

## **AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT**

### **Little League Central Region Headquarters & Mixed Use Development**

This AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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"), LITTLE LEAGUE BASEBALL, INCORPORATED, a federally chartered non-profit corporation ("LLB"), and KITE HARRIS PROPERTY GROUP, LLC, an Indiana limited liability company ("Kite Harris" and collectively with LLB, the "Developers"), to facilitate the development of a Little League regional headquarters and corresponding 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, following the public offering, the Town Parties and LLB entered into a certain Economic Development Agreement dated February 20, 2019 (the "Original EDA"), providing for the transfer of that portion of the Property depicted and described on the attached Exhibit B to LLB (the "LLB Property") and the development of the LLB Property by LLB into a Little League Regional Headquarters and related facilities; and

WHEREAS, prior to the transfer of the LLB Property to LLB and as a part of LLB's due diligence, LLB encountered unanticipated potential additional site development costs for the LLB Property; and

WHEREAS, Kite Harris desires to address the potential additional site development costs on the LLB Property so that LLB may move forward with the LLB regional headquarters project, and also desires to develop the portion of the Property north of the LLB Property, generally depicted on the attached Exhibit C (the "Mixed Use Property"), into a retail/office and multi-family mixed use development that is acceptable to the Town Parties (the "Mixed Use Project"), provided that the Commission transfers the Mixed Use Property to Kite Harris for nominal consideration (the "Mixed Use Incentives") and Kite Harris has access to the LLB Property in order to address potential additional site development costs to the satisfaction of LLB; and

WHEREAS, LLB desires to construct its new central region headquarters and Little League facilities on the LLB Property as further described on Exhibit D (the "LLB Project" and collectively with the Mixed Use Project, the "Projects"), provided that the Commission transfers

the LLB Property to LLB for nominal consideration (the “LLB Incentives” and collectively with the Mixed Use Incentives, the “Town Incentives”), and provided that Kite Harris addresses potential additional site development costs of the LLB Property not originally anticipated by LLB; and

WHEREAS, LLB estimates that its investment in the LLB Project (whether used from funds of LLB or donations) will equal or exceed Four Million Dollars (\$4,000,000), net of the Town Incentives (the “LLB Project Investment”); and

WHEREAS, Kite Harris estimates that its investment in the Mixed Use Project will equal or exceed Twenty Five Million Dollars (\$25,000,000) of additional assessed value on the Mixed Use Property, net of the Mixed Use Incentives (the “Mixed Use Project Investment” and collectively with the LLB Project Investment, the “Project Investments”); and

WHEREAS, the Projects 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 Developers to construct the Projects and make the Project Investments, the Commission finds that the Town Incentives should be provided to provide for the development, redevelopment, and rehabilitation of the Property and the Projects, and that the Town Incentives should be undertaken; and

WHEREAS, in the resolutions authorizing approval of the Original EDA, the governing bodies of the Town Parties each authorized the execution of such additional documents, amendments, additions, deletions, and changes to the Original EDA that their respective Presidents deem necessary or advisable.

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, the Developers 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**

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.

### **ARTICLE III. CONSTRUCTION OF THE PROJECTS**

#### **3.01. Transfer of the LLB Property.**

(a) To provide for the completion of the LLB Project by LLB, subject to the procedures required by law including the Act and the terms and conditions hereof, the Commission will sell to LLB all of the LLB Property for a purchase price of \$1. The LLB Property will be conveyed “as is” to LLB within sixty (60) days following the execution of this Agreement 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 “LLB Deed”), and subject to (a) building and zoning ordinances; (b) permitted exceptions to the deed and deed restrictions; (c) all encumbrances and restrictions of record; and (d) the terms, conditions and restrictions of this Agreement.

(b) The parties acknowledge that the Town Parties have provided environmental surveys, prior title work, and feasibility studies prepared with respect to the LLB Property and in the Town Parties’ possession to LLB. LLB shall be responsible for any further environmental surveys and any title work or policies to be completed on the LLB Property and such items shall, if completed, be completed at the sole cost of LLB.

(c) In connection with the sale of the LLB Property to LLB, LLB and the Commission shall execute and deliver the following items:

LLB and/or Commission, as applicable, shall execute and deliver the following:

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

(B) if necessary, a vendor’s affidavit in form and substance such that any title company providing title insurance in connection herewith (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 representations and warranties set forth in this Agreement remain true and accurate in all respects as of the date of the closing of the transfer of the LLB Property to LLB (the “LLB Property Closing”) and that, to the Commission’s knowledge, there is no existing breach of this Agreement by any of the Town Parties;

(E) a certification by LLB that all of the representations and warranties set forth in this Agreement remain true and accurate in all respects as of the LLB Property

Closing and that, to LLB's knowledge, there is no existing breach of this Agreement by LLB;

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

(G) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, LLB 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 LLB Property to LLB 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, LLB or the Title Company may request in connection with the transfer of the LLB Property (including, for example, a Sales Disclosure Form and a closing statement).

(d) LLB assumes and agrees to pay (i) all real estate taxes and assessments becoming a lien against the LLB Property after the LLB Property Closing; and (ii) so much of the current year taxes as shall be allocable to LLB by proration (based upon the number of days remaining in the year in which the LLB Property Closing occurs after the LLB Property Closing). The Commission shall pay (or cause to be paid): (1) all real estate taxes and assessments becoming a lien against the LLB Property prior to the LLB Property Closing; (2) any installments of real estate taxes payable during the year in which the LLB Property Closing occurs; and (3) so much of the current year taxes as shall be allocable to Commission by proration (based upon the number of days in the year in which the LLB Property Closing occurs prior to and including the LLB Property Closing). Accordingly, as provided by this Section, the real estate taxes with respect to the LLB Property are being prorated and allocated to Commission and LLB on an accrual basis and based upon the period during which Commission and LLB, respectively, hold title to the LLB Property. If the applicable tax rate has not been set, then the current tax rate shall be used for the purposes of such prorations, and there shall be no subsequent adjustment or re-proration. Notwithstanding the foregoing, it is anticipated that because both the Town Parties and LLB are tax exempt entities, there will not be future property tax assessments against the LLB Property for as long as it is owned by the Town Parties and/or LLB.

