in VRP. As a condition of continuing in VRP, IDEM required that a comprehensive ground water sampling event be conducted in January 2016 and that all further investigation and remediation activities related to the submittal of an updated RWP be completed under IDEM's RCG. Wrecks agreed to these requirements in January 2016. Although the summaries listed below compare soil and ground water analytical results to the IDEM Risk Integrated System of Closure (RISC) Technical Resource Guidance Document (February 15, 2001 and applicable revisions) residential and industrial default closure levels (RDCLs and IDCLs), for samples remaining on-Site and for purposes of this letter, sample analytical results were compared to RCG screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively); soil samples collected between 0 and 18 feet bgs were compared to the excavation worker direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth. Ground water samples were compared to residential tap ground water screening levels (Res TAP GWSLs) and residential vapor exposure ground water screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure ground water screening levels (Indus VE GWSLs).

An Amended Remediation Work Plan dated June 3, 2016, prepared by BBJ Group (June 2016 Amended RWP) (Document #80303965) was submitted to VRP for approval. The June 2016 Amended RWP proposes to amend the August 2012 Approved RWP as follows:

- Reduce the scope of ground water monitoring by focusing on selected wells.
- Eliminate ground water remediation in the southeast portion of the Site.
- Treat the plume of volatile organic compounds (VOCs) in the northeast portion of the Site using enhanced reductive dechlorination (ERD).
- Use soil management zones to defer active soil remediation until a redevelopment plan is selected for the Site.
- Defer disposal of solid waste until a redevelopment plan is selected for the Site.
- Use statistical analysis of existing soil data to limit or eliminate remediation of metals in soil located in discrete areas of the Site.

Site Investigations Summary 2004 - 2012

Between 2004 and 2012, multiple investigations and remediation activities occurred on the Site which included the following:

- Advancement of approximately 250 borings to a maximum depth of 20 feet bgs.
- Installation of approximately 74 monitoring wells:
    - Shallow Water bearing unit at 8 to 10 feet bgs, and
    - Deep Water bearing unit at 36 to 50 feet bgs.
- Exaction of 79 test pits or trenches.
- Collection of over 320 soil and 200 ground water samples.
- Collection of three sediment samples from the adjacent ditch.
- Soil, ground water, and sediment samples were analyzed for one or more of the following constituents: total petroleum hydrocarbon (TPH) gasoline range organics (GRO) diesel range organics (DRO), and extended range organics (ERO),[2] VOCs, polynuclear aromatic hydrocarbons (PAHs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), fuel oxygenates, methyl tertiary butyl ether (MTBE), mercury, and metals. Analytical results were compared to the then applicable IDEM RISC RDCLs

[2] As of June 2010 (for ground water) and March 2012 (for soil), IDEM no longer evaluates TPH contamination in soil and ground water when determining RISC or RCG closure. Therefore, the levels of TPH detected in soil and/or ground water are not relevant for purposes of evaluating environmental conditions on the Site and are presented for informational purposes only.

and IDCLs.

The activities and analytical results completed during this time period are summarized below. For details regarding information provided in this summary, please refer to the VFC document numbers associated with the Approved August 2012 RWP, the June 2016 Amended RWP, the October 2018 Phase I ESA, and April 2019 Phase I ESA Update, provided above.

Soil Analytical Results

- TPH-GRO, TPH-DRO, and TPH-ERO were detected at elevated concentrations
- Metals, including arsenic, were detected at levels above their respective RDCLs and/or IDCLs.
- VOCs were detected at levels above their respective RDCLs and/or IDCLs.
- Ethylene dibromide (EDB) was detected above its RDCL.
- PAHs were detected at levels above their respective RDCLs and/or IDCLs.
- See Tables 1 and 2, attached, for concentrations and locations of constituents remaining in on-Site soil above RCG screening levels.

Ground Water Analytical Results

Shallow water-bearing unit:

- Total arsenic, total cadmium, total chromium,[3] and/or total lead were detected above their respective RDCLs and/or IDCLs.
- Benzene and MTBE were detected above their respective RDCLs.
- VC was detected above its IDCL.
- MTBE, benzo(a)pyrene, and dibenzo(a,h)anthracene were detected above their respective RDCLs.
- PAHs were detected above their respective IDCLs.
- cis-1,2-dichloroethene (cis-1,2-DCE) was detected above the RDCL.

Deep water-bearing unit:

- Total arsenic, total cadmium, total chromium, and/or total lead were detected above their respective RDCLs and/or IDCLs.

[3] Because the chromium was not speciated between trivalent chromium (chromium III) and the more toxic hexavalent chromium (chromium VI), IDEM, in the most conservative approach, compared the analytical results to the chromium VI screening level.

- VC was detected above its RDCL and/or IDCL.

Baseline Ground Water Sampling - December 2014

- VOCs were detected above their respective RDCLs.
- cis-1,2-DCE, trans-1,2-dichloroethene (trans-1,2-DCE), TCE, and/or VC were detected above their respective RDCLs and IDCLs.
- TCE was detected above its RDCL in off-site monitoring well MW-54.
- Arsenic was detected in MW-14R, MW-19, MW-25R, MW-35, and MW-56 above its RDCL and IDCL.
- Lead was detected in MW-35 and MW-40 above its RDCL.

North Side Drainage Ditch Evaluation Soil Assessment

- TPH-ERO was detected at elevated concentrations.
- Arsenic and cadmium were detected above their respective RDCLs.
- Lead was detected above its RDCL and/or IDCL.

Based on investigation results and observations, the following five areas of concern (AOCs) were identified on the Site:

- AOC 1 – petroleum contaminated soil in the western portion of the Site.
- AOC 2 – petroleum contaminated soil in the northeastern portion of the Site.
- AOC 3 – A waste oil UST located in the northeastern portion of the Site.
- AOC 4 – petroleum and lead contaminated soil stretching from the northwestern portion to the southeastern portion of the Site.
- AOC 5 – VC contaminated ground water in the southeastern portion of the Site.

Solid Waste/Debris Piles:

Multiple piles consisting of soil, soil/debris (e.g., steel, automotive parts, tires, etc.), and construction debris (e.g., concrete, brick, etc.) were documented on the Site. Except for one soil pile, no COCs were identified at concentrations exceeding IDEM RISC closure levels. Soil was used as backfill material in excavations, discussed further below. Piles of construction debris may also be used as backfill material in existing excavations. For the one soil pile in which COCs exceeded RISC Closure Levels, waste characterization samples were collected for off-site disposal purposes. Currently existing miscellaneous piles of debris (e.g., steel, automotive parts, tires) and contaminated soil piles will be disposed in accordance with applicable regulations.

Background Arsenic Study

After development of a Site-specific background value for arsenic, IDEM published the RCG, which included different screening levels for arsenic in various media as compared to the RISC guidance. Prospectively, RCG arsenic screening levels will be used instead of the Site-specific background value in evaluating environmental conditions on the Site.

Ground Penetrating Radar and Test Pit Survey

A ground penetrating radar (GPR) survey was conducted in the northwest corner of the Site to assist in identifying the lateral extent of areas where significant buried automotive debris may have been present. Subsequently, 36 test pits were completed in select areas to assist to identify any correlation between the GPR finding and actual subsurface material. Test pits were used for observation purposes only. No soil or ground water samples were collected for laboratory analysis from the test pits.

Remediation Activities Summary 2004 - 2009

Ground Water Remediation Pilot Tests

Multiple pilot tests were conducted on-Site to determine the best ground water remediation approach and included the following:

- Pilot test near AOC 5: in-situ ground water remediation of chlorinated solvents by enhanced anaerobic dechlorination using approximately 4,300 pounds CAP 18® (a formulation of food-grade, long-chain fatty acids, refined from natural vegetable oils) injected from 8 to 10 feet bgs in a grid of points 15 feet apart around monitoring well MW-6.
- Pilot test at AOC 3: injection of approximately 120 gallons of RegenOx® (a chemical oxidant used to treat organic contaminants) into direct-push boreholes near monitoring wells MW-26 and MW-27.
- Four 24-hour pilot tests were completed using a mobile dual-phase extraction (MDPE) system connected individually to monitoring wells MW-17, MW-28, MW-41R, and MW-48. While operating the MDPE system, ground water elevations in nearby monitoring wells were monitored to evaluate the pumping radius of influence. 6,032 gallons of ground water were extracted, treated, and discharged on-Site.

Contaminated Soil Excavation

Multiple excavations were completed on-Site. Approximately 24,866 tons of contaminated soil was excavated and removed from the Site. Outside of the excavations, an additional 7,735 tons of soil and soil mixed with debris (metal pieces) from stockpiles on the Site were removed and properly disposed. A total of 16

confirmation soil samples were collected from the excavation side walls and bottom. Analytical results detected benzo(a)pyrene, TPH-ERO, and arsenic above their respective RDCLs and/or IDCLs. See Tables 1 and 2, attached, for concentrations and locations of constituents remaining in on-Site soil above RCG screening levels.

