

**LEASE**  
**Battle Ground Water Tower**

This Lease (Battle Ground Water Tower) (the "Lease") is entered into as of June 21, 2018, by and between Battle Ground Water Tower LLC (the "Lessor"), and the Battle Ground Conservancy District (the "Lessee").

**1. Definitions.**

**Assignment Transaction** shall mean the purchase of the Payment Rights.

**AT Closing** shall mean the closing with respect to the Assignment Transaction.

**AT Closing Date** shall mean the date of the AT Closing.

**AT Documents** shall mean all instruments, agreements, and other documents evidencing, or required in connection with, the Assignment Transaction, including, without limitation, the Participation Agreement.

**Basis Point** shall mean 1/100th of 1%.

**Casualty Insurance** shall mean policies of fire and extended coverage insurance with the minimum coverage amount being an amount equal to the greater of: (a) the Lease Payment Balance; or (b) the full replacement cost of the Premises, as certified at the commencement of the Term, and on each anniversary thereof, by a registered architect, registered engineer or professional appraisal engineer selected by Lessor; provided that such a certification shall not be required so long as the coverage amount is at least equal to the Lease Payment Balance.

**Code** shall mean the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations in effect with respect thereto.

**Conveyance Closing** shall mean, if Lessee: (a) exercises a Purchase Option pursuant to Section 11; or (b) requests pursuant to Section 12 that Lessor execute the Quitclaim Deed; the closing with respect to the execution of the Quitclaim Deed.

**Conveyance Closing Date** shall mean the date of a Conveyance Closing.

**Cure Period** shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Lease to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

**Event of Default** shall have the meaning set forth in Section 13.

**Final Plans** shall mean the final plans and specifications for the construction of the Water Tower. The Final Plans are the "Final Plans" under the Project Agreement.

**Fixed Rate** shall mean: (a) the weekly average of the ten-year Treasury Bill rate, as published in the Wall Street Journal on the business day immediately preceding the applicable Fixed Rate Period; plus (b) 75 Basis Points; provided that if, at any time, there is a Taxable Event or the Assignment Transaction is determined no longer to be bank qualified, then the Fixed Rate shall be adjusted to reflect the taxable equivalent rate. The Fixed Rate shall be: (a) set for the first Ten Years on the AT Closing Date; and (b) re-set commencing on the first day of each of the Second Ten Years and the Remaining Years; providing that the re-set Fixed Rates shall not exceed the Maximum Rate.

**Fixed Rate Period** shall mean the First Ten Years, the Second Ten Years, and the Remaining Years.

**First Ten Years** shall mean the period: (a) commencing on the AT Closing Date; and (b) ending on the last day of the calendar month in which the tenth anniversary of the AT Closing Date occurs.

**Laws** shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental and/or administrative rules, regulations, guidelines, orders, and/or decrees; including, without limitation, Indiana Code §36-1-10, as amended.

**Lease Payments** shall mean semi-annual payments for the lease of the Water Tower Premises, which payments shall be: (a) in the amounts specified on a schedule to the executed Rent Addendum, as such schedule may be amended or replaced in accordance with Section 3; and (b) comprised of the LP Interest Amounts and the LP Principal Amounts. The Lease Payments consist of: (a) one payment comprised only of interest; followed by (b) 50 payments comprised of LP Interest Amounts and LP Principal Amounts as necessary to fully amortize the aggregated LP Principal Amounts over the Term at the Fixed Rate.

**Lease Payment Balance** shall mean, as of any given date, the Outstanding LP Principal Amount, together with all interest that has accrued thereon and remains unpaid.

**Lessee Transfer** shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Premises or any interest in the Premises; or (b) any granting of a mortgage or security interest in the Premises, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents, or required by this Lease, shall not constitute a Lessee Transfer.

**Lessor Transfer** shall mean, prior to delivering possession of the Water Tower Premises to Lessee: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Water Tower or the materials to construct the Water Tower, or any interest in the foregoing; or (b) any granting of a security interest in the Water Tower or the materials to construct the Water Tower, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents, or required by this Lease, shall not constitute a Lessor Transfer.

**Liability Insurance** shall mean a policy of bodily injury (including accidental death) and property damage insurance with the minimum coverage amount being not less than that customarily maintained by Lessee with respect to real property that it owns or leases, which policy may be a blanket insurance policy.

**LP Interest Amount** shall mean, with respect to any given Lease Payment, the amount thereof specified on a schedule to the executed Rent Addendum as the "Amount Attributable to Interest".

**LP Principal Amount** shall mean, with respect to any given Lease Payment, the amount thereof specified on a schedule to the executed Rent Addendum as the "Amount Attributable to Principal".