### 3.02. Transfer of the Mixed Use Property.

(a) To provide for the completion of the Mixed Use Project by Kite Harris and to further enable the completion of the LLB Project by LLB, subject to the procedures required by law including the Act and the terms and conditions hereof, the Commission will sell to Kite Harris the Mixed Use Property for a purchase price of \$1. The Mixed Use Property will be conveyed "as is" to Kite Harris within ninety (90) days following the execution of this Agreement through execution and delivery by the Commission of a Special Warranty deed consistent with the form of Special Warranty deed attached hereto as Exhibit F (the "Kite Harris Deed"), and subject to (a) building and zoning ordinances; (b) permitted exceptions to the deed

and deed restrictions; (c) all encumbrances and restrictions of record; and (d) the terms, conditions and restrictions of this Agreement.

(b) Within thirty (30) days following execution of this Agreement, the Town Parties will provide any environmental surveys, prior title work, and feasibility studies prepared with respect to the Property and in the Town Parties' possession to Kite Harris. Kite Harris shall be responsible for any further environmental surveys and any title work or policies to be completed on the Mixed Use Property and such items shall, if completed, be completed at the sole cost of Kite Harris.

(c) In connection with the sale of the Mixed Use Property to Kite Harris, Kite Harris and the Commission shall execute and deliver the following items:

Kite Harris and/or Commission, as applicable, shall execute and deliver the following:

(A) the Kite Harris Deed conveying to Kite Harris fee simple title to the Mixed Use Property;

(B) a promissory note and a real estate mortgage in the forms attached hereto as Exhibit G (collectively, the "Note and Mortgage") securing the interests of the Town Parties in the payment of Shortfall Payments, if any, that would be due by Kite Harris to the Town Parties as provided in Section 6.03 hereof;

(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 representations and warranties set forth in this Agreement remain true and accurate in all respects as of the date of the closing of the transfer of the Mixed Use Property to Kite Harris (the "Mixed Use Property Closing") and that, to the Commission's knowledge, there is no existing breach of this Agreement by any of the Town Parties;

(F) a certification by Kite Harris that all of the representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Mixed Use Property Closing and that, to Kite Harris' knowledge, there is no existing breach of this Agreement by Kite Harris;

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

(H) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, Kite Harris 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 Mixed Use Property to Kite Harris 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, Kite Harris, or the Title Company may request in connection with the transfer of the Mixed Use Property (including, for example, a Sales Disclosure Form and a closing statement).

(d) Kite Harris assumes and agrees to pay (i) all real estate taxes and assessments becoming a lien against the Mixed Use Property after the Mixed Use Property Closing; and (ii) so much of the current year taxes as shall be allocable to Kite Harris by proration (based upon the number of days remaining in the year in which the Mixed Use Property Closing occurs after the Mixed Use Property Closing). The Commission shall pay (or cause to be paid): (1) all real estate taxes and assessments becoming a lien against the Mixed Use Property prior to the Mixed Use Property Closing; (2) any installments of real estate taxes payable during the year in which the Mixed Use Property Closing occurs; and (3) so much of the current year taxes as shall be allocable to Commission by proration (based upon the number of days in the year in which the Mixed Use Property Closing occurs prior to and including the Mixed Use Property Closing). Accordingly, as provided by this Section, the real estate taxes with respect to the Mixed Use Property are being prorated and allocated to Commission and Kite Harris on an accrual basis and based upon the period during which Commission and Kite Harris, respectively, hold title to the Mixed Use Property. If the applicable tax rate has not been set, then the current tax rate shall be used for the purposes of such prorations, and there shall be no subsequent adjustment or re-proration.

### 3.03. Pre-Closing Access to the Property.

To allow Kite Harris to conduct preliminary site development work on the LLB Property and Mixed Use Property, and to allow Kite Harris to address the potential additional site development costs on the LLB Property in an expeditious manner, within five (5) days of execution of this Agreement the Commission and Kite Harris will execute a Site Access Agreement to the Property in the form attached hereto as Exhibit H ("Access Agreement"). As is also set forth in the Access Agreement, Kite Harris: (i) is 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) 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 LLB Property or Mixed Use Property. In addition, upon execution of this Agreement and prior to closing on the Mixed Use Property, Kite Harris will have the ability to begin marketing the Mixed Use Project to potential partners or tenants of the Mixed Use Project, subject to the closing of the Mixed Use Property.

### 3.04 Post-Closing Contingency.

LLB shall have a period of the earlier of (i) one hundred eighty (180) days after execution of the Access Agreement or (ii) commencement of construction of the LLB Project (not including preliminary site work by Kite Harris), to work with Kite Harris to satisfy any concerns it may have relative to the potential additional site development costs at the LLB Property (“Post Closing Contingency”). In the event LLB determines that it is not satisfied as to the Post Closing Contingency prior to the expiration of such period, LLB may notify the Commission and Kite Harris within such period of its election to terminate further obligations of the parties as to the construction and operation of the Projects. Within thirty (30) days after receipt of notice to terminate from LLB, LLB and Kite Harris shall reconvey the LLB Property and Mixed Use Property, respectively, to the Commission at no cost and free of any liens or encumbrances under the same procedures set forth in Sections 3.01 and 3.02, except that the roles of the parties are reversed. In the event LLB determines that it has satisfied any concerns it may have relative to the potential additional site development costs at the LLB Property, LLB shall provide the Commission and Kite Harris written notice thereof and the obligations of the parties as to the construction and operation of the Projects shall proceed pursuant to the terms hereof.

### 3.05 Construction and Operation of the LLB Project.

(a) Except as set forth in Section 3.04 above, LLB has satisfied any concerns it may have relative to zoning or land use, drainage, permits, environmental conditions, access, utilities, or any other matters related to the feasibility of the LLB Project, and has or will obtain all necessary permits, licenses, approvals and consents required by law for the construction and use of the LLB Project.

(b) Following expiration of the Post Closing Contingency period in Section 3.04, LLB shall complete the LLB Project on the LLB Property in accordance with all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town Building Commissioner). The total cost of the LLB Project shall equal or exceed the LLB Project Investment, without including any cost of the Town Incentives. The LLB Project shall be substantially completed and in operation within two (2) years following the expiration of the Post Closing Contingency, or such later date as may be agreed to by the Commission in writing (the “LLB Completion Date”). LLB is responsible for providing or arranging to provide for the funding of all costs to complete the LLB Project. Such funding and cost is separate and apart from the costs of the Town Incentives to be provided by the Town Parties. The LLB Project shall consist of the items and/or parameters set forth in Exhibit D attached hereto which LLB shall cause to be constructed on the LLB Property as described in Exhibit B. The total cost of the LLB Project Investment shall not be less than \$4,000,000. LLB further covenants that it will utilize the LLB Property as its central region headquarters, and other incidental or related uses, in a manner consistent with the LLB Project as described in Exhibit D for a period of at least ten (10) years following the LLB Completion Date.