Periodic Ground Water Monitoring

The existing monitoring well network consists of 56 shallow and 13 deep monitoring wells and sampled for the following constituents: VOCs, fuel oxygenates, EDB, PAHs, PCBs, ethylene glycol, propylene glycol, arsenic, cadmium, chromium, lead, mercury, and TPH-ERO. Contaminants detected above RISC closure levels included the following:

- Shallow water bearing unit: benzene, cadmium, cis-1,2-DCE, and/or lead above their respective RDCLs; arsenic above its IDCL; chlorinated VOCs (CVOCs) above their respective RDCLs and/or IDCLs; naphthalene, MTBE, and lead above their respective RDCLs; and arsenic and VC above their respective IDCLs.
- Deep water bearing unit: arsenic and CVOCs above their respective IDCLs; and naphthalene and lead above their respective RDCLs.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents. These documents may be viewed electronically by searching online by the noted document number in IDEM's VFC accessible through IDEM's website.

- *Groundwater Monitoring Report*, dated June 13, 2017, prepared by BBJ Group (Document #80474974)
- *Site Investigation Report*, dated March 8, 2019, prepared by August Mack (Document #82781771, p. 2,321)

Groundwater Monitoring Report – June 2017

In March 2017, a ground water sampling event included the collection of 58 samples, including two duplicates, from 46 shallow and 10 deep monitoring wells. Samples were analyzed for VOCs, PAHs, and metals. Analytical results detected VOCs and arsenic above applicable RCG residential screening levels. All other sampled constituents were below applicable RCG screening levels. See Table 3, attached, for concentrations and locations of constituents detected in on-Site ground water above RCG screening levels.

Site Investigation Report – March 2019

In November 2018, a total of 49 soil samples were collected from 30 soil borings (SB-101 through SB-130)[4] advanced to a maximum depth of 5 feet bgs and analyzed for lead and hexavalent chromium. Analytical results detected lead concentrations at SB-114 above its RDCSL and at SB-107 and SB-108 above its RDCSL, IDCSL, and EX DCSL. All other analytical results were below their applicable RCG screening levels. See Tables 1 and 2, attached, for concentrations and locations of constituents remaining in on-Site soil above RCG screening levels.

A total of 12 ground water samples were collected from on-Site monitoring wells MW-1, MW-4, MW-9, MW-11, MW-12, MW-14, MW-16, MW-18, MW-20, MW-35, MW-39, and MW-56. Ground water samples were field filtered and analyzed for dissolved arsenic, total chromium, and hexavalent chromium. Analytical results detected dissolved arsenic above its RCG Res TAP GWSL in MW-14R. All other sampled constituents were below applicable RCG screening levels. See Table 3, attached, for concentrations and locations of constituents remaining in on-Site ground water above applicable RCG screening levels.

Liability Clarification

IDEM's "*Brownfields Program Comfort and Site Status Letters*" Non-rule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Prospective Purchaser, that:

(1) no state or federal enforcement action at the Site is pending;[5]

(2) no federal grant requires an enforcement action at the Site;

(3) no condition on the Site constitutes an imminent and substantial threat to human health or the environment;

(4) neither the Prospective Purchaser nor an agent or employee of the Prospective Purchaser caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site, and;

(5) the Prospective Purchaser is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exception to liability for hazardous substance contamination found in IC §13-25-4-8(b) and/or for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the

[4] Soil boring SB-106 was not advanced deeper than 1 foot bgs due to an unidentified subsurface structure; therefore, no soil samples were collected from this location.

[5] Although the 2005 Agreed Order is not closed, the Program has discussed the proposed transaction and redevelopment with IDEM enforcement staff who do not object to the agency's use of enforcement discretion as it pertains to the Prospective Purchaser.

applicable statutory criteria are met.

As discussed below, the Prospective Purchaser has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and/or petroleum contamination provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

Bona Fide Prospective Purchaser

Under IC § 13-25-4-8(a), except as provided in IC § 13-25-4-8(b), (c), or (d), a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. IC § 13-25-4-8(b) references certain exceptions to liability imposed by IC § 13-25-4-8(a), including the exception in Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which states that a BFPP whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus a prospective purchaser that qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

Under Indiana law, if the Prospective Purchaser qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Prospective Purchaser even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such a prospective purchaser for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Prospective Purchaser to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA or the Resource Conservation and Recovery Act, 42 U.S.C. § 6901.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Prospective Purchaser will acquire the Site after January 11, 2002 (and after June 30, 2009), and the disposal of hazardous substances and petroleum at the Site will have occurred prior to that date. See 42 U.S.C. § 9601(40)(A); § IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on

information reviewed by IDEM, IDEM concludes that the Prospective Purchaser has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Prospective Purchaser has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Prospective Purchaser meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Prospective Purchaser must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance." 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Prospective Purchaser must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Prospective Purchaser recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Prospective Purchaser will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Prospective Purchaser must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

Reasonable Steps

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Prospective Purchaser to undertake with respect to the hazardous substances and/or petroleum contamination found at the Site in order to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Implement and maintain the land use restrictions required by this letter.
- Reasonably cooperate with and do not impede any third party's undertaking of any response actions required by IDEM as a part of the VRP project (site number 6050304) or to address any other identified contamination on the Site.
- Properly close/remove, or allow a third party to properly close/remove, the

remaining OWS, automotive debris, and tires.

- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance and/or petroleum contamination or any information about new (or previously unidentified) contamination. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

Institutional Control

Since levels of contaminants remaining in soil and in ground water on-Site are above applicable RCG residential screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Prospective Purchaser must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- Shall not interfere with a third party's response actions on the Site.
- Shall not disturb, remove, excavate, or dispose of any soil on the Site without first submitting a soil management plan to IDEM for approval.
- Shall not occupy any newly-constructed human-occupied building(s) on the Site without first determining with IDEM concurrence that a vapor intrusion (VI) exposure is not present; or installing an approved-IDEM VI mitigation system. If a VI mitigation system(s) is installed, the VI system(s) shall be operated and maintained to ensure the VI exposure risk is mitigated, or shall be operated and maintained until such a time it is determined with IDEM concurrence that the VI exposure risk longer exists.
- Shall not use ground water on the Site.

Conclusion

IDEM encourages the mixed residential, commercial, and recreational redevelopment of the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the Site pursuant to its

terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Prospective Purchaser must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

This letter shall not be construed as limiting the Prospective Purchaser's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Prospective Purchaser that are required to maintain the status of BFPP. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site, and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Prospective Purchaser , then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Prospective Purchaser result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. In addition, if any acts or omission by the Prospective Purchaser exacerbates the contamination at the Site, or if the Prospective Purchaser does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Prospective Purchaser would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. This letter does not constitute an assurance that the Site is safe for any particular use. Please be advised that any work performed at the Site must be done in accordance with all applicable environmental laws.

In order for IDEM to consider this letter effective, upon acquisition, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the new deed

for the Site in the Boone County Recorder's Office. Please return a certified copy of the filed document to the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Kyle Hendrix

IDEM is pleased to assist the Whitestown Redevelopment Commission with this residential, commercial, and recreational redevelopment project. Should you have any questions or comments, please contact Kyle Hendrix at (317) 234-4860. He can also be reached via email at: lhendrix@ifa.in.gov.

Sincerely,

Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Enclosure
Attachments

cc: Patricia Polston, U.S. EPA Region 5 (*electronic copy*)
Linda Mangrum, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)
Kyle Hendrix, Indiana Brownfields Program (*electronic copy*)
Mike McCann, IDEM VRP Section (*electronic copy*)
Sarah Young, August Mack (*electronic copy*)
Brad Sugarman, Bose McKinney & Evans (*electronic copy*)

TABLE 1

Wrecks, Inc., Whitestown – BFD #4190506

Soil Concentrations Exceeding Applicable IDEM RCG Screening Levels

Sample Information			Contaminant Detected & Result *(parts per million (ppm))*		
Location	**Depth** (feet bgs)	**Date**	**BAP**	**Lead**	**TCE**
1000N & 600E	1	1/2005	0.31	***971***	NA
100N & 1600E	1		**1.8**	210	BDL
100N & 1650E	1		1.2	**411**	BDL
150N & 1600E	1		**2.0**	47.1	BDL
600N &1000E	1		**1.8**	15.3	NA
600N & 1400E	1		0.13	***929***	NA
800N & 1000E	0.5		NA	***925***	NA
TW-2	10	1/2006	NA	NA	***290***
5,3 (B)	0.5-1.5	10/2007	NA	***930***	NA
12,8 (A)	0-0.5		NA	***860***	<0.0049
BSB-6(D)	2.5-3.5		**1.6**	NA	<0.23
BSB-19(I)	7.5-8.5		<0.035	5.9	**11.0**
DUP			<0.036	6.3	**12.0**
BSB-21	10[1]		0.024	6.7	**7.1**
BD-3	1	8/2008	BDL	***1,200***	NA
A-EW-1	0-0.5	7/2009	**2.6**	NA	NA
A-EW-3	0-0.5		**2.1**	NA	NA
A-EW-4	0-0.5		**2.0**	NA	NA
A-WW-5	0-0.5		**3.3**	NA	NA
SB-107	4-5	11/2018	NA	***9,820***	NA
SB-108	4-5		NA	***1,500***	NA
SB-114	4-5		NA	**403**	NA
RDCSL			1.5	400	5.7
IDCSL			21	800	19
EX DCSL			500	1,000	95

Notes: **bold** = above RCG Residential Direct Contact Screening Level
italics = above RCG Commercial/Industrial Direct Contact Screening Level
underline = above RCG Excavation Worker Direct Contact Screening Level
BAP = benzo(a)pyrene TCE = trichloroethene
bgs = below ground surface NA = not analyzed BDL = below detection limit
[1]Depth was listed as "Bottom", and a boring log was not available for review; however, most borings collected at this time terminated at 10 feet bgs.