**Maximum Rate** shall mean a maximum interest rate of 10% per annum.

**Outstanding LP Principal Amount** shall mean, as of any given date, the aggregate outstanding LP Principal Amount.

**Participation Agreement** shall mean that certain Participation and Purchase Agreement (Battle Ground Water Tower) executed by and among Lessor, Lessee, and the Payment Rights Purchaser in connection with the AT Closing.

**Payment Due Date** shall mean each February 15 and August 15 during the Term, commencing on February 15, 2019.

**Payment Rights** shall mean the rights with respect to the receipt of the Lease Payments.

**Payment Rights Purchaser** shall mean Salin Bank and Trust Company and its successors and assigns.

**Premises** shall have the meaning ascribed to such term in Subsection 2(a).

**Project Agreement** shall mean that certain Project Agreement (Battle Ground Water Tower) executed by and between Lessor (as "Developer") and Lessee (as "District") in connection with the AT Closing.

**Project Costs** shall have the meaning ascribed to the term "Project Costs" in the Project Agreement.

**Project Site** shall mean that certain real estate located in the Town of Battle Ground, Indiana, that more particularly is described on Exhibit A.

**PS Purchase Option** shall mean the option to purchase the Project Site granted to Lessee pursuant to Section 11.

**Purchase Option** shall mean the PS Purchase Option and/or the WT Purchase Option, as applicable.

**Quitclaim Deed** shall mean a quitclaim deed substantially in the form attached hereto as Exhibit D-1 or Exhibit D-2, as applicable.

**Recorder's Office** shall mean the Office of the Tippecanoe County Recorder.

**Remaining Years** shall mean the period: (a) commencing on the date immediately following the expiration of the Second Ten Years; and (b) ending upon the expiration of the Term.

**Rent Addendum** shall mean an addendum in the form attached hereto as Exhibit B, which addendum shall be executed at the AT Closing; provided that: (a) it shall be a condition of the parties' obligation to proceed to the AT Closing and execute the Rent Addendum that Lessor has acquired fee simple title to the Project Site; and (b) the parties shall not proceed to the AT Closing and execute the Rent Addendum, and, accordingly, the Term shall not commence, unless and until Lessor has acquired fee simple title to the Project Site.

**Rent Schedule** shall mean the schedule of Lease Payments that will be attached as a schedule to the Rent Addendum.

**Rental Value Insurance** shall mean rent or rental value insurance in an amount equal to the full rental value of the Premises for a period of two years, which insurance provides coverage against physical loss or damage of the types covered by the Casualty Insurance.

**Second Ten Years** shall mean the period: (a) commencing upon the date immediately following the expiration of the First Ten Years; and (b) ending on the date that is ten years thereafter.

**Substantial Completion Date** shall mean the date on which, pursuant to the Project Agreement, Lessor (as "Developer") delivers to Lessee (as "District") a copy of an architect's certificate of substantial completion. The Substantial Completion Date is the "Substantial Completion Date" under the Project Agreement.

**Taxable Event** shall mean any action or event that results in the loss of the exclusion of the IP Interest Amount from gross income for federal and/or state income tax purposes under the Code or any Laws regarding Indiana income taxation.

**Tax Revenues** shall mean ad valorem property real estate taxes levied and collected by Lessee on all taxable property within the geographical boundaries of Lessee.

**Term** shall mean the period: (a) commencing on the date on which Lessor and Lessee execute the Rent Addendum; and (b) ending on the first to occur of: (i) the Payment Due Date occurring on February 15, 2044, which represents 25½ years of Lease Payments; provided that, for purposes of clarity, the final Lease Payment shall be due and payable on such Payment Due Date; or (ii) the date on which the Lease Payment Balance is paid in full.

**Triple Net Payments** shall mean the payments and/or reimbursements to be made by Lessee pursuant to Subsection 4(a). For purposes of clarity, the Triple Net Payments shall constitute additional rental payments under Ind. Code. §36-1-10.

**Water Tower** shall mean the 100,000 gallon public water tower to be constructed on the Project Site pursuant to the Project Agreement.

**Water Tower Premises** shall mean the Water Tower, together with all appurtenances thereto.

**WT Purchase Option** shall mean the option to purchase the Water Tower Premises granted to Lessee pursuant to Section 11.

## **2. Premises/General.**

(a) Lease. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, each of the Project Site and the Water Tower Premises (collectively, the Premises”) for a period equal to the Term.

