

RESOLUTION NO. 2019-24-CM
AUTHORIZING EXECUTION OF REAL ESTATE PURCHASE DOCUMENTS

WHEREAS, on July 15, 2019, the Board of Commissioners authorized making a purchase offer to Concord Partners South, LLC for certain real estate adjacent to the Highway Garage; and

WHEREAS, on August 21, 2019, Concord Partners South, LLC accepted the purchase offer attached hereto as Exhibit A for a purchase price of \$41,240;

WHEREAS, closing on the Real Estate transaction will use the services of Stallard & Schuh whose exact fee is not known but is not expected to exceed \$3,760;

NOW, THEREFORE, BE IT RESOLVED that the President of the Tippecanoe County Board of Commissioners or, if he is not available, the Vice-President or any member of the Board of Commissioners is hereby authorized to execute purchase documents and take such other actions as are necessary to complete the sale under the terms reflected in the Amended Purchase Offer attached hereto as Exhibit A.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Treasurer of Tippecanoe County is requested to wire the necessary funds to Stallard and Schuh to complete the closing in an amount not to exceed \$45,000.

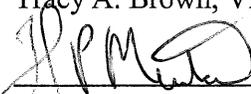
Duly adopted this 3rd day of September, 2019.

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

David S. Byers, President

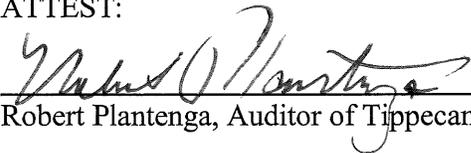


Tracy A. Brown, Vice President



Thomas P. Murtaugh, Member

ATTEST:



Robert Plantenga, Auditor of Tippecanoe County

AMENDED OFFER TO PURCHASE REAL ESTATE

Tippecanoe County, "Buyer", offers to purchase from **Concord Partners South, LLC**, "Seller", approximately 0.52 acres from the parcel owned by Seller having State Parcel ID 79-11-03-200-006.000-033 located in Lafayette, Indiana, on US 52 South adjacent to the Tippecanoe County Highway Garage at 3150 US 52 South. Said 0.52 acres has the following legal description:

SEE EXHIBIT A

including all improvements either permanently installed, or which belong to or are used in connection with the real estate, all referred to as the Real Estate, together with all equipment, fixtures and other items connected with the Real Estate, for the sum of forty one thousand, two-hundred and forty dollars (**\$41,240.00**) referred to as the "Purchase Price", subject to the following, and only the following:

1. **Payment.** The Purchase Price shall be paid by check or wire transfer issued by the Treasurer of Tippecanoe County at the time of closing the transaction.
2. **Conditions of Offer.** The *Buyer's* obligations are subject to the satisfaction of the following conditions:
 - a. *Seller* shall, at the time of closing, execute a release of any claims in the nature of adverse possession or any other claim arising out of *Buyer's* use or occupation of the Real Estate prior to closing in a form substantially similar to Exhibit C. Such release shall extend to any claims by Seller's predecessors in interest: James C. Shook, John R. Gambs, Donald J. Ehrlich, and Steven W. Norfleet.
3. **Seller's Title Evidence.**
 - a. Within thirty (30) days after the Acceptance Date, *Seller*, at *Seller's* sole cost and expense, shall cause to be delivered to *Seller* and *Buyer* a commitment for an owner's policy of title insurance (the "Title Commitment") issued by the Title Company on ALTA Owner's Policy Form B-1970, if available (otherwise in a form acceptable to *Buyer*) ("Final Policy"), in which the Title Company shall agree to insure, for the full amount of the Purchase Price, merchantable title to the Real Estate in the name of *Buyer*, free from the Schedule B standard printed exceptions and all other exceptions except Permitted Exceptions (as defined below) after delivery of the Deed required in Section 4 hereof to *Buyer* from *Seller*. *Seller* shall pay any and all costs and expenses related to the Commitment, including all search fees, closing fees and the premium for the Final Policy. All endorsements issued pursuant to the Title Commitment shall be at the sole cost and expense of the *Buyer*.
 - b. If at any time prior to the Closing, title to the Real Estate is encumbered by any exception to title not acceptable to *Buyer*, in *Buyer's* sole discretion (any such exception or unacceptable state of fact being referred to herein