TABLE 2
Wrecks, Inc., Whitestown – BFD #4190506
Arsenic Concentrations in Soil Exceeding Applicable IDEM RCG Screening Levels

Sample Information			Result (parts per million (ppm))
Location	Depth (feet bgs)	Date	
BSB-23(F)	4.5-5.5	10/2007	**14.0**
2,2(C)	1.5-2.5		**12.0**
2,4(B) DUP	0.5-1.5		**10.0**
2,12(D)	2.5-4		**28.0**
3,3(C)	1.5-2.5		**10.0**
4,12(B)	0.5-1.5		**11.0**
5,3(B)	0.5-1.5		**22.0**
6,6(B)	0.5-1.5		***32.0***
6,8(B)	0.5-1.5		***45.0***
6,12(C)	1.5-2.5		**10.0**
7,1(D)	2.5-4		**12.0**
7,5(C)	1.5-2.5		**14.0**
7,7(C)	1.5-2.5		**14.0**
7,9(C)	1.5-2.5		**13.0**
7,11(C)	1.5-2.5		**11.0**
8,4(C)	1.5-2.5		**9.7**
8,12(D)	2.5-4		**10.0**
9,9(B)	0.5-1.5		**10.0**
9,11(C)	1.5-2.5		**11.0**
10,6(B)	0.5-1.5		**9.8**
10,10(D)	2.5-4		**10.0**
11,3(B) DUP	0.5-1.5		**11.0**
12,4(D)	2.5-4		**9.8**
12,6(D)	2.5-4		**13.0**
13,3(B)	0.5-1.5		**10.0**
13,5(B)	0.5-1.5		**11.0**
13,9(A) DUP	0-0.5		**9.8**
14,6(C)	1.5-2.5		**11.0**
15,3(C)	1.5-2.5		**12.0**
15,7(D)	2.5-4		**12.0**
16,6(B)	0.5-1.5		**12.0**
RDCSL			9.5
IDCSL			30
EX DCSL			920

Sample Information			Result (parts per million (ppm))
Location	Depth (feet bgs)	Date	
BD-3	1	8/2008	**14.0**
BD-8	4-6	7/2009	**10.0**
D-EW-1	0-0.5		**9.7**
	0.5-2		**10.0**
	2-4		**12.0**
D-SW-1	0-0.5		**12.0**
	0.5-2		**12.0**
	2-4		**14.0**
D-WW-1	0-0.5		**11.0**
	2-4		**13.0**
	4-5		**16.0**
D-B-1	5		**21.0**
D-NW-1	6-7		**29.0**
D-WW-2	2-4		**14.0**
D-EW-1	6-7		**12.0**
F-NW-1	0-0.5		**10**
F-SW-1	0-0.5		**9.7**
	0.5-2		**9.8**
E-NW-1	0-0.5		**14.0**
E-EW-1	0-0.5		**12.0**
E-SW-1	0-0.5		**12.0**
BSB-67(C)	2.5-4	2009	**9.6**
BSB-68(C)	2.5-4	2009	**13.0**
INTENTIONALLY LEFT BLANK			
RDCSL			9.5
IDCSL			30
EX DCSL			920

Notes: **bold** = above RCG Residential Direct Contact Screening Level
italics = above RCG Commercial/Industrial Direct Contact Screening Level
bgs = below ground surface NA = not analyzed
DUP = field duplicate

TABLE 3

Wrecks, Inc., Whitestown – BFD #4190506

Ground Water Concentrations Exceeding Applicable IDEM RCG Screening Levels

Sample Information		Contaminant Detected & Results *parts per billion (ppb)*				
Location	Date	Arsenic		cis-1,2-DCE	TCE	VC
		Total	Dissolved			
MW-6	3/2017	<10	NA	8.4	<5	***2.2***
MW-14R	3/2017	**14.2**	NA	<5	<5	<2
	11/2018	NA	**11.9**	NA	NA	NA
MW-15	3/2017	<10	NA	10.5	**5.9**	<2
MW-16	3/2017	**46.4**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
MW-18	3/2017	**10.8**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
MW-20	3/2017	<10	NA	<5	<5	***2.3***
	11/2018	NA	<10	NA	NA	NA
MW-25R	3/2017	<10	NA	25.4	<5	***35.3***
MW-28	3/2017	<10	NA	**5,410**	***841***	***420***
DUP		<10	NA	**5,210**	***838***	***421***
MW-35	3/2017	**14.4**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
MW-47	3/2017	<10	NA	28.3	***35.4***	<2
MW-56	3/2017	**12.8**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
Res TAP GWSL		10		70	5	2
Res VE GWSL		NE		NE	9.1	2.1
Indus VE GWSL		NE		NE	38	35

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
italics = above RCG Residential Vapor Exposure Ground Water Screening Level
underline = above RCG Industrial/Commercial Vapor Exposure Ground Water Screening Level
cis-1,2-DCE = cis-1,2-dichloroethene TCE = trichloroethene
VC = vinyl chloride DUP = field duplicate
NA = not analyzed NE = not established

EXHIBIT D

TABLE 1
Wrecks Incorporated, Whitestown – BFD #4190506
Soil Concentrations Exceeding Applicable IDEM RCG Screening Levels

TABLE 2
Wrecks Incorporated, Whitestown – BFD #4190506
Arsenic Concentrations in Soil Exceeding Applicable IDEM RCG Screening Levels

TABLE 3
Wrecks Incorporated, Whitestown – BFD #4190506
Ground Water Concentrations Exceeding Applicable IDEM RCG Screening Levels

TABLE 1

Wrecks Incorporated, Whitestown – BFD #4190506

Soil Concentrations Exceeding Applicable IDEM RCG Screening Levels

Sample Information			Contaminant Detected & Result *(parts per million (ppm))*		
Location	Depth (feet bgs)	Date	BAP	Lead	TCE
1000N & 600E	1	1/2005	0.31	***971***	NA
100N & 1600E	1		**1.8**	210	BDL
100N & 1650E	1		1.2	**411**	BDL
150N & 1600E	1		**2.0**	47.1	BDL
600N &1000E	1		**1.8**	15.3	NA
600N & 1400E	1		0.13	***929***	NA
800N & 1000E	0.5		NA	***925***	NA
TW-2	10	1/2006	NA	NA	***290***
5,3 (B)	0.5-1.5	10/2007	NA	***930***	NA
12,8 (A)	0-0.5		NA	***860***	<0.0049
BSB-6(D)	2.5-3.5		**1.6**	NA	<0.23
BSB-19(I)	7.5-8.5		<0.035	5.9	**11.0**
DUP			<0.036	6.3	**12.0**
BSB-21	10[1]		0.024	6.7	**7.1**
A-EW-1	0-0.5	7/2009	**2.6**	NA	NA
A-EW-3	0-0.5		**2.1**	NA	NA
A-EW-4	0-0.5		**2.0**	NA	NA
A-EW-5	0-0.5		**3.3**	NA	NA
SB-107	4-5	11/2018	NA	***9,820***	NA
SB-108	4-5		NA	***1,500***	NA
SB-114	4-5		NA	**403**	NA
RDCSL			1.5	400	5.7
IDCSL			21	800	19
EX DCSL			500	1,000	95

Notes: **bold** = above RCG Residential Direct Contact Screening Level
italics = above RCG Commercial/Industrial Direct Contact Screening Level
underline = above RCG Excavation Worker Direct Contact Screening Level
BAP = benzo(a)pyrene TCE = trichloroethene
bgs = below ground surface NA = not analyzed BDL = below detection limit
[1]Depth was listed as "Bottom", and a boring log was not available for review; however, most borings collected at this time terminated at 10 feet bgs.