(b) Completion. Lessee has approved the Final Plans pursuant to the Project Agreement. Proposed changes to the Final Plans shall be addressed through the process set forth in Section 7 of the Project Agreement. Upon the Substantial Completion Date, Lessor and Lessee shall execute and record an addendum to this Lease in the form attached hereto as Exhibit C.

## **3. Lease Payments.**

(a) Interest. During the Term, interest shall accrue: (a) on the Outstanding LP Principal Amount at the Fixed Rate; and (b) on the basis of a 360-day year based on the number of actual days elapsed. The Fixed Rate shall: (i) be set for the First Ten Years on the AT Closing Date; and (ii) re-set twice during the Term, with each re-set Fixed Rate: (A) being determined on the date that is 15 days prior to the expiration of the applicable Fixed Rate Period; provided that the re-set Fixed Rate shall not exceed the Maximum Rate; and (B) becoming effective on the first day of the immediately succeeding Fixed Rate Period.

(b) Projections. Though the Fixed Rate will be set for the First Ten Years, the full amount to which the Fixed Rate will be applied for the Fixed Rate Periods will not be known until such time as construction of the Water Tower has been completed and no further disbursements of AT Proceeds will be needed. Accordingly, the LP Interest Amounts that will be set forth on the Rent Schedule are projections based: (i) for the First Ten Years, on: (A) the anticipated date of each disbursement of AT Proceeds during construction of the Water Tower; and (B) the amount of AT Proceeds to be disbursed on each applicable date; and (ii) for all three Fixed Rate Periods, disbursement of the entirety of the AT Proceeds to pay Project Costs; and, as a result, may not be accurate. Accordingly:

(i) if, prior to the first Payment Due Date, there is a change in the date of a disbursement, and/or the amount of AT Proceeds drawn, from that assumed by the projections such that the actual LP Interest Amount will be different from the amount set forth in the Rent Addendum, then, at

least five business days prior to such Payment Due Date, Lessor shall deliver a written notice to Lessee that: (A) sets forth the actual LP Interest Amount, which shall be the amount of the Lease Payment due on the first Payment Due Date; and (B) includes an addendum to, or replacement of, the Rent Schedule that updates the LP Interest Amount;

(ii) at least five business days prior to the second Payment Due Date, at which time the first amortizing payment will be due; Lessor shall deliver a written notice to Lessee that: (A) sets forth: (1) the actual LP Principal Amount to be amortized over the remainder of the Term at the Fixed Rate; and (2) the amount of the Lease Payment due on such Payment Due Date; and (B) includes an addendum to, or replacement of, the Rent Schedule that reflects the amortization of the actual LP Principal Amount over the remainder of the Term at the Fixed Rate; and

(iii) within 15 days after the first day of each of the Second Ten Years and the Remaining Years, Lessor shall deliver a written notice to Lessee that: (A) identifies the then-current weekly average of the ten-year Treasury Bill rate; (B) sets forth the re-set Fixed Rate; and (C) includes an addendum to, or replacement of, the Rent Schedule reflecting updated LP Interest Amounts (and Lease Payment amounts) based upon the re-set Fixed Rate for the applicable Fixed Rate Period.

(c) **Payments.** Lessee shall pay a Lease Payment on each Payment Due Date during the Term. The Participation Agreement shall provide that: (A) the Payment Rights Purchaser shall disburse the first Lease Payment to itself from the AT Proceeds in satisfaction of the obligation of Lessee to pay such Lease Payment; and (B) thereafter, Lessee shall pay each Lease Payment directly to the Payment Rights Purchaser in accordance with the terms and conditions of the Participation Agreement. If Lessee fails to make any Lease Payment on the applicable Payment Due Date (excluding the Lease Payment due on the first Payment Due, which shall be made by the Payment Rights Purchaser from AT Proceeds), then Lessee shall: (A) remain obligated to pay the full amount of such Lease Payment; and (B) pay interest on the unpaid amount of the Lease Payment at the Fixed Rate. The amount of each Lease Payment shall be as set forth in the Rent Addendum, as amended or replaced in accordance with this Section.

(d) **Absolute Obligation.** Subject to Section 6, the obligation of Lessee to pay the Lease Payments is absolute and unconditional, and until the Lease Payment Balance has been paid in full: (i) Lessee shall not discontinue or suspend payment of any Lease Payments; and (ii) no Lease Payment shall be: (A) subject to reduction, whether by offset or otherwise; or (B) conditional upon the performance or nonperformance by any party of any agreement or any other cause.