as a "Title Defect"), then *Buyer* shall, within ten (10) days following receipt of the Title Commitment or discovery of the Title Defect, as the case may be, give *Seller* written notice of such Title Defect. *Seller* shall, within ten (10) days after receipt of such notice, use its reasonable efforts to remove such Title Defect or obtain affirmative title insurance coverage insuring and defending against any loss, cost or expense arising out of or related to such Title Defect ("Affirmative Coverage"). On or before the Closing, *Seller* shall provide *Buyer* with reasonable evidence of such removal or provide reasonable evidence that such Title Defect will be removed or that such Affirmative Coverage shall be obtained. Notwithstanding anything contained herein to the contrary, *Seller* shall be obligated to expend whatever sums are required to cure or obtain Affirmative Coverage for the following Title Defects prior to, or at, the Closing:

- (i) All mortgages, security deeds or other security instruments encumbering the Real Estate;
 - (ii) All past due *ad valorem* taxes and assessments of any kind, whether or not of record, which constitute, or may constitute, a lien against the Real Estate; and
 - (iii) Judgments against the *Seller* (which do not result from acts or omissions on the part of *Buyer*) which have attached to and become a lien against the Real Estate.
- c. In the event *Seller* is unable to cure or obtain Affirmative Coverage for any Title Defect prior to Closing, *Buyer* shall have the option to (i) waive any Title Defect and proceed to Closing; or (ii) terminate this Offer, in which case neither party shall have any further obligation hereunder except for such obligations which this Offer states survive such termination.

4. **Closing and Possession.**

- a. If this Offer is accepted, the transaction shall be closed on or before ninety (90) days after execution of this Offer to Purchase by *Seller*. At closing, *Seller* shall execute and deliver a **Warranty Deed** conveying the Real Estate and improvements in the same condition as they now are, ordinary wear and tear expected, free and clear of all liens and encumbrances except current year's real estate taxes, and existing covenants and easements, and shall furnish a **Seller's Affidavit** in the form commonly used in Tippecanoe County, Indiana.
- b. Possession of the Real Estate shall be delivered to *Buyer* on closing.
- c. Expenses. The *Seller* agrees to pay all costs to release any mortgage lien, if any, the Title Commitment (as herein defined), and the Deed (as herein defined). The *Buyer* agrees to pay the costs of Survey (as herein defined), and any deed recording fees. The fees charged by the Title Company to conduct the Closing will be paid one-half (½) by *Seller* and one-half (½)

by the *Buyer*. No other expenses in connection with this transaction will be allocated to the *Buyer* other than those specifically provided for in this Offer.

5. **General.** *Buyer* and *Seller* agree that all terms of this Offer are included in it; no verbal agreements of any kind shall be binding upon the parties; this Offer shall be binding upon the parties, their heirs, administrators, executors, successors and assigns. When applicable, the singular shall apply to the plural.

6. **Additional Terms.**

a. Use of Detention Pond. The land remaining in parcel 79-11-03-200-006.000-033 following the transaction shall be entitled to discharge storm water into the detention pond on Buyer's adjacent parcel 79-11-02-151-001.000-033 so long as the pond has capacity for such additional discharge and so long as such discharge does not interfere with Buyer's use. This agreement is made in Buyer's capacity as a landowner and is not intended as a waiver, approval, or modification of any regulatory requirements to which Seller or Seller's discharge may be subject. At closing, the parties shall execute a Stormwater Easement agreement in a form substantially similar to **Exhibit D**.

b. Notice. Any notice, request, instruction or other document required or permitted to be given under this Offer by a party to the Offer will be in writing and be deemed to have been given when (i) received, if delivered and given in person, (ii) on the date of transmission if sent by telex, telecopy, or other wire transmission (provided that a copy of such transmission is simultaneously sent in a manner provided in clause (iii)), or (iii) deposited with the United States mail, postage prepaid, certified and return receipt requested, and addressed to the *Seller*, *Buyer*, or Title Company, as the case may be, at the address set forth below:

Seller: Concord Partners South, LLC
C/O John R. Gambs
P.O. Box 1608
Lafayette, IN 47902

Buyer: Tippecanoe County Board of Commissioners
20 N. 3rd Street
Lafayette, IN 47901

Title Company: Michael P. Schuh
STALLARD & SCHUH, INC.
301 Columbia Street
P.O. Box 929
Lafayette, IN 47902-0929
(765) 423-2642
mschuh@stallardandschuh.com

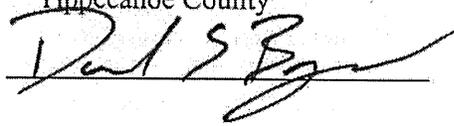
or such other individual, entity, or address as a party may designate for itself by notice given as provided above.

c. Supersedes previous offers. This amended offer supersedes and replaces any previous offers, including a certain offer executed July 15, 2019.

7. **Duration of Offer.** This Offer shall expire if written acceptance endorsed hereon is not delivered to *Buyer*, on or before 4:30 (p.m.)/a.m. (circle) on Aug. 30, 2019.

DATED the 19th day of August, 2019.

Buyer:

Tippecanoe County
By: 

ACCEPTANCE OF OFFER

The undersigned, *Seller*, hereby accepts such Offer this 21st day of August, 2019.

SELLER:

Concord Partners South, LLC

By: 

This instrument prepared by: Douglas J. Masson, Attorney at Law.

EXHIBIT A

LEGAL DESCRIPTION – PARCEL I

Grantor: John R. Gambs, etal

State Parcel Identification No.: 79-11-03-200-006.000-033

Grantee: Board of Commissioners of Tippecanoe County

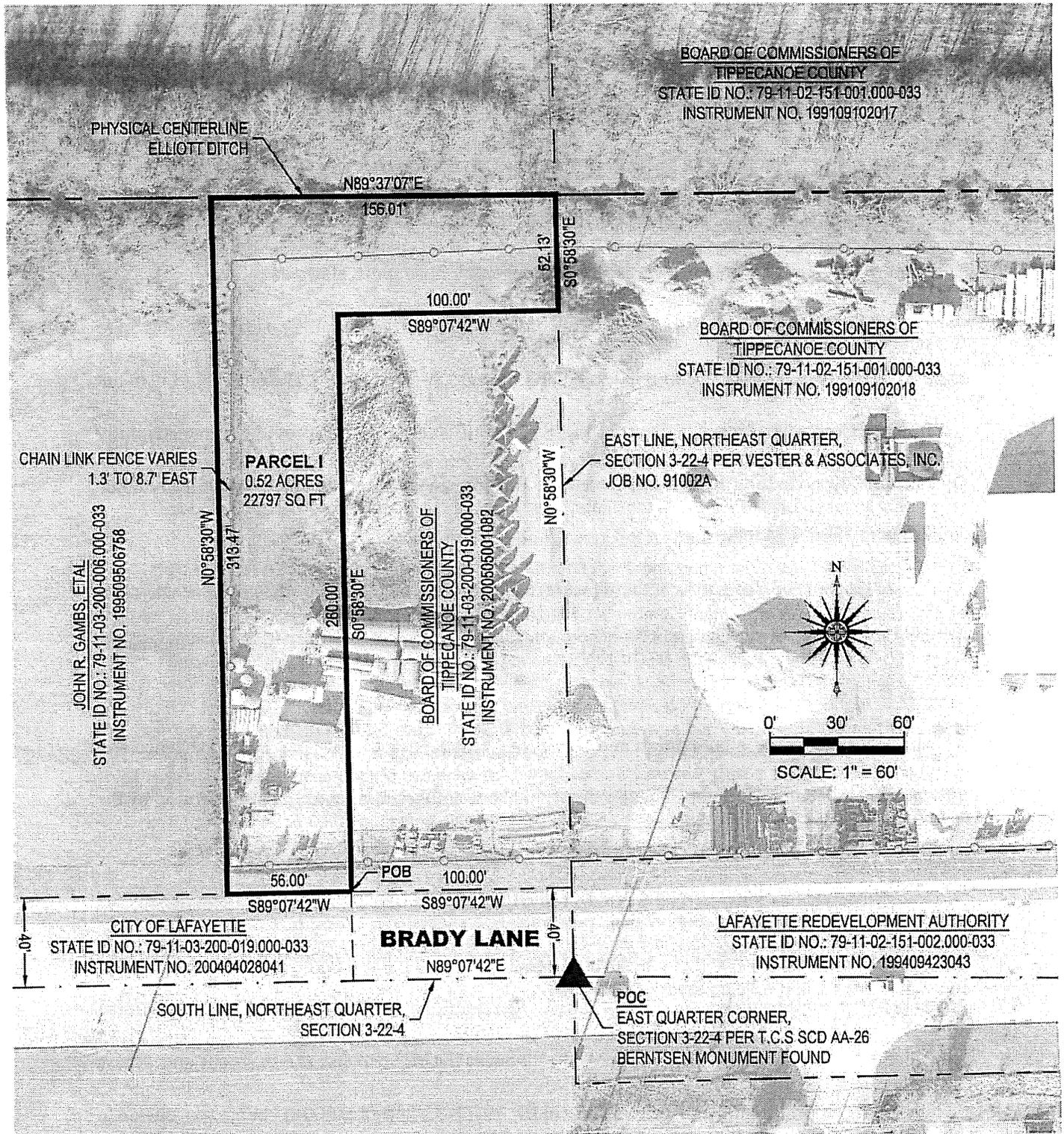
State Parcel Identification No.: 79-11-02-151-001.000-033