TABLE 2

Wrecks, Inc., Whitestown – BFD #4190506

Arsenic Concentrations in Soil Exceeding Applicable IDEM RCG Screening Levels

Sample Information			Result (parts per million (ppm))
Location	Depth (feet bgs)	Date	
BSB-23(F)	4.5-5.5	10/2007	**14.0**
2,2(C)	1.5-2.5		**12.0**
2,4(B) DUP	0.5-1.5		**10.0**
2,12(D)	2.5-4		**28.0**
3,3(C)	1.5-2.5		**10.0**
4,12(B)	0.5-1.5		**11.0**
5,3(B)	0.5-1.5		**22.0**
6,6(B)	0.5-1.5		***32.0***
6,8(B)	0.5-1.5		***45.0***
6,12(C)	1.5-2.5		**10.0**
7,1(D)	2.5-4		**12.0**
7,5(C)	1.5-2.5		**14.0**
7,7(C)	1.5-2.5		**14.0**
7,9(C)	1.5-2.5		**13.0**
7,11(C)	1.5-2.5		**11.0**
8,4(C)	1.5-2.5		**9.7**
8,12(D)	2.5-4		**10.0**
9,9(B)	0.5-1.5		**10.0**
9,11(C)	1.5-2.5		**11.0**
10,6(B)	0.5-1.5		**9.8**
10,10(D)	2.5-4		**10.0**
11,3(B) DUP	0.5-1.5		**11.0**
12,4(D)	2.5-4		**9.8**
12,6(D)	2.5-4		**13.0**
13,3(B)	0.5-1.5		**10.0**
13,5(B)	0.5-1.5		**11.0**
13,9(A) DUP	0-0.5		**9.8**
14,6(C)	1.5-2.5		**11.0**
15,3(C)	1.5-2.5		**12.0**
15,7(D)	2.5-4		**12.0**
16,6(B)	0.5-1.5		**12.0**
RDCSL			9.5
IDCSL			30
EX DCSL			920

Sample Information			Result (parts per million (ppm))
Location	Depth (feet bgs)	Date	
BSB-67(C)	2.5-4	2009	**9.6**
BSB-68(C)	2.5-4	2009	**13.0**
D-EW-1	0-0.5	7/2009	**9.7**
	0.5-2		**10.0**
	2-4		**12.0**
D-SW-1	0-0.5		**12.0**
	0.5-2		**12.0**
	2-4		**14.0**
D-WW-1	0-0.5		**11.0**
	2-4		**13.0**
	4-5		**16.0**
D-B-1	5		**21.0**
D-NW-1	6-7		**29.0**
D-WW-2	2-4		**14.0**
D-EW-1	6-7		**12.0**
F-NW-1	0-0.5		**10**
F-SW-1	0-0.5		**9.7**
	0.5-2		**9.8**
E-NW-1	0-0.5		**14.0**
E-EW-1	0-0.5		**12.0**
E-SW-1	0-0.5		**12.0**
INTENTIONALLY LEFT BLANK			
RDCSL			9.5
IDCSL			30
EX DCSL			920

Notes: **bold** = above RCG Residential Direct Contact Screening Level
italics = above RCG Commercial/Industrial Direct Contact Screening Level
bgs = below ground surface NA = not analyzed
DUP = field duplicate

TABLE 3

Wrecks Incorporated, Whitestown – BFD #4190506

Ground Water Concentrations Exceeding Applicable IDEM RCG Screening Levels

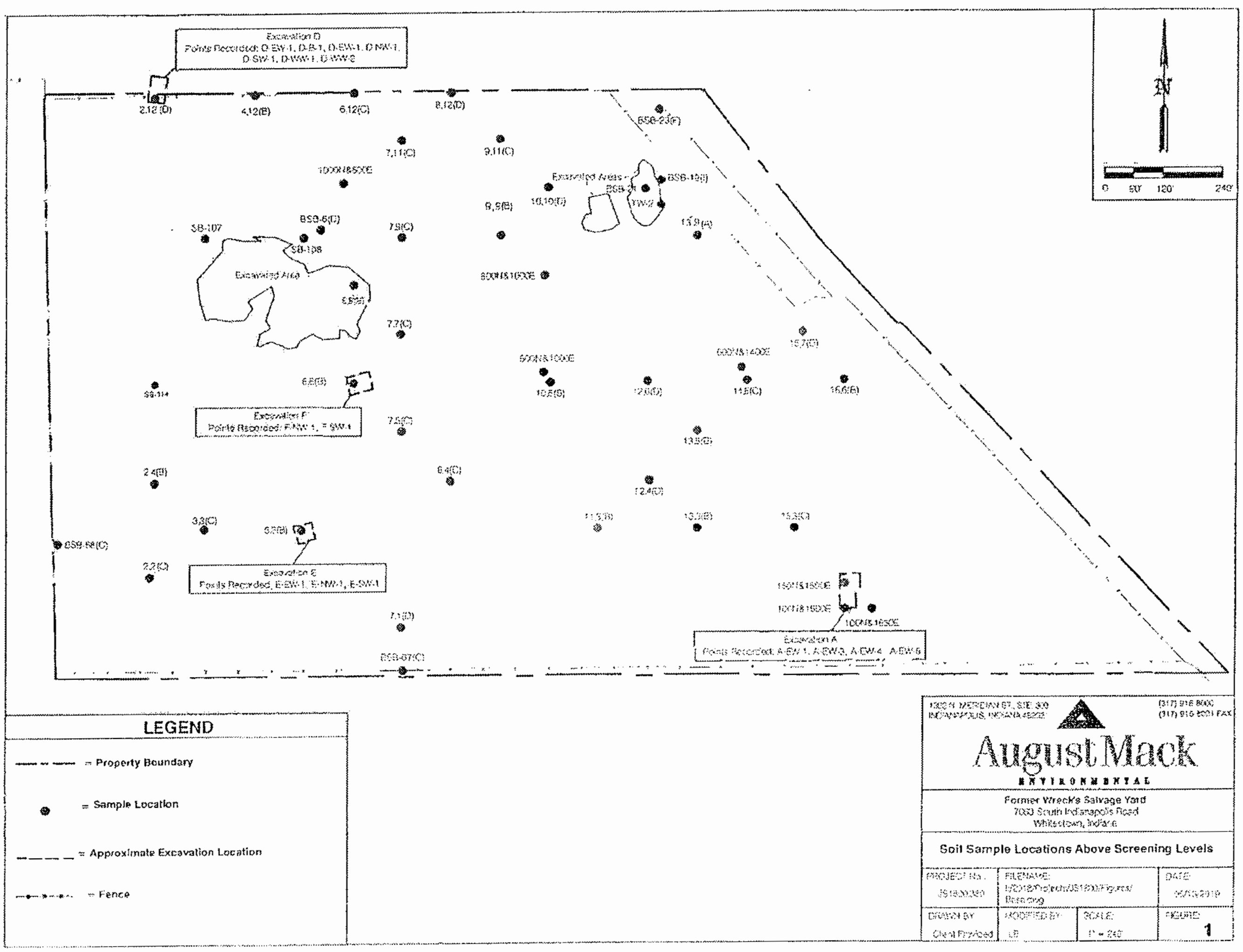
Sample Information		Contaminant Detected & Results *parts per billion (ppb)*				
Location	Date	Arsenic		cis-1,2-DCE	TCE	VC
		Total	Dissolved			
MW-6	3/2017	<10	NA	8.4	<5	***2.2***
MW-14R	3/2017	**14.2**	NA	<5	<5	<2
	11/2018	NA	**11.9**	NA	NA	NA
MW-15	3/2017	<10	NA	10.5	**5.9**	<2
MW-16	3/2017	**46.4**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
MW-18	3/2017	**10.8**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
MW-20	3/2017	<10	NA	<5	<5	***2.3***
	11/2018	NA	<10	NA	NA	NA
MW-25R	3/2017	<10	NA	25.4	<5	***35.3***
MW-28	3/2017	<10	NA	**5,410**	***841***	***420***
DUP		<10	NA	**5,210**	***838***	***421***
MW-35	3/2017	**14.4**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
MW-47	3/2017	<10	NA	28.3	***35.4***	<2
MW-56	3/2017	**12.8**	NA	<5	<5	<2
	11/2018	NA	<10	NA	NA	NA
Res TAP GWSL		10		70	5	2
Res VE GWSL		NE		NE	9.1	2.1
Indus VE GWSL		NE		NE	38	35

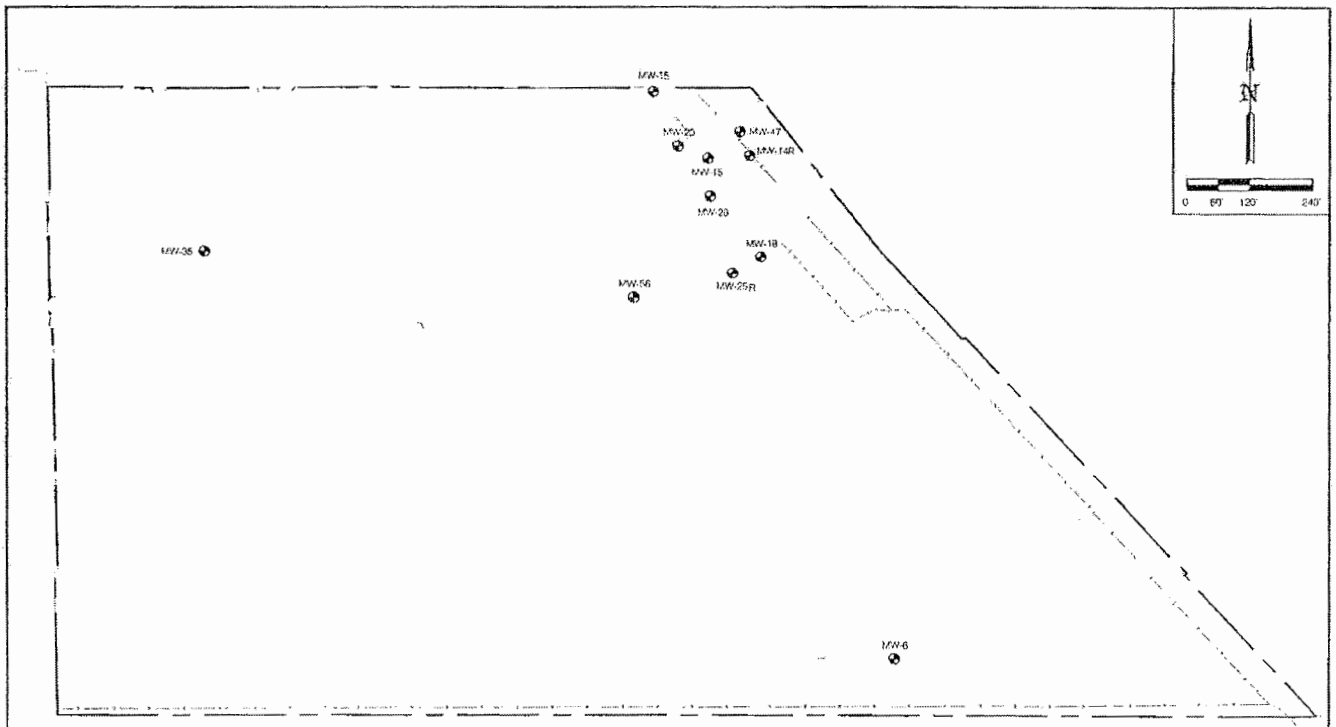
Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
italics = above RCG Residential Vapor Exposure Ground Water Screening Level
underline = above RCG Industrial/Commercial Vapor Exposure Ground Water Screening Level
cis-1,2-DCE = cis-1,2-dichloroethene TCE = trichloroethene
VC = vinyl chloride DUP = field duplicate
NA = not analyzed NE = not established