(c) LLB shall commence construction of the LLB Project by no later than one-hundred eighty (180) days from the date of expiration of the Post Closing Contingency and shall maintain continuous construction on the LLB Project to completion by the LLB Completion Date.

(d) For so long as the LLB Property is owned and/or operated by LLB, LLB agrees to: (i) identify the regional headquarters as located in or a part of the Whitestown community in any advertisement or literature in which the location of the LLB 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; (iii) make the space at the regional headquarters available as a venue for public meetings and events of the Town Parties under reasonable terms and conditions; and (iv) work with the Town Parties in reasonable partnerships or opportunities, where available to the mutual benefit of all parties, to use the LLB Project and LLB Property in a manner that furthers Whitestown community pride and engagement, youth development, healthy activity, and volunteerism.

(e) LLB shall be responsible to maintain, repair and replace the LLB Project in good condition and repair, and operate a regional headquarters at the LLB Property in a commercially reasonable and workmanlike manner, for a minimum of ten (10) years following the LLB Completion Date.

(f) For a period of twenty (20) years after the Town issues a certificate of occupancy for the LLB Project, in the event that LLB (or any successor) desires at any time to sell the LLB Property, LLB shall provide and the Town Parties shall have a right of first purchase ("First Option") to acquire the LLB Property at the 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 LLB. After receipt of both appraisals, the Town Parties shall have thirty (30) days to notify LLB of its intention to exercise its First Option. If the Town Parties so notify LLB, then LLB and the Town Parties shall proceed with closing on the sale of the LLB 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 LLB within thirty (30) days of the Town Parties' decision to exercise its First Option, then LLB shall be free to sell the LLB Property to a third party. 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 LLB shall reoffer the developed property to the Town Parties and the Town Parties shall have fifteen (15) days to notify LLB of acceptance of the lesser price.

(g) Upon reasonable written notice delivered to LLB, the Town Parties, or its inspector, may perform an inspection of the LLB Project. Within seven (7) business days after an inspection, the Town Parties may deliver to LLB a notice (the "Non-Compliance Notice") that identifies a Material Defect (for purposes of this provision, a "Material Defect" is any item or component of the LLB Project that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the LLB Project; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town timely delivers a Non-Compliance Notice, then LLB shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted by the Town. 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 Parties under applicable laws or this Agreement.



### 3.06 Construction and Operation of the Mixed Use Project.

(a) Kite Harris shall have a period of sixty (60) days from the execution of this Agreement, or until the Mixed Use Property Closing if sooner, to satisfy any concerns it may have relative to zoning or land use, drainage, permits, environmental conditions, access, utilities, or any other matters related to the feasibility of the Mixed Use Project (collectively, “Mixed Use Contingencies”). In the event Kite Harris determines that it is not satisfied as to any Mixed Use Contingencies prior to the expiration of such period, Kite Harris shall notify the Commission and LLB and may terminate Kite Harris’ rights to the Mixed Use Property and obligations to carry out the Mixed Use Project under this Agreement.

(b) Kite Harris shall complete the Mixed Use Project on the Mixed Use Property in accordance with all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town Building Commissioner). The total cost of the Mixed Use Project shall equal or exceed the Mixed Use Project Investment, without including any cost of the Town Incentives. The Mixed Use Project shall be substantially complete within three (3) years following the Mixed Use Property Closing, or such later date as may be agreed to by the Commission in writing (the “Mixed Use Completion Date”). For purposes of the Mixed Use Property, “substantial completion” shall be achieved when the total assessed value of the Mixed Use Project is no less than \$25,000,000. Kite Harris is responsible for providing or arranging to provide for the funding of all costs to complete the Mixed Use Project. Such funding and cost is separate and apart from the costs of the Town Incentives to be provided by the Town Parties. The Mixed Use Project shall consist of the items and/or parameters as may be required by the Commission, including but not limited to minimum amounts of property usage types and space (e.g., office, retail, residential, etc.). Kite Harris shall submit a detailed master plan for the Mixed Use Project for review and approval by the Commission, in its sole discretion, prior to beginning construction (not including preliminary site development). The total additional assessed value of the Mixed Use Project Investment shall not be less than \$25,000,000.

(c) Kite Harris shall commence construction of the Mixed Use Project by no later than two-hundred seventy (270) days from the date of expiration of the Post Closing Contingency and shall substantially complete the Mixed Use Project by the Mixed Use Completion Date.

(d) Kite Harris 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 Mixed Use Project prior to the Mixed Use Property Closing.

(e) For so long as the Mixed Use Property is owned and/or operated by Kite Harris, Kite Harris agrees to: (i) identify the 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 Mixed Use 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; (iii) make unoccupied space on the Mixed Use Property available to the Town Parties under reasonable terms and conditions; and (iv) work with the Town Parties in reasonable partnerships or opportunities, where available to the mutual benefit of all parties, to use the

Mixed Use Project and Mixed Use Property in a manner that furthers Whitestown economic development.

(f) Kite Harris, its successors and/or assigns, shall be responsible to maintain, repair and replace the Mixed Use Project, excepting therefrom any portion thereof conveyed to an end user, in good condition and repair at the Mixed Use Property in a commercially reasonable and workmanlike manner, for a minimum of ten (10) years following the Mixed Use Completion Date.

(g) Upon reasonable written notice delivered to Kite Harris, the Town, or its inspector, may perform an inspection of the Mixed Use Project. Within seven (7) business days after an inspection, the Town may deliver to Kite Harris a notice (the “Non-Compliance Notice”) that identifies a Material Defect (for purposes of this provision, a “Material Defect” is any item or component of the Mixed Use Project that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Mixed Use Project; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town timely delivers a Non-Compliance Notice, then Kite Harris shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted by the Town. 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) Kite Harris shall, at its own expense, address any and all potential site development costs on the LLB Property so that LLB may move forward with the LLB Project in the time and manner contemplated by this Agreement. Kite Harris agrees to coordinate with LLB to ensure that such site development costs are timely and orderly addressed as necessary so that LLB is not delayed in proceeding with the LLB Project.

3.07 Development Standards and Zoning. The Property is currently zoned General Business. The Developers consent to the rezoning of the Property to Planned Unit Development, under terms and conditions as may be required by the Town Parties. All site standards relating to the Planned Unit Development shall be subject to review and approval of the Town Parties in their sole discretion. The Developers further agree to cooperate in the location of shared access points to the Property along Indianapolis Road as may be approved by the Town Parties in their sole discretion.