A part of the Northeast Quarter of Section 3, Township 22 North, Range 04 West, Wea Township, Tippecanoe County, Indiana being a part of the John R. Gambs, etal real estate, as described in Instrument Number 199509506758 in the Office of the Tippecanoe County Recorder and being more completely described as follows:

COMMENCING at a Bermtsen monument marking the southeast corner of said quarter; thence along the east line of said quarter, North 0°58'30" West, 40.00 feet to the northerly line of the City of Lafayette real estate, as described in Instrument Number 200404028041 in said Recorder's office; thence along said northerly line, being parallel with and 40 feet northerly of the south line of said quarter, South 89°07'42" West, 100.00 feet to the POINT OF BEGINNING; thence continue along said northerly line, South 89°07'42" West, 56.00 feet; thence along a course parallel with said east line, North 0°58'30" West, 313.47 feet to the centerline of Elliott Ditch; thence along said centerline North 89°37'07" East, 156.01 feet to said east line; thence along said east line, South 0°58'30" East, 52.13 feet; thence along the bounds of the Board of Commissioners of Tippecanoe County real estate, as described in Instrument Number 200505001082 in said Recorder's office for the following two (2) courses: 1) along a course parallel with said south line, South 89°07'42" West, 100.00 feet; 2) along a course parallel with said east line, South 0°58'30" East, 260.00 to the POINT OF BEGINNING, containing 0.52 acres, more or less.

SUBJECT TO ALL OTHER EASEMENT, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD.

This transfer is made pursuant to Exemption "E" of the Unified Subdivision Ordinance of Tippecanoe County, Section 2, definition of "Subdivision," paragraph E, and combines a 0.52 acre tract from State Identification Number 79-11-03-200-006.000-033 to Grantee's adjoining tract with State Identification Number 79-11-02-151-001.000-033 with the understanding that this transfer does not create any additional principal use building sites.