EXHIBIT E

Wrecks Incorporated, Whitestown – BFD #4190506
Site Maps Depicting Sampling Locations At Which
COCs Were Detected Above Applicable IDEM *RCG Screening Levels*

DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.


Excavation D
Excavation F
Excavation E
Excavation A
Excavated Area
LEGEND
= Property Boundary
= Sample Location
= Approximate Excavation Location
= Fence
AugustMack
ENVIRONMENTAL
Former Wreck's Salvage Yard
Soil Sample Locations Above Screening Levels
PROJECT No.
FILENAME:
DATE:
DRAWN BY
MODIFIED BY
SCALE:
FIGURE
1



LEGEND

- = Property Boundary
- = Monitoring Well Location
- = Fence

1302 N. MERIDIAN ST., STE. 200
INDIANAPOLIS, INDIANA 46202
(317) 913-8000
(317) 916-8001 FAX

August Mack
ENVIRONMENTAL

Wrecks, Inc.
7590 South Indianapolis Road
Whitetown, Indiana

Monitoring Well Locations Exceeding Limits

PROJECT No.:	FILENAME:	DATE:
JS1800.030	I:\2018\Projects\JS1800\Figures\Base.dwg	6/14/2019
DRAWN BY:	MODIFIED BY:	SCALE:	FIGURE:
Client Provided	LB	1" = 240'	2

EXHIBIT N
Remediation Agreement

REMEDIATION AGREEMENT

This Remediation Agreement (this "Agreement") is entered into this 21st day of December, 2018 (the "Execution Date"), by and between Wrecks, Inc. ("Wrecks"), an Indiana corporation, and the Town of Whitestown Redevelopment Commission (the "Commission"). Wrecks and the Commission shall be referred to collectively as the "Parties".

Recitals

A. On September 24, 2018, the Parties entered into that certain Purchase Agreement (the "Purchase Agreement") pursuant to which Wrecks agreed to sell and the Commission agreed to purchase four parcels of real property owned by Wrecks as more specifically provided in the Purchase Agreement (the "Property"). The Purchase Agreement acknowledged the presence of certain contamination on the parcel referred to as Area D (the "Site"), as disclosed in various environmental reports, including, but not limited to, those submitted to the Indiana Department of Environmental Management ("IDEM") in connection with Wrecks' enrollment of the Site in IDEM's Voluntary Remediation Program ("VRP").

B. Pursuant to the Purchase Agreement, the Parties have agreed to allocate responsibility for undertaking certain remedial tasks to move the Site toward regulatory closure and the issuance of a Covenant Not-to-Sue in favor of Wrecks. Wrecks has agreed to remediate the Chlorinated Solvent Contamination, as defined below, and the Commission has agreed to remediate the Other Known Environmental Conditions, as defined below. The Parties also agreed to enter into this Agreement as a condition to Closing.

C. The Parties also agreed in the Purchase Agreement to work together in good faith to reach a resolution of how to allocate responsibility for any Unknown Conditions, as defined below, that might be discovered during the Commission's due diligence and/or further investigation of the Site.

D. The Parties are entering into this Agreement in furtherance of their mutual obligations under the Purchase Agreement.

Agreement

Based on the foregoing Recitals, and in consideration of their respective promises to each other, the Parties do promise and agree as follows:

1. **Recitals; Addendum to Purchase Agreement; Defined Terms.** The recitals first written above are hereby incorporated into this Agreement by this reference. This Agreement shall be incorporated into and made an Addendum to the Purchase Agreement upon its full execution by the Parties. Unless otherwise defined in this Agreement, capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement.

2. **Chlorinated Solvent Contamination.**

2.1. **Definition of Chlorinated Solvent Contamination.** For purposes of this Agreement, "Chlorinated Solvent Contamination" is a defined term which means the groundwater plume containing trichloroethene ("TCE") and its breakdown products, cis-1,2-dichloroethene ("cis-1,2-DCE") and vinyl chloride ("VC") that is (i) presently existing on the Site, generally located in the northeast portion, as of the Execution Date; (ii) known by, disclosed to, or reported to IDEM; and (iii) indicated by, identified by, or contained in the documents listed in the schedule attached as Exhibit B to the Purchase Agreement (the "Wrecks Environmental Documents"), the Reports, or the documents provided to the Commission during the Primary Contingency Period.

2.2. **Monitoring Well Network.** The Parties agree that the portion of the monitoring well network existing on the Site that relates to the Chlorinated Solvent Contamination is depicted on Exhibit A attached to this Agreement and incorporated herein by this reference (the "Monitoring Well Network"). Wrecks shall be responsible for the cost of any quarterly groundwater sampling in connection with and any long-term monitoring of the Monitoring Well Network through the completion of its obligations with respect to the Chlorinated Solvent Contamination as described in Section 2.5 below.

2.3. **Remediation Planning.** Wrecks shall have the sole responsibility to design, submit and obtain IDEM approval of all remedial work necessary to address the remediation of the Chlorinated Solvent Contamination. Wrecks shall perform all design work within one (1) year of the Execution Date. Wrecks shall provide the Commission Remediation Consultant (as

defined below) and the Commission's legal counsel, Bose McKinney & Evans, with a copy of any plans or specifications regarding the remediation and/or mitigation work Wrecks proposes conducting with respect to the Chlorinated Solvent Contamination at least fourteen (14) days prior to its submittal of such plans to IDEM for comment and the Commission's approval and consent. Commission shall provide Wrecks with written confirmation of its approval and consent, which approval and consent shall not be unreasonably withheld, conditioned, or delayed, to Wrecks' proposed remediation and/or mitigation work plans within ten (10) days of the Commission's receipt of such plans. If the Commission does not respond in writing to Wrecks' proposed plans within ten (10) days of its receipt of such plans, the Commission shall be deemed to have provided its approval and consent to the same.

2.4. **Disputes regarding Remediation Plan.** In the event of any objection the Commission raises as to Wrecks' proposed plan(s) to remediate and/or mitigate the Chlorinated Solvent Contamination with which Wrecks does not agree, the parties shall work in good faith toward a mutually acceptable compromise within the fourteen (14) days following Wrecks' receipt of the Commission's objection to permit the submittal of a mutually acceptable plans to IDEM. If the Parties are unable to reach such a compromise, the Parties shall refer their dispute to mediation before a neutral third-party with the Parties to share in the costs of such neutral third-party evenly.

2.5. **Remediation Work.** Wrecks agrees to work diligently toward the implementation of the IDEM-approved remediation of the Chlorinated Solvent Contamination, which may include (but not be limited to) vapor mitigation activities as may be required by IDEM. Wrecks' obligations with respect to the remediation or mitigation of the Chlorinated Solvent Contamination shall be deemed complete when IDEM issues a Certificate of Completion through its VRP and when the State of Indiana issues a Covenant Not-to-Sue. Wrecks shall provide a copy of the IDEM document or documents confirming completion of its obligations under this Section to the Commission within five (5) Business Days of its receipt of such document(s).

2.6. **Wrecks Remediation Consultant.** Wrecks has advised the Commission that BBJ Group, an environmental consultant with offices in Chicago, will serve as its environmental consultant (the "Wrecks Remediation

Consultant"), with John Tanaka serving as BBJ Group's project manager, overseeing the remediation and/or mitigation activities Wrecks shall conduct with respect to the Chlorinated Solvent Contamination. The Commission consents to Wrecks' retention of BBJ Group in this capacity as Wrecks' environmental consultant. In the event that Wrecks seeks to change its environmental consultant (and, therefore, the Wrecks Remediation Consultant) from BBJ Group for any reason, Wrecks shall provide written notice to the Commission of such decision within seven (7) days of identifying a new environmental consultant subject to the Commission's approval. The Commission shall provide Wrecks with written notice of its approval, which shall not be unreasonably withheld, conditioned, or delayed, as to such new consultant representing Wrecks within seven (7) days of receiving such notice.

