

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the “Agreement”) is made and entered into as of the _____ day of _____, 2024, by and among the Town of Whitestown, Indiana (the “Town”), the Town of Whitestown Redevelopment Commission (the “Redevelopment Commission”), and Wally’s Whitestown, LLC, an Indiana limited liability company (the “Company”),

WITNESSETH:

WHEREAS, the Town desires to foster economic development within the Town; and

WHEREAS, the Company and its affiliates are, or will be, the owner of two parcels of real estate (parcel numbers 0180232001 and 0181232000) containing approximately 30 acres generally located on the northwest side of Town off of Albert S. White Drive and Perry Worth Road (the “Real Estate”), which Real Estate is described in Exhibit A attached hereto; and

WHEREAS, the Company has approached the Town regarding the construction of a travel center on the Real Estate, including related amenities and certain public infrastructure improvements (collectively, the “Project”), which Project is more particularly described in Exhibit B attached hereto; and

WHEREAS, the Company intends to make an investment in the development and construction of the Project in the amount of approximately _____ Dollars (\$_____); and

WHEREAS, in connection with and as part of the Project, the Company will construct certain public infrastructure improvements consisting of the construction of road improvements as more particularly described in Exhibit B attached hereto; and

WHEREAS, the Company has requested certain economic development assistance from the Town in connection with the financing of the Project; and

WHEREAS, the Town and the Redevelopment Commission (each, a “Town Body” and, collectively, the “Town Bodies”) have determined that the completion of the Project is in the best interests of the citizens of the Town, and, therefore, the Town Bodies desire to take certain steps in order to induce the Company to complete the Project; and

WHEREAS, to stimulate and induce the development of the Real Estate and the completion of the Project, the Town Bodies have agreed, subject to further proceedings as required by law and the conditions herein set forth, to provide the economic development incentives described herein which include, specifically, the provision of funding in the amount not to exceed Four Million Four Hundred Thousand and 00/100 Dollars (\$4,400,000) (the “Project Incentive Funds”) for costs of the Project; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby 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 the execution and delivery of such documents, instruments and certifications (and, in the case of the Town Bodies, 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.

ARTICLE III. PROJECT DEVELOPMENT

3.01. Real Estate. The Company has acquired, or shall acquire, and shall improve the Real Estate described in Exhibit A attached hereto, subject to the performance by the Town Bodies of their respective obligations under this Agreement, by constructing the Project on such Real Estate as more particularly described in Exhibit B hereof.

3.02. Project and Development. The Project shall consist of the items and/or parameters set forth in Exhibit B attached hereto. The Company shall commence construction of the Project by no later than _____, 2024 and shall complete construction and equipping of the Project within _____ () months after construction commencement, subject to permitted delays provided for in Section 3.03 hereof, with the first full assessment of the Project occurring the first full calendar year after construction completion. The Company shall make a minimum capital investment in the Project of not less than _____ Dollars (\$ _____) within _____ () months following construction commencement, and following construction completion, the Company reasonably anticipates that the Project will be assessed at the values set forth on Exhibit C. Based on such assessed value, the Company and the Town anticipate that projected TIF Revenues (as defined in Section 4.02 hereof) will be generated in the amounts set forth on Exhibit C. In connection with the construction of the Project, the Company shall commence the public infrastructure portion of the Project concurrently with the construction of the other aspects of the Project such that the public infrastructure portion of the Project is not delayed. The Company anticipates _____ temporary jobs will be created during construction of the Project with hourly wages of \$ _____ per hour and upon completion of the Project _____ full time jobs will be created with hourly wages of \$ _____ per hour and including benefits.

3.03. Public Infrastructure Standards. With respect to the public infrastructure described in Exhibit B which is a part of the Project, the Company shall ensure that such public infrastructure improvements are constructed in accordance with the Town's standards for similar

such projects. All plans, specifications, renderings, drawings and related documentation in respect of the construction of the public infrastructure improvements shall be first submitted to the Public Works Director of the Town for approval at least thirty (30) days prior to construction. The Town shall have thirty (30) days from submission of such documentation to review and either approve or provide comments thereon to the Company. During the construction of the public infrastructure improvements the Town shall have the right to inspect, during business hours, the construction of the public infrastructure improvements to ensure the same are being constructed in accordance with the Town's standards. In the event of any deviation from the Town standards, the Public Works Director of the Town shall notify the Company in writing of such deviation and the Company shall proceed in good faith and in a commercially timely manner to address any such deviations at its own expense.

ARTICLE IV.

4.01. Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, pandemics, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the Company or any of the Town Bodies is entitled to delay its performance under this Agreement and (ii) the Company or such Town Body anticipates that such permitted delay will cause a delay in its performance under this Agreement, then the Company or such Town Body, as the case may be, agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay.