T.BIRD
Design Services Corporation
Engineering • Surveying • Environmental
Construction Management
105 NORTH 10TH STREET • LAFAYETTE, INDIANA
phone: (765) 742-1900 • fax: (765) 742-1905
www.tbirdesign.com

EXHIBIT B

PART OF THE NORTHEAST QUARTER OF SECTION 03,
TOWNSHIP 22 NORTH, RANGE 04 WEST, WEA TOWNSHIP,
TIPPECANOE COUNTY, INDIANA

PROJECT: 18112	DATE: 5/3/2019	CHECKED BY: PW	DRAWN BY: PW	DRAWING FILE: 18112-COUNTY GARAGE EXHIBIT.DWG	SHEET: 1 of 1
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EXHIBIT C TO PURCHASE AGREEMENT

RELEASE AND SETTLEMENT OF INVERSE CONDEMNATION CLAIM

Come now Concord Partners South, LLC and executes this Release and Settlement of Inverse Condemnation Claim in favor of Tippecanoe County and, in support, states as follows:

1. Concord Partners South, LLC (“Concord”) is the owner of certain real estate having State Parcel ID: 79-11-03-200-006.000-033 located in Lafayette, Indiana, on US 52 South adjacent to the Tippecanoe County Highway Garage at 3150 US 52 South. This parcel was previously owned jointly by James C. Shook, John R. Gambs, Donald J. Ehrlich, and Steven Norfleet. These individuals subsequently assigned their interest to Concord on or about December 12, 2018.

2. Tippecanoe County owns the adjacent real estate at 3150 US 52 South, having State Parcel ID 79-11-02-151-001.000-033 where Tippecanoe County houses and operates the Tippecanoe County Highway Garage.

3. It is Concord’s contention and belief that Tippecanoe County has erected a fence and otherwise made use of Concord’s real property without authorization and in contravention of the rights of Concord and Concord’s predecessors in interest.

4. The parties have agreed to settle this dispute by means of Tippecanoe County paying Concord \$41,240 in exchange for a deed to approximately 0.52 acres more particularly described in a Purchase Offer dated _____, 2019, (hereinafter “subject property”) As additional consideration. Tippecanoe County agrees to relinquish the right to use the curb cut and access located on the approximately .52 acres of parcel ID: 79-11-03-200-006.000-03 being transferred to Tippecanoe County and to cooperate in every way reasonably requested by Concord in order for Concord to secure access rights and a curb cut from its parcel to Brady Lane at a location nearby to the west of the .52 acre parcel transferred to Tippecanoe County’ in order to replace the access/curb

cut on the .52 acre Parcel being transferred.

5. In exchange, Concord on its own behalf and on behalf of its personal representatives, successors, and assigns, does hereby forever discharge Tippecanoe County, its employees, officers, agents, and representatives (“Releasees”), from any and all claims, demands, actions or causes of action for any and all damages, including but not limited to, losses, injuries, property losses, afflictions, emotional distress, mental anguish or suffering, costs, expenses, lost wages, loss of time, business or use, and punitive damages heretofore or hereafter sustained or incurred on account of, or in any way arising out of Tippecanoe County’s use of or presence upon the subject property. This release in full is given in return for the consideration described in paragraph 4, the receipt and sufficiency of which is hereby acknowledged by the undersigned.

6. The undersigned hereby warrants and represents that the undersigned is fully empowered by Concord to execute this release on behalf of Concord and that all necessary corporate action for the granting of this release has been duly taken.

7. Concord hereby agrees to defend, hold harmless, and indemnify the County against claims made by James C. Shook, John R. Gambs, Donald J. Ehrlich, and/or Steven Norfleet, their personal representatives, successors, or assigns arising out of the County’s use or occupation of the subject property.

8. Concord acknowledges and understands that the consideration set forth in paragraph 4 of this agreement does not constitute an admission of liability on the part of the County, by whom liability is expressly denied. Concord further represents it will satisfy liens of any type, nature or description on the proceeds of this settlement, and that no person, firm or entity has a right of subrogation or other claim for payment of benefits against the County and Concord further agrees

to hold harmless the County against any claim subsequently asserted by anyone who might hereinafter claim either a lien a upon the proceeds of this settlement or rights of subrogation.

9. In making this settlement, Concord understands this release shall be complete and shall cover all damages, and it shall not be subject to any claim or mistake or fact; that this settlement expresses a full and complete settlement of all the liability claimed and denied, and regardless of the adequacy or inadequacy of the amount paid, it is intended to avoid further litigation and to be a full and complete settlement.

Dated this 21 day of AUGUST, 2019.