2.7. **Indemnity.** Wrecks shall indemnify, defend, and hold the Commission harmless from and against any and all claims, proceedings, lawsuits, causes of action, governmental agency orders or directives, demands, actions, judgments, fines, settlements, liens, penalties, taxes, oversight costs, damages, costs and expenses (including assessment, remedial, removal, response, abatement, clean-up and monitoring costs and the fees charged by governmental agencies, reasonable attorneys' fees and legal costs and consultant and expert fees of whatever kind or nature) resulting from or relating to failure of Wrecks to complete remediation or other mitigation of the Chlorinated Solvent Contamination as set forth herein and as approved by IDEM.

2.8. **Notice of Claims Against the Commission.** In the event that any third-party asserts a claim against the Commission with respect to the Chlorinated Solvent Contamination prior to Wrecks' completion of the remediation or mitigation activities of such contamination in accordance with Section 2.3 above, the Commission shall provide notice to Wrecks of such claim within ten (10) Business Days of its receipt of such claim. The Commission shall not voluntarily incur any defense cost or make any payment to resolve such claim without Wrecks' written approval and consent. However, the Commission retains the right to select counsel to defend such claim until Wrecks seeks to be substituted as the real party-in-interest to defend any claim brought against the Commission relating to the Chlorinated Solvent Contamination. At that time, Wrecks shall have sole discretion regarding the settlement of any such claim. Any defense or indemnity obligations Wrecks may owe the Commission arising under

Section 2.7 of this Agreement shall terminate upon the completion of the remediation or mitigation activities with respect to the Chlorinated Solvent Contamination as set forth in Section 2.5.

2.9. **Good Faith Cooperation.** The Commission agrees that it will act in good faith to cooperate with or assist Wrecks, if possible, toward completing the remediation or mitigation of the Chlorinated Solvent Contamination, provided that such cooperation will not unreasonably affect the Commission's development plan for the Site, as shown on Exhibit D attached to the Purchase Agreement.

3. Other Known Environmental Conditions.

3.1. **Definition of Other Known Environmental Conditions.** For purposes of this Agreement, "Other Known Environmental Conditions" is a defined term which means the presently existing environmental condition of the Property as (i) known by the Commission (its members, representatives, agents, legal counsel, or advisors), the current Whitestown Town Manager, the current Whitestown Director of Parks and Recreation, or the Commission Remediation Consultant (its employees, representatives, or agents) as of the Execution Date; (ii) known by, disclosed to, or reported to IDEM as of the Effective Date; or (iii) indicated by, identified by, or contained in the Wrecks Environmental Documents, the Reports, the documents provided to the Commission during the Primary Contingency Period, the Site Investigation Report for Area C or the Site Investigation Report for Area D both dated November 30, 2018 and prepared by August Mack Environmental, Inc. (together such Site Investigation Reports shall be referred to as the "2018 AME Reports"). The term Other Known Environmental Conditions also means the presence of the chemicals that have been discovered in soil and groundwater at the Property as of the Execution Date, as described in the Wrecks Environmental Documents, the Reports, the documents provided to the Commission during the Primary Contingency Period, or the 2018 AME Reports, including:

Poly-aromatic hydrocarbons (PAHs)
Benzene
MTBE
Benzo(a)pyrene in soil
Dibenzo(a,h)anthracene

Arsenic, chromium, cadmium (in soil), chromium (in soil and sediment), and lead (in soil, groundwater and sediment) in the areas of MW-14R, MW-16, MW-18, MW-35, MW-40, MW-56, SB-107, SB-108, SB114, and SB-118.

The term Other Known Environmental Conditions also means the existence of soil mixed with debris (e.g., steel, automotive parts, tires, etc.) and construction debris as depicted on Exhibit B to this Agreement and incorporated herein by this reference, or as otherwise described in the Wrecks Environmental Documents, the Reports, the documents provided to the Commission during the Primary Contingency Period, or the 2018 AME Reports.

3.2. **Remediation Work.** Wrecks and the Commission are currently negotiating the Comfort Letter with Indiana Brownfields and IDEM's VRP to address what continuing obligations (if any) will be necessary to address the Other Known Environmental Conditions at the Property. As such, the scope of remediation work as to these conditions is not known at this time but may include (but not be limited to) a soil management plan and an IDEM-approved institutional control being placed on the Site. The Commission's obligations with respect to the remediation or mitigation of the Other Known Environmental Conditions shall be deemed complete when IDEM and Indiana Brownfields provides written confirmation to the Commission, or the Commission Remediation Consultant, that the Commission has demonstrated compliance with the continuing obligations contained in the Comfort Letter. The Commission shall provide a copy of the document or documents demonstrating compliance with these obligations to Wrecks, or its designee, within five (5) Business Days of its receipt of such document(s).

3.3. **Commission Remediation Consultant.** The Commission has advised Wrecks that August Mack Environmental, Inc. ("AME") will serve as its environmental consultant (the "Commission Remediation Consultant"), with Sarah Young serving as AME's project manager, overseeing the remediation activities the Commission shall conduct with respect to the Other Known Environmental Conditions. Wrecks consents to the Commission's retention of AME in this capacity. In the event that the Commission seeks to change its environmental consultant from AME for any reason, the Commission shall provide written notice to Wrecks of such decision within seven (7) days of identifying a new environmental consultant subject to Wrecks' reasonable approval, and such new

environmental consultant shall thereafter be considered the Remediation Consultant for purposes of this Agreement. Wrecks shall provide the Commission with written notice of its approval, which approval shall not be unreasonably withheld, conditioned, or delayed, as to such new consultant representing the Commission within seven (7) days of receiving such notice.

3.4. **Indemnity.** The Commission shall indemnify, defend, and hold Wrecks harmless from and against any and all claims, proceedings, lawsuits, causes of action, governmental agency orders or directives, demands, actions, judgments, fines, settlements, liens, penalties, taxes, oversight costs, damages, costs and expenses (including assessment, remedial, removal, response, abatement, clean-up and monitoring costs and the fees charged by governmental agencies, reasonable attorneys' fees and legal costs and consultant and expert fees of whatever kind or nature) resulting from or relating to the Other Known Environmental Conditions. The Commission's agreement to indemnify, defend and hold Wrecks harmless, as set forth in the preceding sentence or elsewhere in this Agreement, shall terminate on the later of (i) five (5) years from the Execution Date, or (ii) two (2) years after Wrecks winds down its business and files its formal dissolution papers with the Indiana Secretary of State.

3.5. **Notice of Claims Against Wrecks.** In the event that any third-party asserts a claim against Wrecks with respect to the Other Known Environmental Conditions, the Commission shall provide notice to Wrecks of such claim within ten (10) Business Days of its receipt of such claim. Wrecks shall not voluntarily incur any defense cost or make any payment to resolve such claim without the Commission's approval and consent, which such approval and consent shall not be unreasonably withheld, conditioned, or delayed. However, Wrecks retains the right to select counsel to defend such claim until the Commission seeks to be substituted as the real party-in-interest to defend any claim brought against Wrecks relating to the Other Known Environmental Conditions. At that time, the Commission shall have sole discretion regarding the settlement of any such claim.

4. Unknown Conditions.

4.1. **Definition of Unknown Conditions.** For purposes of this Agreement, "Unknown Conditions" is a defined term which means environmental contamination or conditions that (i) were unknown as of the Execution Date, (ii) that are discovered on the Site and disclosed to Wrecks prior to

the later of three (3) years from the date of the Closing on Area C and Area D, or the completion of the formal dissolution of Wrecks with the Indiana Secretary of State, and (iii) that are not included in the definition of Chlorinated Solvent Contamination (as defined in Section 2.1 above) or Other Known Environmental Conditions (as defined in Section 3.1 above). In addition, an Unknown Condition must be one that IDEM, in writing, identifies and demands or otherwise requires be further investigated or remediated as a condition of issuing a Comfort Letter for Area D or the Commission maintaining compliance with the conditions of the Comfort Letter, and such investigation or remediation demanded by IDEM imposes an additional obligation on the Commission not already contemplated in the soil management plan the Commission plans to implement and/or the environmental restrictive covenant(s) ("ERC") the Commission intends to place on the Site.

4.2. **Allocation of Costs for Unknown Conditions.** The Parties agree that if any Unknown Conditions are discovered by the Commission or the Commission Remediation Consultant that directly result in environmental response costs for further investigation and remediation of such Unknown Conditions (the "Unknown Conditions Costs"), then the Unknown Conditions Costs shall be allocated as follows: (i) the Commission shall be solely responsible for the Unknown Conditions Costs for all amounts up to the first three percent (3%) of the total Purchase Price for the Property (the "Total Purchase Price") (i.e., $195,000.00); (ii) Wrecks shall be responsible for the Unknown Conditions Costs of between three percent (3%) of the Total Purchase Price and the Purchase Price for Area D (i.e., $2,150,000.00)(the "Area D Purchase Price"); and (iii) the Commission shall be solely responsible for the Unknown Conditions Costs exceeding the Area D Purchase Price. The Parties agree that the Unknown Conditions Costs will not include potential claims for economic damages. Wrecks' obligations under this Section for Unknown Conditions Costs shall run for a period of three (3) years from the date of the Closing on Area C and Area D or its formal dissolution with the Indiana Secretary of State, whichever is the latter. The Commission acknowledges that Wrecks shall be entitled to pursue the windup of its corporate affairs and its dissolution at any time following the Closing on Area C and Area D. Wrecks, or its directors, shall also have the right to obtain an insurance policy that satisfies Wrecks' commitment, as set forth above, to the Unknown Conditions Costs (if any). The Commission shall not unreasonably object to Wrecks', or its directors', procurement of such insurance policy, which

shall name the Commission as an additional insured, as satisfying Wrecks' commitment, as set forth above, regarding the Unknown Conditions Costs. The Parties shall work in good faith to determine the reasonable Unknown Conditions Costs before either Party begins the further investigation or remediation of the Unknown Conditions. If the Parties are unable to reach agreement on the Unknown Conditions Costs, the Parties shall refer their dispute to mediation before a neutral third-party with the Parties to share in the costs of such neutral third-party evenly.