3.08. Project Records, Reporting. For purposes of demonstrating the economic development guaranteed by the Projects, for a period up to and including five (5) year(s) following the respective Completion Dates, the Developers 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 Projects, and will cooperate with and permit any duly authorized representative of the Town Parties, during regular business hours of Developers and upon not less 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.

3.9 Building Approvals. The Town Parties shall hold such meetings and assist Developers 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 the Developers, 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.

#### **ARTICLE IV. TOWN INCENTIVES**

4.01 Covenant to Provide Town Incentives. The Town Parties shall provide the Town Incentives to facilitate the Projects. The Town Incentives shall be separate and apart from the Projects and the cost of the Town Incentives shall not be considered a part of the respective Project Investments. The Town Incentives shall be provided as follows:

(a) The transfer of the Property to the Developers shall be handled in accordance with Sections 3.01 and 3.02 hereof.

#### **ARTICLE V. AUTHORITY**

5.01 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 VI. DEFAULTS**

6.01 Developer Events of Default. Each of the following events is an “event of default” hereunder:

(a) If the Developers fail to perform any obligation under this Agreement within ninety (90) days after the respective Developer’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 Developer obligation; or

(b) Failure by the respective Developer to make the respective Project Investment by the respective Completion Date; or

(c) Failure by the respective Developer to construct the respective Project in accordance with terms of this Agreement; or

(d) Failure by the respective Developer to complete the respective Project by the respective Completion Date; or

(e) For LLB, cessation of all construction work of a material nature with respect to the LLB 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; or

(f) The commencement by a respective Developer 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 the respective Developer 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 the respective Developer generally to pay its debts as such debts become due, or the taking of corporate action by the respective Developer in furtherance of any of the foregoing; or

(g) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the respective Developer 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 the respective Developer 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.

6.02 Remedies. Until the respective Developer achieves substantial completion of the respective Project in compliance with this Agreement, upon the happening of any event of default specified in Section 6.01 and the continuance of the same for the period, if any, specified in Section 6.01, and the unsuccessful conclusion of formal mediation between the parties, for those defaults listed in subsections 6.01(a) through 6.01(e), the Town may elect, in addition to any other legal and equitable remedies available to the Town, to (i) terminate this Agreement, terminate or suspend the provision of the Town Incentives and terminate all related agreements; and (ii) re-enter the respective Property and cause title to the respective Property to revert in the Commission, and Developers hereby grant to Commission the right of reversion of the title to the Property under these conditions. The foregoing rights shall be deemed exercised upon delivery to the respective Developer of written notice to the respective Developer of the Commission's determination to exercise its right to take possession of the Property. Such notice may be recorded by the Town contemporaneously with, or at any time after, its delivery of such notice. Upon delivery of such notice, the respective Developer shall surrender possession of the Property to the Commission and title to the respective Property shall automatically, and without further action, re-vest in the Commission. Any such re-vesting shall be free and clear of any and all encumbrances, liens, easements, agreements, and other matters of record. No delay or failure by the Town 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 by the respective Developer shall under any circumstances be deemed or held to be a waiver by the Town of the right to do so thereafter, or an estoppel of the Town to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

6.03 Reimbursement Obligation. In addition to any other available remedies of the Town Parties, if the Commission determines that Kite Harris has failed to perform by not meeting or exceeding its Mixed Use Project Investment by the Mixed Use Completion Date, Kite Harris agrees to make payments each year to the Commission equivalent to the projected lost real property tax increment revenues resulting from the shortfall in the minimum Mixed Use Project Investment (such payments, herein "Shortfall Payments") until the Mixed Use Project Investment is met. The calculation of Shortfall Payments will be undertaken by the Commission's financial advisor each year, commencing from the first year following the Mixed Use Completion Date (i.e.,

three years from the Mixed Use Property Closing unless otherwise agreed to by the Commission) and continuing until the Mixed Use Project Investment is met. If in any such year the Commission determines, based upon the calculations of its financial advisor, that a Shortfall Payment is due, the Commission shall invoice Kite Harris for a Shortfall Payment which Kite Harris shall pay to the Commission within thirty (30) days' of mailing by the Commission. In any event, the obligations to make Shortfall Payments hereunder shall expire once the Mixed Use Project Investment is met. Kite Harris's obligation to pay the Shortfall Payments herein shall be further evidenced by and be enforceable by the Town Parties in accordance with the Note and Mortgage. In the enforcement of the provisions of this Section 6.03, Kite Harris shall be further responsible for any reasonable court costs and attorneys' fees incurred by the Town Parties. Within thirty (30) days of Kite Harris meeting the Mixed Use Project Investment, the Commission shall file a satisfaction of Mortgage in the Boone County Recorder's Office. Additionally, the Commission agrees to file a partial satisfaction or subordination of the Mortgage when requested by Kite Harris as necessary to convey any portion of the Mixed Use Project for further development.

6.04 Default of Town Parties. Upon the occurrence of any default on the part of the Town Parties hereunder, the respective Developer 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 pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, the respective Developer may commence the dispute resolution procedures as provided in Section 6.05 below.

6.05 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 Developers consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue.

## **ARTICLE VII. MISCELLANEOUS**

7.01 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.

7.02 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.

7.03 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 Projects and the Town 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 Town Incentives.

7.04 Certificates. On a 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 Developer is not in default under the terms of this Agreement or specifying why the Developer is in default; or (c) any other matters which such Developer reasonably requests. When a Developer has satisfied all of its obligations under this Agreement then, on such Developer'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 such Developer.

7.05 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.

7.06 Assignment. Developers may not assign their respective interests, rights and responsibilities under this Agreement without the prior written consent of the Town Parties. The President of 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 the Developers may encumber their respective interest in a respective Project with a mortgage or similar instrument or indenture, which instruments shall in all cases be subject to the rights of the Commission outlined in this Agreement. In connection with any assignment hereunder, the assigning party shall assume all obligations under this Agreement, unless otherwise consented to by the Town Parties.

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

7.08 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.

7.09 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; 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 LLB:* Little League International  
539 U.S. Highway 15  
P.O. Box 3485  
Williamsport, PA 17701-0485  
Attn: Dave Houseknecht / Karl Eckweiler

*If to Kite Harris:* Kite Harris Property Group, LLC  
P.O. Box 37  
Zionsville, Indiana 46077  
Attn: Bob Harris

*With a copy to:* THOMAS LAW GROUP, LLC  
4600 NW Plaza W. Drive, Suite D  
Zionsville, Indiana 46077  
Attn: Robert R. Thomas

*If to Commission  
and/or Town:* Town of Whitestown  
6210 Veterans Drive  
Whitestown, Indiana 46075  
Attention: Town Manager

*With a copy to:* Stephen C. Unger  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204

7.10 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.