READ BEFORE SIGNING:

Concord Partners South, LLC

By: 

STATE OF INDIANA:

SS:

COUNTY OF TIPPECANOE:

Before me, a Notary Public in and for said State and County, personally appeared

John R Combs
_____, on behalf of **Concord Partners South, LLC** as its MANAGING MEMBER in the above Agreement, and acknowledged the execution of the same on the date aforesaid to be his voluntary act and deed and who, being duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 21st day of August,
2019.

Beth A Paolack Watts

Signature
Beth A Paolack Watts, notary public
Printed Name _____

My Commission expires 9-17-2022

I am a resident of Tippecanoe County, Indiana
Commission No. NPO658145

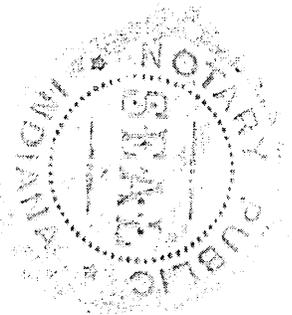


EXHIBIT D

STORM WATER DISCHARGE EASEMENT AGREEMENT

This Storm Water Discharge Easement Agreement (this "Agreement") is made by and between the the Board of Commissioners of Tippecanoe County (the "County"), and Concord Partners South, LLC, ("Concord").

RECITALS

Concord owns an undeveloped parcel consisting of approximately 57.68 acres located in Tippecanoe County, Indiana having State Parcel ID 79-11-03-200-006.000-033 ("Concord Parcel") located in Lafayette, Indiana which is adjacent to the County's Highway Garage located on a tract of land having State Parcel ID 79-11-02-151-001.000-033 ("County Parcel"). Concurrently with this agreement, County is purchasing from Concord approximately 0.52 acres ("Purchased Property") from the Concord Parcel which is adjacent to the County Parcel. (Following the transaction, the Concord Parcel will consist of approximately 57.16 acres). As part of this transaction, Concord desires that the remainder of its parcel be permitted to discharge storm water into a storm water detention facility ("Detention Facility") which is partially on the County parcel and partially on the portion of the Concord parcel being transferred to the County.

The County wishes to allow Concord to discharge storm water into the Detention Facility so long as such discharge does not interfere with the County's ability to drain its own land and does not subject the County to increased liability due to Concord's discharges. The County does not anticipate additional development on its parcel that would increase its need for storm water detention. However, increased rainfall in the future or unforeseen factors could increase the County's need for detention, and it intends that Concord's right to discharge storm water into the detention pond be subordinate to its own right to discharge storm water into the detention pond. The County further does not intend to guarantee any particular level of functionality or maintenance on the detention facility.

Concord anticipates that it may assign the rights under this Easement Agreement to a subsequent purchaser or purchasers of the Concord parcel and intends to obligate such subsequent purchasers to perform Concord's obligations under this Agreement.

AGREEMENT

1. **Grant of Easement.** For and in consideration of transfer of the Purchased Property from Concord to the County and for the mutual promises set forth herein, the County grants to Concord and its successors and assigns a perpetual, non-exclusive easement (the "Easement") in, to, through, and over the Purchased Property for the purpose of discharging storm water runoff originating on the Concord Parcel into the Detention Facility. The County further grants to Concord and its successors and assigns a perpetual, non exclusive easement in the Detention Facility for the purpose of storing storm water in the Detention Facility. Such easements shall be subordinate to the County's own right to detain water in the Detention Facility.

2. Condition of Detention Facility. Concord accepts the condition of the Detention Facility and related easements (to the extent of any license or use rights therein) in their "AS IS" condition. By entering into this Agreement, Concord waives and releases the County from any liability, obligation, damage, or claim of whatsoever nature relating to the condition of the Detention Facility or County Parcel, whether apparent or hidden. Concord waives any right to require the County to maintain the Detention Facility or County Parcel in a safe condition.

3. Conduct of Concord. At all times, all actions of Concord, its successors, or assigns in connection with the easements herein and all activities of Concord contemplated by this Agreement shall be taken in full and strict compliance with all governmental requirements. Concord, its successors and assigns shall at all times be responsible for the quantity and quality of all waters discharged onto the County Parcel and the Detention Facility from the Concord Parcel. Concord, its successors, and assigns shall be responsible for compliance with all applicable federal, state, and local requirements for discharges of storm water from the Concord Parcel into the Detention Facility, for storage of the storm water in the Detention Facility, and for any discharge of such storm water from the Detention Facility, including compliance with all applicable federal, state, and local water quality requirements.