4.3. **Closing**. In the event the Commission closes on Area A or Area B, Wrecks shall not be responsbile for the costs of any remediation and/or mitigation work related to such Area(s) after the respective Closing(s), except for its obligations related to the Chlorinated Solvent Contamination, as provided in Section 2. The preceding sentence shall survive the respective Closings of Area A and Area B. In the event the Commission closes on Area C and Area D, Wrecks shall not be responsible for the costs of any remediation and/or mitigation work related to such Areas after the Closing, except for its obligations related to the Chlorinated Solvent Contamination, as provided in Section 2, and its obligations related to the Unknown Conditions Costs, if any, as provided in Section 4.2. The preceding sentence shall survive the Closing of Area C and Area D.

5. **Other Conditions.**

5.1. **Effective Date and Termination.** The obligations under this Agreement shall take effect upon the Closing of Area C and Area D. If the Parties fail to close on Area C or Area D, or the Purchase Agreement is otherwise terminated with respect to Area C and Area D, this Agreement shall terminate and the Parties shall have no further obligations under this Agreement; provided, however, in the event the Commission closes on Area A or Area B, Wrecks shall not be responsbile for the costs of any remediation and/or mitigation work related to such Area(s) after the respective Closing(s).

5.2. **Notices.** All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement must be in writing and will be deemed to have been duly given: (a) on the day of delivery, if delivered by hand; (b) on the day of delivery, if sent by facsimile or electronic mail (with confirmation of receipt) at or prior to 5:00 p.m. Eastern Time on a Business Day; (c) on the first Business Day following delivery, if sent by facsimile or electronic mail on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day; (d)

on the first Business Day following deposit with a nationally recognized overnight delivery service; or (e) upon the earlier of actual receipt and the 5th Business Day following first class mailing, with first class, postage prepaid:

If to the Commission:

Whitestown Redevelopment Commission
6210 Veterans Drive
Whitestown, IN46075
Attn: Dax Norton
Telephone: 317-732-4530
Email: dnorton@whitestown.in.gov

With Copy to:

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Attn: Stephen C. Unger
Telephone: 317-684-5465
Email: sunger@boselaw.com

If to Wrecks:

Wrecks, Inc.
1389 W. 86th Street, #358
Indianapolis, IN 46260
Attn: Stacy A. Maurer and
Elizabeth K. Maurer
Email: maurerek@comcast.net and
samaurer@juno.com

With Copy to:

Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204
Attn: Matthew T. Troyer
Telephone: 317-968-5419
Email: mtroyer@bgdlegal.com

and

Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
Attn: Thomas F. O'Gara
Telephone: 317-713-3610

5.3. **Governing Law.** This Agreement and any dispute about which this Agreement is a subject will be governed by and construed in accordance with the applicable laws of the State of Indiana, without regard to choice of law principles of any jurisdiction. The parties hereby submit to the exclusive jurisdiction of the Commercial Court in Marion County, Indiana (the "Commercial Court") in respect of any lawsuit or judicial proceeding related to or arising out of this Agreement, including any lawsuit or judicial proceeding involving the interpretation or enforcement of the provisions of this Agreement, and the parties hereby waive, and agree not to assert, any defense in any such action, lawsuit or judicial proceeding, that they are not subject thereto or that such action, suit or lawsuit or judicial proceeding may not be brought or is not maintainable in such courts or that this Agreement may not be enforced in or by such courts or that their property is exempt or immune from execution, that such lawsuit or judicial proceeding is brought in an inconvenient forum, or that the venue of such lawsuit or judicial proceeding is improper. The parties agree not to bring any lawsuit or judicial proceeding related to or arising out of this Agreement in any court other than the Commercial Court. If any lawsuit or judicial proceeding involving the interpretation or enforcement of the provisions of this Agreement is commenced, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in bringing such lawsuit or judicial proceeding, in addition to any other relief to which such party may be entitled. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.4. **Miscellaneous.** The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties hereto to this Agreement may be transmitted by facsimile or

electronic transmission in portable document format (.pdf), and such facsimile or .pdf will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. The headings of the articles, sections and paragraphs in this Agreement have been inserted for convenience of reference only and will not restrict or otherwise modify any of the provisions of this Agreement. The Parties represent, warrant and covenant that this Agreement has been duly authorized, executed and delivered on their behalf and, assuming due execution and delivery by the other parties hereto, constitutes its legal, valid and binding obligation enforceable against the Commission and Wrecks in accordance with its terms. Nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Parties (and their permitted successors and assigns) any legal or equitable right, remedy, interest or claim under or in respect of this Agreement. In the event that any claim(s) of inconsistency between this Agreement and the terms of the Purchase Agreement arise, as they may from time to time be amended, the terms of this Agreement shall control. "Business Day" shall mean any day other than (a) any Saturday or Sunday, or (b) any other day on which banks located in Indiana are required or authorized by law to be closed for business. If any time period specified herein expires on a Saturday, Sunday or any other day on which banks located in Indiana are required or authorized by law to be closed for business, such time period shall be automatically extended through the close of business on the next Business Day.

5.5. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the Parties with respect to the investigation and remediation (if necessary) of all environmental contamination or conditions at the Property, including, but not limited to, the Chlorinated Solvent Contamination, the Other Known Environmental Conditions, and the Unknown Conditions (as all defined herein). No representation, promise, inducement, or statement of intention has been made by any party in connection with the transactions contemplated by this Agreement that is not embodied in this Agreement or the Purchase Agreement, and no party will be bound by or liable for any alleged representation, promise, inducement, or statement of intention not so embodied.

5.6. **Partial Invalidity.** All terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law. If any one or more of the provisions of this Agreement should be ruled

wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then: (a) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable shall be unaffected; (b) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (c) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized and requested to reform such provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein; (d) if the court or other government body declines or is unable to reform the provision(s), then the Parties shall in good faith negotiate a reformation of the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (e) if the ruling and/or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

5.7. **Assignment.** No party may assign any of its rights or obligations under this Agreement to any other Person without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed; and, upon such consent, such assignment shall not relieve the assignor of any obligation hereunder except to the extent actually performed or satisfied by the assignee. Notwithstanding the provisions of the foregoing sentence, the Commission may, without prior written consent of Wrecks, assign all or a portion of its rights, interests or obligations, provided that no such assignment shall relieve the Commission of any obligation hereunder except to the extent actually performed or satisfied by the assignee, and the Commission shall notify Wrecks of such assignment as described above.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow.]

WRECKS, INC.