7.11 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.

7.12 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, 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.

7.13 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.

7.14 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 Developers, 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.

7.15 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.

7.16 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 Developers' right to take other or further action in any circumstances without notice or demand.

7.17 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes.

7.18 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.

7.19 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.

7.20 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.

7.21 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.

7.22 Entire Agreement. This Agreement and the document incorporated by reference herein constitutes the entire agreement by and between the Town Parties and Developers and supersedes all prior agreements, written or verbal, including but not limited to the Original EDA, between the Town Parties and Developer. This Agreement and its exhibits attached hereto, incorporated herein by this reference, shall and hereby do fully replace and supersede the Original EDA. 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 Developer that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement.

7.23 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 Developers 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

LITTLE LEAGUE BASEBALL,  
INCORPORATED

Attest:

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

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

KITE HARRIS PROPERTY GROUP, LLC

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

Attest:

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

3676800

EXHIBIT A  
Property Legal Description

THE FOLLOWING DESCRIBED REAL ESTATE IN BOONE COUNTY, IN THE STATE OF INDIANA:

PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST OF THE SECOND PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID QUARTER SECTION WITH THE SOUTHWEST LIMITED ACCESS RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 65 (SAID BEGINNING POINT BEARS SOUTH 00 DEGREES 07 MINUTES 15 SECONDS EAST 447.55 FEET FROM THE NORTHEAST CORNER OF THE SAID QUARTER SECTION); THENCE SOUTH 00 DEGREES 07 MINUTES 15 SECONDS EAST ALONG THE EAST LINE OF THE SAID QUARTER SECTION AND ALONG THE CENTER OF THE WHITESTOWN ROAD 1349.85 FEET TO THE CENTER OF U.S. HIGHWAY NO. 52 PAVEMENT; THENCE NORTH 42 DEGREES 22 MINUTES 44 SECONDS WEST ALONG THE CENTER OF SAID PAVEMENT 1305.60 FEET TO THE BEGINNING OF A TANGENT CURVE WHICH HAS A RADIUS OF 42,971.84 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE CENTER OF SAID PAVEMENT AND ALONG THE SAID CURVE TO THE RIGHT 1136.35 FEET TO THE NORTH LINE OF THE SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 36 MINUTES 40 SECONDS EAST ALONG THE NORTH LINE OF THE SAID QUARTER SECTION 312.44 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 22 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF THE SAID QUARTER SECTION 1030.20 FEET TO THE SAID SOUTHWEST LIMITED ACCESS RIGHT OF WAY LINE; THENCE SOUTH 32 DEGREES 42 MINUTES 00 SECONDS EAST ALONG SAID RIGHT OF WAY LINE 535.58 FEET TO THE PLACE OF BEGINNING, CONTAINING 32.479 ACRES, MORE OR LESS.

EXCEPTING THEREFROM:

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

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST; THENCE NORTH 88 DEGREES, 52 MINUTES, 50 SECONDS WEST ALONG THE NORTH LINE OF THE QUARTER SECTION A DISTANCE OF 247.26 FEET TO THE EASTERN R.O.W. LINE OF U.S. 52 (INDIANAPOLIS ROAD), THENCE FOLLOWING SAID R.O.W. LINE FOR A DISTANCE OF 102.89 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING ALONG THE SAME R.O.W. LINE FOR 100.00 FEET, THENCE SOUTH 88 DEGREES, 52 MINUTES, 50 SECONDS EAST A DISTANCE OF 100.00 FEET, THENCE NORTH 1 DEGREE, 7 MINUTES, 10 SECONDS EAST A DISTANCE OF 75.75 FEET, THENCE NORTH 88 DEGREES, 52 MINUTES, 50 SECONDS WEST A DISTANCE OF

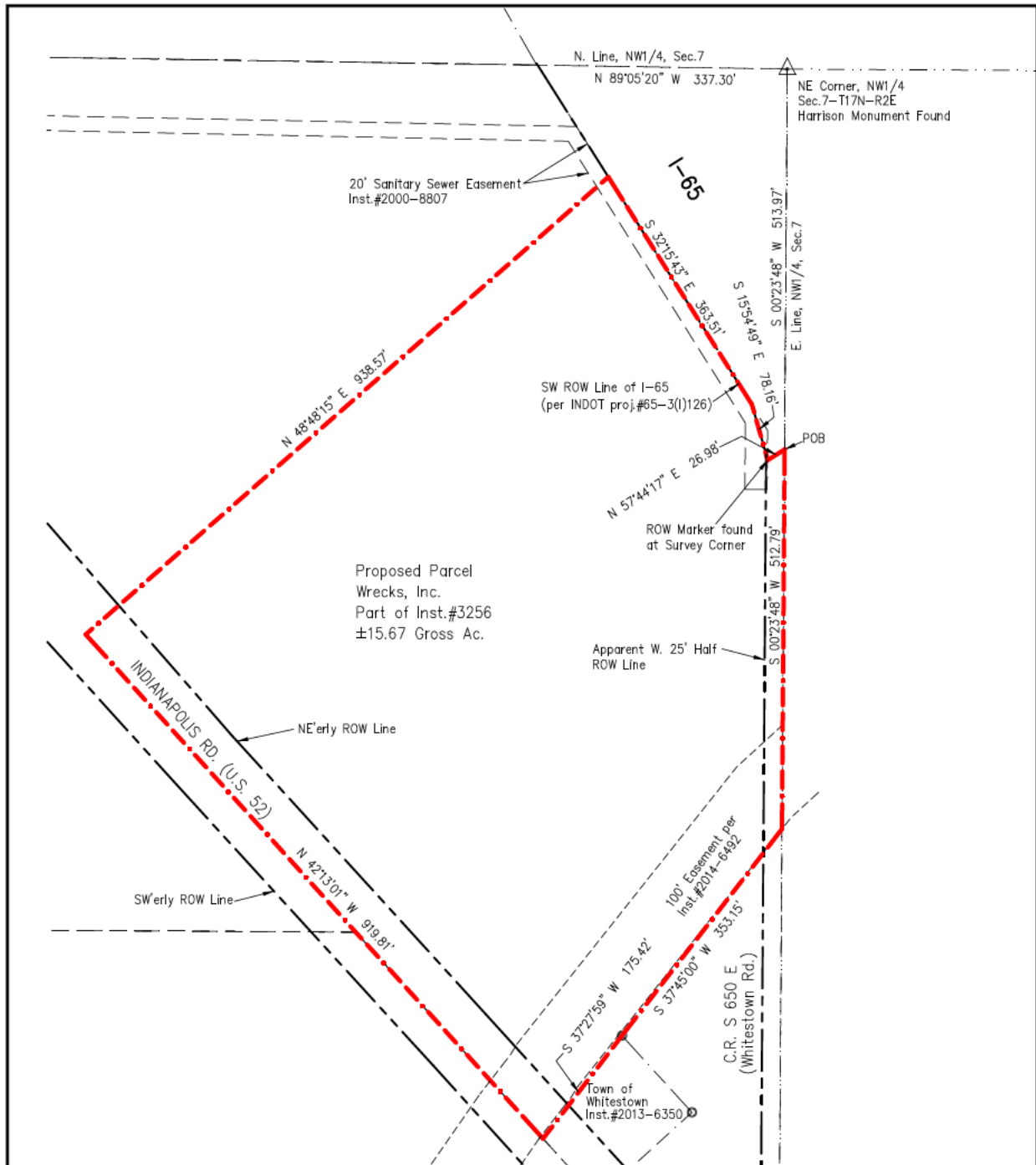
165.31 FEET TO THE POINT OF BEGINNING, CONTAINING 0.23 ACRES MORE OR LESS.