4. Ingress and Egress. Concord shall have the right of access over and across the Purchased Property for itself and its agents to the extent reasonably necessary in order to exercise Concord's rights under this Agreement. In exercising such right of ingress and egress, Concord shall provide reasonable advance notice to the County of proposed activities. Concord shall limit times of access to reasonable business hours and areas of access as may be reasonably directed by the County from time to time.

5. Reserved Rights of the County. The County reserves the rights to use the Purchased Property and Detention Facility and to grant further easement interests in the Purchased Property or Drainage Easement to others so long as such interest and uses do not materially or unreasonably interfere with the use of the Easement Property by Concord in accordance with this Agreement. The County reserves the right to discharge storm water from its own property into the Detention Facility and Concord's rights herein are subordinate to that right.

6. Inurement. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, and assigns. The rights and obligations set forth in this Agreement are intended to run with the land.

7. Conditions of Use. The right of Concord, its successors, and assigns to continue to discharge storm water run-off into the Detention Facility is expressly conditioned on the run-off being of a quantity and sufficient quality not to cause or contribute to any material harm, or to otherwise materially damage the Detention Facility or adversely and materially impact the present or future uses of the Detention Facility. If at any time the County, or its successors or assigns, reasonably

determine that the quantity or quality of the storm water run-off has materially damaged or is materially damaging the Detention Facility, the County and its successors or assigns may demand, and Concord shall take, such measures as may be required to correct the condition causing such damage. If the discharge from the Concord Parcel into the Detention Facility has caused or contributed to any material damage of the Detention Facility, or the County Parcel, Concord, its successors, and its assigns shall take such action as may be necessary to bring the County Parcel and the Detention Facility substantially back to their original condition prior to the damage, or to compensate the County, its successors or assigns for such damages. The provisions of this paragraph 8 shall be specifically enforceable by the County without the necessity of demonstrating an adequate remedy at law exists and damage to the County's real property shall be presumed to be irreparable harm. In connection with any such action, the County shall not be required to post a surety bond.

8. Attorneys' Fees. In the event of any litigation, arbitration, or other proceeding brought to enforce or interpret this Agreement, the prevailing party shall receive an award of its reasonable attorneys' fees and costs.

9. Paragraph Headings. Paragraph headings are included for reference purposes only and do not constitute part of this Agreement.

10. Governing Law. This Agreement shall be governed and construed under the laws of the State of Indiana without regard to conflicts of law provisions and exclusive venue shall lie in the Courts of Tippecanoe County, Indiana.

11. Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

12. Waiver. Waiver by either party of any one default will not be deemed to be a waiver of any other default under this Agreement. Any remedy or election under this Agreement will not be deemed exclusive, but, instead, whenever legally permissible, will be cumulative with all other remedies at law or in equity.

Dated this _____ day of _____, 2019.

Concord Partners South, LLC

Tippecanoe County Board of Commissioners

By: 

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared David S. Byers, President of the Board of Commissioners of Tippecanoe County who acknowledged the execution of the foregoing instrument for or on behalf of said Board of Commissioners of Tippecanoe County, and who, having been duly sworn, stated that any representations therein contained are true this ____ day of _____, 2019.

Notary Public Resident of _____ County, IN

Printed Name My commission expires: _____

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared Joan R. GAMES of Concord Partners South, LLC who acknowledged the execution of the foregoing instrument for or on behalf of said Concord Partners South, LLC, and who, having been duly sworn, stated that any representations therein contained are true this 21st day of August, 2019.

Beth A Paddack Watts
Notary Public Resident of Tippecanoe County, IN
Beth A PADDACK WATTS Commission No. NPO658145
Printed Name My commission expires: 9-17-2022

This instrument prepared by Douglas J. Masson, Attorney at Law

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/Douglas J. Masson