By: _____
Stacy A. Maurer, Director

By: _____
Elizabeth K. Maurer, Director

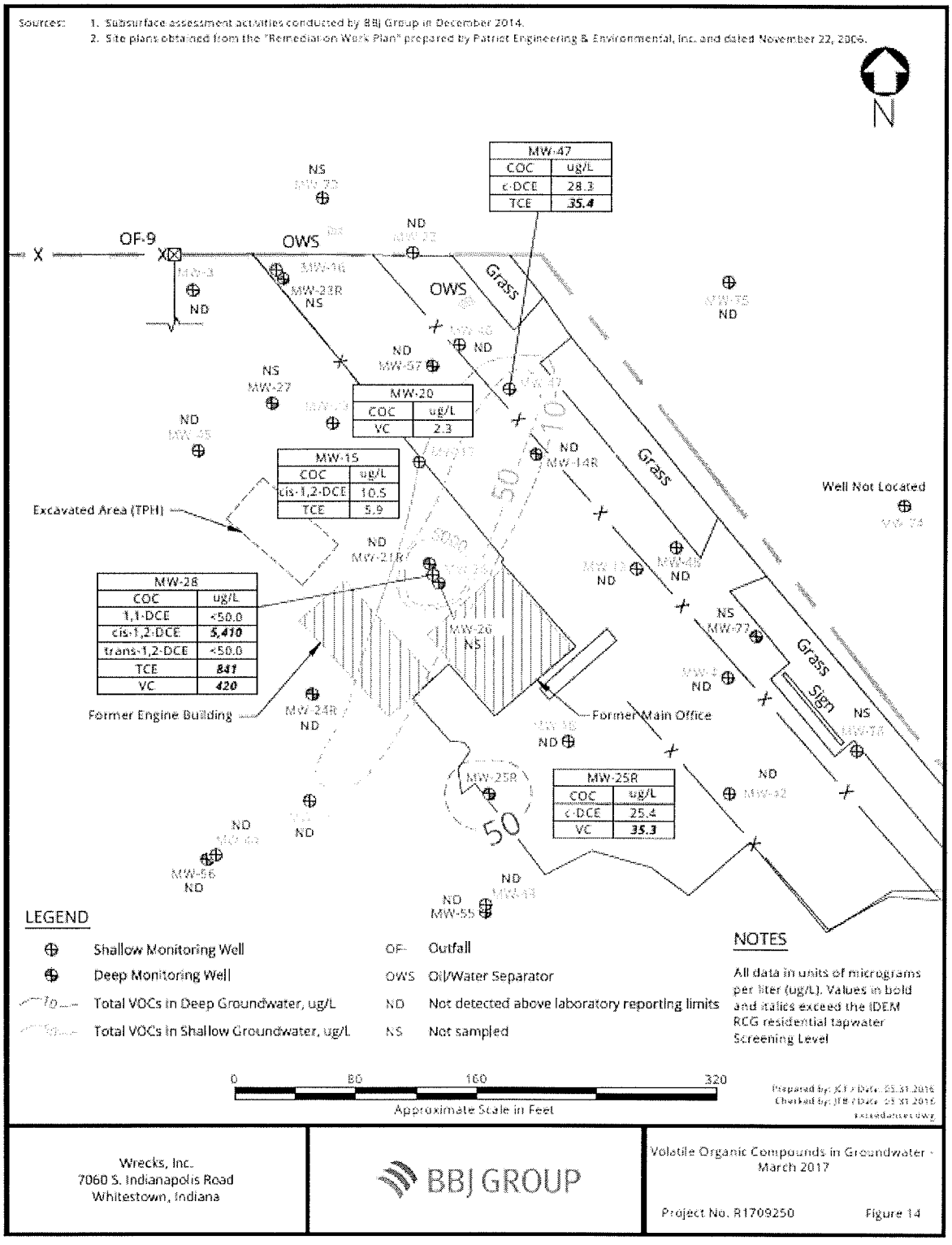
WRECKS, INC.

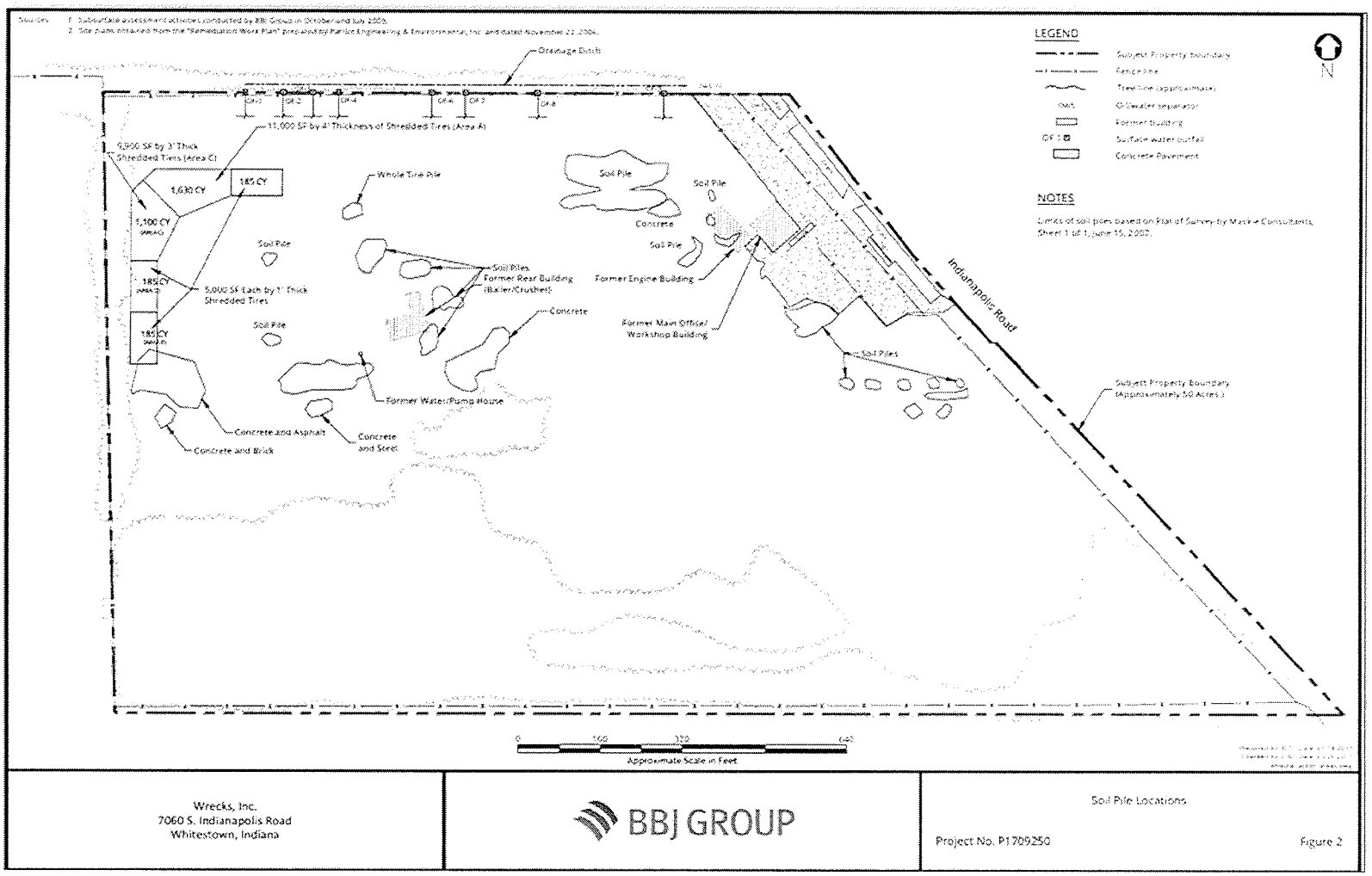
By: _____
Stacy A. Maurer, Director

By: Elizabeth K. Maurer
Elizabeth K. Maurer, Director

WHITESTOWN REDEVELOPMENT COMMISSION

By: Bryan Brackemyre By:
Bryan Brackemyre, President
Atty # 25844-49


Sources: 1. Subsurface assessment activities conducted by BBJ Group in December 2014.
2. Site plans obtained from the "Remediation Work Plan" prepared by Patriot Engineering & Environmental, Inc. and dated November 22, 2006.
N
MW-47
COC | ug/L
c-DCE | 28.3
TCE | 35.4
MW-20
COC | ug/L
VC | 2.3
MW-15
COC | ug/L
cis-1,2-DCE | 10.5
TCE | 5.9
MW-28
COC | ug/L
1,1-DCE | <50.0
cis-1,2-DCE | 5,410
trans-1,2-DCE | <50.0
TCE | 841
VC | 420
MW-25R
COC | ug/L
c-DCE | 25.4
VC | 35.3
OF-9
OWS
Grass
Sign
Excavated Area (TPH)
Former Engine Building
Former Main Office
Well Not Located
50
5000
LEGEND
Shallow Monitoring Well
Deep Monitoring Well
Total VOCs in Deep Groundwater, ug/L
Total VOCs in Shallow Groundwater, ug/L
OF- Outfall
OWS Oil/Water Separator
ND Not detected above laboratory reporting limits
NS Not sampled
NOTES
All data in units of micrograms per liter (ug/L). Values in bold and italics exceed the IDEM RCG residential tapwater Screening Level
0 80 160 320
Approximate Scale in Feet
Wrecks, Inc.
7060 S. Indianapolis Road
Whitestown, Indiana
BBJ GROUP
Volatile Organic Compounds in Groundwater - March 2017
Project No. R1709250
Figure 14


Sources: 1. Subsurface assessment activities conducted by BBJ Group in October and July 2008.
2. Site plans obtained from the "Remediation Work Plan" prepared by Partner Engineering & Environmental, Inc. and dated November 21, 2006.
LEGEND
Subject Property Boundary
Fence Line
Tree Line (approximate)
OWS
Oil/water separator
Former Building
SW 1
Surface water outfall
Concrete Pavement
N
NOTES
Limits of soil piles based on Plat of Survey by Martin Consultants, Sheet 1 of 1, June 16, 2008.
Drainage Ditch
SW 1
SW 2
SW 3
SW 4
SW 5
SW 6
SW 7
11,000 SF by 4" Thickness of Shredded Tires (Area A)
9,900 SF by 3" Thick Shredded Tires (Area C)
1,630 CY
185 CY
1,100 CY (MIRAD)
185 CY (AREA B)
185 CY (AREA D)
5,000 SF Each by 1" Thick Shredded Tires
Whole Tire Pile
Soil Pile
Soil Piles
Former Rear Building (Baler/Crusher)
Concrete
Former Engine Building
Former Main Office/ Workshop Building
Former Water/Pump House
Concrete and Asphalt
Concrete and Brick
Concrete and Steel
Indianapolis Road
Subject Property Boundary (Approximately 50 Acres)
0
150
300
600
Approximate Scale in Feet
Wrecks, Inc.
7060 S. Indianapolis Road
Whitestown, Indiana
BBJ GROUP
Soil Pile Locations
Project No. P1709250
Figure 2