FURTHER EXCEPTING THEREFROM:

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

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 00 DEGREES 07 MINUTES 15 SECONDS EAST (BASIS OF BEARINGS IS THE WARRANTY DEED RECORDED IN DEED BOOK 181, PAGE 251 IN THE OFFICE OF THE RECORDER OF BOONE COUNTY, INDIANA) 1797.40 FEET ALONG THE EAST LINE OF SAID NORTHWEST QUARTER TO THE CENTERLINE OF INDIANAPOLIS ROAD PAVEMENT (FORMERLY U.S. HIGHWAY 52) AS IT EXISTED IN 1965; THENCE NORTH 42 DEGREES 49 MINUTES 04 SECONDS WEST 365.18 FEET ALONG SAID CENTERLINE TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 42 DEGREES 49 MINUTES 04 SECONDS WEST 108.64 FEET; THENCE NORTH 36 DEGREES 56 MINUTES 56 SECONDS EAST 177.85 FEET TO A 5/8" REBAR WITH GRW CAP; THENCE SOUTH 42 DEGREES 49 MINUTES 04 SECONDS EAST 140.24 FEET TO A 5/8" REBAR WITH GRW CAP; THENCE SOUTH 47 DEGREES 10 MINUTES 56 SECONDS WEST 175.02 FEET TO THE POINT OF BEGINNING, CONTAINING 0.500 ACRES, MORE OR LESS.

# **EXHIBIT B** **LLB Property Legal Description**



<b>WRECKS INC.</b> <b>LITTLE LEAGUE PARCEL</b>	
SEA PROJECT NUMBER <b>C18-4464 L</b>	DATE: 02/11/19 DWN. BY: JMF CHKD. BY: JMF SCALE: NONE
SHEET 1 OF 2	


  
**SEA Group**  
**Surveyors**  
**Design Layout**  
 494 Gradle Drive Phone: 317.844.3333  
 Carmel, IN 46032 Fax: 317.844.3383  
 www.SEAGroupLLC.com

### Land Description

A part of the Northwest Quarter of Section 7, Township 17 North, Range 2 East, Boone County, Indiana, described as follows:  
Commencing at the northeast corner of said Northwest Quarter Section; thence South 00 degrees 23 minutes 48 seconds West (assumed bearing) along the East line thereof a distance of 513.97 feet to the southwest Right-of-Way line of Interstate 65 (INDOT Proj. #65-3(1)126) and the Point of Beginning; thence South 00 degrees 23 minutes 48 seconds West continuing along said East line a distance of 512.79 feet to the southeasterly line of a 100 foot easement as described in Instrument Number 2014-6492 and recorded in the Office of the Boone County Recorder; thence South 37 degrees 45 minutes 00 seconds West a distance of 353.15 feet to the northerly corner of property to the Town of Whitestown as described in Instrument Number 2013-6350; thence South 37 degrees 27 minutes 59 seconds West along the northwesterly line thereof a distance of 175.42 feet to the centerline of Indianapolis Road (US 52); thence North 42 degrees 13 minutes 01 seconds West along said centerline a distance of 919.81 feet; thence North 48 degrees 48 minutes 15 seconds East a distance of 938.57 feet to said southwesterly line of Interstate 65, the remaining courses are along the southwesterly line thereof; thence South 32 degrees 15 minutes 43 seconds East a distance of 363.51 feet; thence South 15 degrees 54 minutes 49 seconds East a distance of 78.16 feet; thence North 57 degrees 44 minutes 17 seconds East a distance of 26.98 feet to the Point of Beginning, containing 15.67 acres, more or less.

WRECKS INC.  
LITTLE LEAGUE PARCEL

SEA PROJECT NUMBER  
C18-4464 L

DATE: 02/11/19  
DWN. BY: JMF  
CHKD. BY: JMF  
SCALE: NONE

SHEET 2 OF 2

  
**Surveyors**  
**Design Layout**  
494 Gradle Drive Phone: 317.844.3333  
Carmel, IN 46032 Fax: 317.844.3383  
www.SEAGroupLLC.com



EXHIBIT C  
Mixed Use Property

NOT FOR CONSTRUCTION

OWNER

CONSULTANT  
Stoughton Commercial  
1661 North Patterson Road  
Bainbridge, GA 30606  
PH: (770) 586-6660

STRONGBOX  
STRENGTH. INTELLIGENCE. DESIGN.

PROJECT TITLE  
CIRCLE CITY CURLING

SHEET TITLE  
CONCEPT SITE PLAN

REVISION	DATE	BY	CHKD
1	01/11/2019	...	...
2	01/11/2019	...	...
3	01/11/2019	...	...