(e) **Principal/Interest.** The obligation of Lessee hereunder to pay the Lease Payments shall constitute an "obligation" under Section 1.150-1(b) of the Regulations: (i) the principal of which is the LP Principal Amount; and (ii) the interest on which is the LP Interest Amount; although, for purposes of the laws of the State of Indiana, the LP Principal Amount and the LP Interest Amount simply are two amounts that serve as the basis for calculating the amount of each Lease Payment. The obligations of Lessee under this Lease are those of a conservancy district under a lease of real and personal property. Accordingly, this Lease is neither a bond nor a loan to, nor a borrowing of, Lessee.

#### **4. Additional Payments.**

(a) **Payments.** During the Term, Lessee shall: (i) pay all real estate taxes and

assessments levied on, against, or with respect to the Premises; (ii) pay all taxes and assessments levied as a result of the receipt of Lease Payments; (iii) pay all usage and other charges for all utility services furnished to the Premises; (iv) reimburse Lessor for any payments made with respect to the maintenance of insurance pursuant to Section 7; (v) reimburse Lessor for any costs or expenses incurred to satisfy an obligation of Lessee hereunder with respect to which Lessee is in default; (vi) reimburse Lessor for administrative costs and expenses incurred by Lessor in connection with the Assignment Transaction; and (vii) pay the amount calculated as the amount required to be paid to the United States Treasury, after taking into account other available moneys, to prevent the Payment Rights from becoming arbitrage bonds under Section 148 of the Code. Each of the foregoing shall be paid prior to delinquency, with proof of payment prior to delinquency provided to Lessor; provided that, in the case of reimbursements to Lessor, such reimbursement shall be made within 30 days after receipt by Lessee of written invoice.

(b) Contest. Lessee shall have the right, at its cost and expense and in the manner prescribed by law, to contest the valuation of the Premises and/or the calculation of any real estate taxes or assessments; provided that prior to such contest Lessee shall deliver written notice to Lessor, together with a surety bond reasonably satisfactory to Lessor. Pending resolution of such a contest, Lessee shall pay when required by the applicable taxing authority the installments and payments of the taxes and assessments being contested, except to the extent that the foregoing may be deferred during the pendency of the contest.

**5. Payment Source.** The Lease Payments and the Triple Net Payments shall be payable from the Tax Revenues, which are hereby pledged to the Payment Rights Purchaser pursuant to Ind. Code §5-1-14-4. Lessee may elect to pay the Lease Payments and/or the Triple Net Payments from any other revenues legally available to Lessee; provided that Lessee is not under any obligation to pay any Lease Payments and/or Triple Net Payments out of any revenues other than the Tax Revenues.

**6. Casualty/Abatement.**

(a) Restoration. If there is damage to, or total or partial destruction of, the Water Tower Premises by fire or other casualty during the Term such that the Water Tower Premises is rendered unfit, in whole or in part, for use by Lessee, then Lessor shall restore and/or replace the Water Tower Premises as promptly as is reasonable, subject to force majeure; provided that, in connection with such restoration and/or replacement, Lessor shall not be obligated to incur any costs in excess of the proceeds received by Lessor from the insurance actually maintained with respect to the Premises.

(b) Substitute Property. Notwithstanding the terms and conditions of Subsection 6(a), Lessor shall not be obligated to restore and/or replace the Water Tower Premises if Lessee provides to Lessor written notice stating that Lessee anticipates either: (i) that the cost to restore and/or replace the Water Tower Premises will exceed the proceeds that will be received from the insurance actually maintained with respect to the Premises; or (ii) that the restoration and/or replacement cannot be completed during the period covered by the policy of Rental Value Insurance required to be maintained by Lessee; provided that: (i) contemporaneously with such notice, Lessee shall transfer to Lessor property and/or improvements that, in the aggregate, have a value substantially equal to the value of the Water Tower Premises; and (ii) such property and/or improvements shall be deemed to constitute a portion of the Water Tower Premises for all purposes of this Lease; with the result being, for purposes of this Section, that the entirety of the Water Tower Premises shall be deemed to be fit for use by Lessee such that there is no abatement of the Lease Payments.

(c) Abatement. Lease Payments shall be abated for the period during which the

Water Tower Premises or any part thereof is unfit for use by Lessee, which abatement shall be proportionate to the area of the Water Tower Premises that is unfit for use; provided that, as provided pursuant to Subsection 6(b), if property and/or improvements of an aggregate value substantially equal to the "original" Water Tower Premises are substituted in accordance with this Section, then there shall be no abatement of the Lease Payments.