ARTICLE V. ECONOMIC DEVELOPMENT INCENTIVES

5.01. Economic Development Revenue Bonds. The Redevelopment Commission and the Town shall each, subject to further proceedings required by law, cause the issuance of, in one or more series, economic development revenue bonds pursuant to Indiana Code 36-7-12 (the "Bonds"), in the principal amount not to exceed Four Million Four Hundred Thousand and 00/100 Dollars (\$4,400,000), bearing interest at the rate or rates not to exceed eight percent (8.0%) per annum, and maturing over a term ending no later than 25 years from the date of issuance of the Bonds. The proceeds of the Bonds shall be used solely for (a) the payment of a portion of the costs of the Project as described in Exhibit B, (b) funding of capitalized interest, if necessary, (c) funding a debt service reserve for the Bonds, if necessary, and (d) the legal, financial advisory, and planning consultant expenses incurred by the Town Bodies and the Company in connection with the issuance of the Bonds. The Town shall pledge to the repayment of the Bonds the TIF Revenues (as defined below). The Company shall purchase the Bonds or provide for a third-party purchaser of the Bonds. The ability of the Company to access the proceeds of the Bonds shall be conditioned on the Company first providing evidence satisfactory

to the Redevelopment Commission, in its sole reasonable discretion, that it has secured or is able to secure the financing necessary to complete the Project.

5.02. Inclusion in Economic Development Area and Allocation Area; Pledge of TIF Revenues. The Real Estate shall be located within an economic development area and an allocation area (as described in Indiana Code 36-7-14-39) to be established by the Town Bodies in accordance with Indiana Code 36-7-14, as amended. The Town and Redevelopment Commission agree to pledge eighty percent (80%) of the tax increment revenues generated in the allocation area from the Project to the payment of the Bonds (such eighty percent (80%) of the tax increment revenues, herein the “TIF Revenues”). The twenty percent (20%) of tax increment revenues from the Project not pledged to the payment of the Bonds shall be retained by the Redevelopment Commission to be used for any lawful purposes. It is currently contemplated that the estimated investment in the Project and resulting increases in assessed valuation of the real property will generate estimated TIF Revenues in the amounts set forth on Exhibit C attached hereto. The Redevelopment Commission shall, subject to further proceedings required by law, cause the TIF Revenues to be pledged to the repayment of the Bonds. For the avoidance of doubt, any tax increment revenues generated from the Real Estate which are not part of the Project shall not be included in the TIF Revenues and such tax increment shall be retained by the Redevelopment Commission. For example, if commercial buildings are subsequently constructed on any portion of the Real Estate which are not part of the original Project (i.e., the travel center), the tax increment generated from such commercial buildings shall not be included in the TIF Revenues pledged to the payment of the Bonds. The Company agrees that it shall not seek any incentives from the Town or the Redevelopment Commission in connection with the development and construction of any such commercial buildings it being the intent of the parties hereto that any such tax increment generated from such commercial buildings will be used by the Town to construct, equip and support a new fire station to be constructed in the area.

5.03. Property Tax Status/Assessed Value. So long as the Bonds shall remain outstanding, the Company agrees that it shall not (a) apply for tax exempt status or (b) sell, transfer or otherwise convey all or any portion of the Project to an entity that is exempt from the payment of property taxes (e.g., a governmental entity or non-profit entity). In addition, so long as the Bonds remain outstanding the Company agrees that it will not challenge the assessed value of all or any portion of the Project absent manifest error. In connection with any sale, transfer or conveyance of all or any portion of the Project, so long as the Bonds remain outstanding, prior to such sale, transfer or conveyance the Company shall provide the Town with a written agreement from the entity receiving all or a portion of the Project agreeing to the provisions set forth in this Section 5.04.

ARTICLE VI. AUTHORITY

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

6.02. Powers. The Town Bodies 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 VII. GENERAL PROVISIONS

7.01. Indemnity; No Joint Venture or Partnership. The Company covenants and agrees at its expense to pay and to indemnify and save the Town Bodies, and their officers and agents (the “Indemnitees”) harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the Company’s (and/or any affiliate’s thereof) development activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the Town Bodies, or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town Bodies, and the Company or any affiliate thereof.

7.02. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

7.03. Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

7.04. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of each of the Town Bodies approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

7.05. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

7.06. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

7.07. Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

7.08. Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company:

Wally's Whitestown, LLC
Attn.: Nate Hale
4203 Yoakum Boulevard, Suite 200
Houston, Texas 77006

And

Lewis Rice LLP
Attn: Catherine Phillips
600 Washington Avenue
St. Louis, MO 63101

To the Town Bodies:

Town of Whitestown
Attn: Todd Barker
6210 Veterans Drive
Whitestown, IN 46075

And

Taft Stettinius & Hollister LLP
Attn: Cam Starnes
One Indiana Square
Suite 3500
Indianapolis, IN 46204

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

7.09. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

7.10. Assignment. The rights and obligations contained in this Agreement may not be assigned by the Company or any affiliate thereof without the express prior written consent of each of the Town Bodies; provided, however, that the Company may transfer all or a portion of its rights and obligations hereunder to an affiliate of the Company upon notice to but without the consent of the Town Bodies, but any such transfer to an affiliate of the Company shall not have the effect of releasing the Company from its obligations hereunder.

7.11. No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

7.12. Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and each of the Town Bodies have approved or ratified this Agreement at public meetings.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

TOWN OF WHITESTOWN, INDIANA

By: _____
Dan Patterson, Town Council President

TOWN OF WHITESTOWN
REDEVELOPMENT COMMISSION

By: _____
, President

WALLY'S WHITESTOWN, LLC

By: _____

EXHIBIT A

DESCRIPTION OF REAL ESTATE

EXHIBIT B

DESCRIPTION OF PROJECT

EXHIBIT C

ESTIMATED ASSESSED VALUES AND TIF REVENUES