FILES REFERENCED

SHEET NO.  
C-1

Scale: 1" = 80'

CONCEPT SITE PLAN

# EXHIBIT D LLB Project

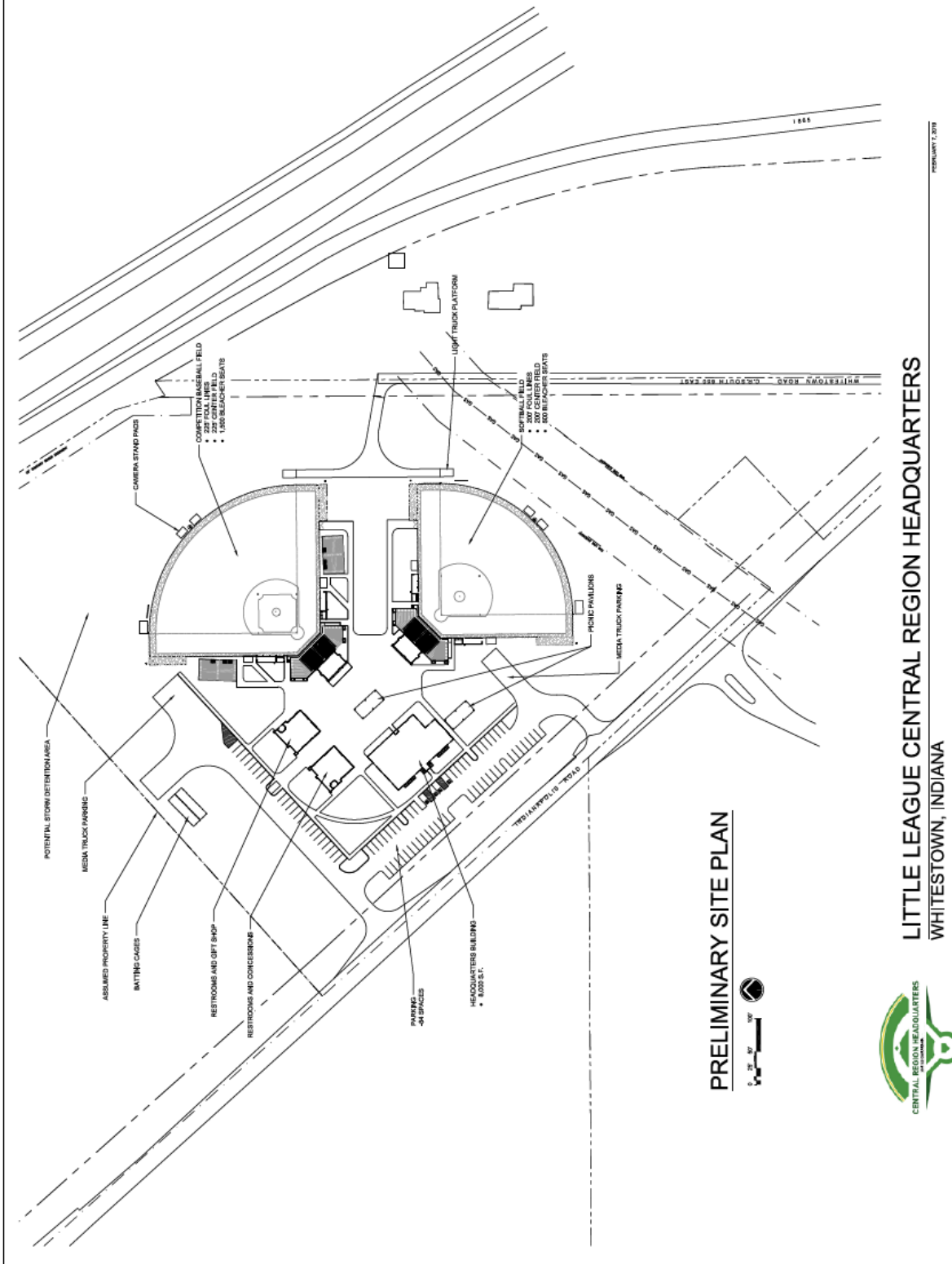




EXHIBIT E

Form of LLB 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 LITTLE LEAGUE BASEBALL, INCORPORATED (“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.

Grantor hereby creates the following restrictions on the Property which (i) shall run with the title to the Property and shall apply to and be binding upon Grantee, its successors and assigns and all tenants and occupants of the Property, and (ii) shall inure to the benefit of (and may be enforced by) Grantor:

(a) for a period of fifty (50) years after the date of this Special Warranty Deed, no part of the Property shall be used for any purpose other than the operation of a regional headquarters and sports facility, and for purposes which are ancillary to such operations, or for one of the following uses classified as general business under the Whitestown Unified Development Ordinance: accounting, auditing, & bookkeeping services; advertising agencies; agricultural credit institutions; apparel shop, shoes, or custom tailoring; art & music schools; banks & branch banks; barber shop or beauty shop; bed & breakfast; bicycle shops; bond & mortgage company; book & stationary store; cafeteria; candy, nut & confectionary; charitable institutions; china, glassware, metalware; civic, social, or religious organizations; dance halls, studios & schools; dinner theater; engineering & architectural service; food processing; fruits & vegetables; grocery, bakery, meat & fish; hardware store; hobby, toy & game shops; indoor recreation facility; lodge or private club; motion picture theater; municipal or government buildings; museum & art gallery; music & video store; photographic studio; professional office; skating; tavern; wholesale business; public owned park or recreational facility; and

(b) for a period of twenty (20) years after the date of this Special Warranty Deed, Grantor shall have a right of first refusal and option to purchase the Property as set forth in the Amended and Restated Economic Development Agreement dated \_\_\_\_\_, 2019, among the Grantor, Grantee, the Town of Whitestown, Indiana and Kite Harris Property Group, LLC and recorded as Instrument No. \_\_\_\_\_ in the Office of the Recorder of Boone County, Indiana.

If Grantee or its successors or assigns fails to comply with the covenants and restrictions herein, then, in addition to any other remedies provided for herein, or any other remedies available at law or in equity, Grantor shall be entitled to injunctive relief.

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 \_\_\_\_\_, 2019.

WHITESTOWN REDEVELOPMENT  
COMMISSION  
an Indiana redevelopment commission

By: \_\_\_\_\_  
Bryan Brackemyre, President

STATE OF INDIANA        )  
                                      )SS:  
COUNTY OF BOONE        )

Before me, a Notary Public in and for said State and County, personally appeared Bryan Brackemyre, 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 \_\_\_\_\_, 2019.

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 [NOTE: Tax Exempt] to:

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

EXHIBIT F

Form of Kite Harris 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 KITE HARRIS PROPERTY GROUP, LLC (“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.

Grantor hereby creates the following restrictions on the Property which (i) shall run with the title to the Property and shall apply to and be binding upon Grantee, its successors and assigns and all tenants and occupants of the Property, and (ii) shall inure to the benefit of (and may be enforced by) Grantor: Grantee shall comply with the terms set forth in the Amended and Restated Economic Development Agreement dated \_\_\_\_\_, 2019, among the Grantor, Grantee, the Town of Whitestown, Indiana and Little League Baseball, Inc., and recorded as Instrument No. \_\_\_\_\_ in the Office of the Recorder of Boone County, Indiana.

If Grantee or its successors or assigns fails to comply with the covenants and restrictions herein, then, in addition to any other remedies provided for herein, or any other remedies available at law or in equity, Grantor shall be entitled to injunctive relief.

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 \_\_\_\_\_, 2019.

WHITESTOWN REDEVELOPMENT  
COMMISSION  
an Indiana redevelopment commission

By: \_\_\_\_\_  
Bryan Brackemyre, President

STATE OF INDIANA        )  
                                  )SS:  
COUNTY OF BOONE        )

Before me, a Notary Public in and for said State and County, personally appeared Bryan Brackemyre, 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 \_\_\_\_\_, 2019.

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 G

Note and Mortgage



## PROMISSORY NOTE

Kite Harris Property Group, LLC (“Developer”), an Indiana limited liability company, 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 Amended and Restated Economic Development Agreement dated \_\_\_\_\_, 2019 (the “Agreement”), among the Town Parties, the Developer, and Little League Baseball, Incorporated, any Shortfall Payments (as defined in the Agreement) then due under the Agreement, in a total aggregate amount not exceeding \$850,000. Any Shortfall Payments 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 Shortfall Payments are due by the Developer to the Town Parties, the Town Parties shall tender written demand to the Developer that Shortfall Payments 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 \_\_\_\_\_, 2019, 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 Shortfall Payments 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 ten year anniversary date of the Mixed Use Completion Date (as defined in the Agreement).

IN WITNESS WHEREOF, \_\_\_\_\_ has caused this Promissory Note to be duly executed, countersigned and delivered as of \_\_\_\_\_, 2019.

KITE HARRIS PROPERTY GROUP, LLC

By: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

3676800

## REAL ESTATE MORTGAGE

**1. DATE AND PARTIES.** The date of this Mortgage (the “Security Instrument”) is \_\_\_\_\_, 2019, and the parties and their addresses are as follows:

**MORTGAGOR:**

Kite Harris Property Group, LLC

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

**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 \_\_\_\_\_, 2019, by Mortgagor in favor of Mortgagee in a total aggregate amount not to exceed \$850,000 (the "Note"), which Note was delivered to Mortgagee pursuant to secure the payment of Shortfall Payments, if any, from Mortgagor to Mortgagee under that certain Amended and Restated Economic Development Agreement, dated \_\_\_\_\_, 2019, by and among Mortgagor, Mortgagee and Little League Baseball, Incorporated (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.

KITE HARRIS PROPERTY GROUP, LLC

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

ATTEST:

By: \_\_\_\_\_

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF BOONE        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 Kite Harris Property Group, LLC, the limited liability company 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
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 Amended and Restated Economic Development Agreement;
- (2) liens for taxes and special assessments which are not then delinquent;
- (3) utility, access and other easements and rights-of-way, restrictions, covenants, conditions and exceptions that Kite Harris Property Group, LLC shall certify will not substantially interfere with or substantially impair the operation of the Property;
- (4) any mechanic’s, laborer’s, materialman’s, supplier’s or vendor’s liens, or rights in respect thereof, if payment shall not yet be due under the contract in question, or if the same is being contested in good faith and proceedings, if any, to execute on the Property have been stayed;
- (5) such minor defects, irregularities, encumbrances, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Property and which do not materially impair the Property for the purpose for which it was acquired or is held by Kite Harris Property Group, LLC;
- (6) 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 Kite Harris Property Group, LLC or the exercise of any privilege or license necessary to Kite Harris Property Group, LLC; and
- (7) any exceptions to title as set forth in Schedule B-1 attached hereto.

SCHEDULE B-1

*Exceptions to Title*

EXHIBIT H

Site Access Agreement

## **SITE ACCESS AGREEMENT**

This Site Access Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Kite Harris Property Group, LLC (“Kite Harris”) 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 7279 South Indianapolis Road in Whitestown, Boone County, Indiana (the “Property”).

**ECONOMIC DEVELOPMENT AGREEMENT.** The Commission, Kite Harris, the Town of Whitestown, Indiana and Little League Baseball, Inc. (“LLB”), entered into an Amended and Restated Economic Development Agreement dated \_\_\_\_\_, 2019 (“Economic Development Agreement”), wherein the Commission has agreed to allow Kite Harris immediate access to the Property in order to address potential additional site development costs and begin preliminary site development work for the development of the LLB Property and Mixed Used Property (as defined in the Economic Development Agreement).

**SITE ACCESS.** The Commission grants access from the date of this Agreement to Kite Harris to address potential additional site development costs and begin preliminary site development work for the development of the LLB Property and Mixed Used 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 Mixed Used Property to Kite Harris and transfer of the LLB Property to LLB, and not a grant of an easement or any other interest in the Property. Kite Harris 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 Kite Harris if/when the Agreement is terminated. Notice may be provided via email or telephone to:

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

RELEASE AND INDEMNIFICATION OF THE COMMISSION. Kite Harris, 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) Kite Harris's use of the access to the Property; (ii) activities to address potential additional site development costs and begin preliminary site development work; (iii) any default or failure of Kite Harris to perform its obligations under this Agreement; (iv) the condition of the Property; or (v) the acts or



omissions of Kite Harris or Kite Harris's employees, contractors, or agents on or about the Property. Kite Harris shall bear the risk of any loss or damage to Kite Harris's personal property in, on or about the Property. Kite Harris's indemnification as described herein shall survive the termination of this Agreement.

CONDITIONS OF PROPERTY. Kite Harris 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. Kite Harris agrees that all of Kite Harris's personal property of every kind or description which may at any time be on the Property shall be on the Property at Kite Harris's sole risk or at the risk of those claiming through or under Kite Harris, and in no event shall the Commission be liable for the same.

INSURANCE. Kite Harris 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. Kite Harris 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 Kite Harris' access to the Property for any reason with twenty-four (24) hours advance notice to Kite Harris by email. Upon the Commission giving notice of such revocation, Kite Harris shall have forty-eight (48)

hours to remove its equipment from the Property. If Kite Harris fails to timely remove its equipment, the equipment shall be deemed abandoned. Kite Harris shall be responsible for all costs, expenses, and reasonable attorneys' fees the Commission incurs as a result of Kite Harris 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: \_\_\_\_\_

**Kite Harris Property Group, LLC**

By: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

Date: \_\_\_\_\_

3676800