**7. Insurance.** During the Term, Lessee, at its cost and expense shall maintain in full force and effect with respect to the Premises each of the Casualty Insurance, the Liability Insurance, and the Rental Value Insurance. Each policy of insurance required to be maintained pursuant to this Section shall be: (a) maintained with a reputable insurance company reasonably approved by Lessor; (b) for the benefit of all persons or entities having an insurable interest in the Premises, including that the Payment Rights Purchaser shall be named as an additional insured; (c) made payable to Lessor (or its designee); (d) be countersigned by an agent of the insurer who is a resident of the State of Indiana; and (e) deposited, together with a certificate of insurance, with Lessor. If, at any time, Lessee fails to maintain any policy of insurance required to be maintained by this Section, then: (a) Lessor, for and on behalf of Lessee, may obtain such insurance; provided that Lessor shall not be obligated to obtain such insurance, and an election by Lessor not to obtain such insurance shall not relieve Lessee of any consequence of its failure to maintain such insurance; and (b) if Lessor obtains such insurance, then the costs and expenses incurred by Lessor shall be reimbursed by Lessee as provided in Section 4.

**8. Lessee Covenants.**

(a) Lease Compliance. Lessee: (i) shall pay the Lease Payments punctually and in strict conformity with the terms of this Lease; (ii) faithfully shall observe and perform all of its obligations under this Lease; and (iii) shall not terminate this Lease for any cause whatsoever.

(b) Other Compliance. Lessee shall: (i) not take, or omit to take, any action under any contract, if the effect of such act or failure to act would in any manner impair or adversely affect the ability of Lessee to pay Lease Payments; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Water Tower to which Lessee is a party.

(c) No Liens. At all times Lessee shall: (i) keep the Project Site and, after receiving possession thereof, the Water Tower Premises, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing existing on the AT Closing date; (B) the lien of current real estate taxes not delinquent; and (C) any of the foregoing existing due to compliance with the Project Agreement, this Lease, and/or the AT Documents; and (ii) defend the Premises against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Premises, or the materials to construct the Water Tower, for work claimed to have been done for, or materials claimed to have been furnished to, Lessee, then Lessee shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(d) Taxes. Lessee: (i) shall pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon the all or any part of the Premises; and (ii) upon request by Lessor or the Payment Rights Purchaser, shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to all or any part of the Premises.

(e) Protection. Lessee shall: (i) preserve and protect the security hereof, and the rights of Lessor and the Payment Rights Purchaser to the Lease Payments; and (ii) warrant and defend such rights against all claims and demands of all persons.

(f) Use. Lessee, at its cost, shall: (i) provide the maintenance and repairs necessary to keep the Premises in a good, safe, clean, and slightly order and condition that complies with all Laws; and (ii) use the Premises in compliance with the Laws. Lessee may, without the consent of Lessor, make any alterations, modifications, and/or additions to or of the Premises, so long as such alterations, modifications, and/or additions do not reduce the rental value of the Water Tower Premises. Equipment or other personal property used in connection with the Premises that becomes worn out or obsolete may be discarded or sold by Lessee. Lessee is not obligated to replace such equipment or personal property; provided that any such equipment or personal property replaced by Lessee at its expense shall: (i) be and remain the property of Lessee; and (ii) be subject to the terms and conditions of this Lease.

(g) Assurances. Lessee shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Lease; (ii) to facilitate the performance of this Lease; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Lessor and the Payment Rights Purchaser.

(h) No Transfer. Except as permitted by the AT Documents: (i) there shall be no Lessee Transfer by Lessee; and (ii) Lessee shall not cause or permit any Lessee Transfer. The execution by Lessor of the AT Documents shall not be deemed to be a consent by Lessor to any Lessee Transfer.

(i) No Mortgage. Lessee shall not: (i) record or file any mortgage or financing statement covering all or any portion of the Premises, or the materials to construct the Water Tower, in any public office, except financing statements and other evidence of liens in favor of the Payment Rights Purchaser; or (ii) cause or permit any such mortgage or financing statement to be recorded or filed.

## **9. Lessor Covenants.**

(a) Filings. Lessor shall keep in full force and effect, without any violations by Lessor, any and all filings or registrations with any applicable: (i) governmental agency, board, commission, or department; or (ii) other judicial, administrative, or regulatory body; necessary in connection with: (i) the performance by Lessor of its obligations under the AT Documents; (ii) the acquisition of the materials to construct, and/or the construction of, the Water Tower in accordance with the Project Agreement; or (iii) the leasing of the Premises to Lessee in accordance with this Lease.

(b) No Liens. At all times prior to delivering possession of the Water Tower Premises to Lessee, Lessor shall: (i) keep the Water Tower, and the materials to construct the Water Tower, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing existing on the AT Closing Date; (B) the lien of current real estate taxes not delinquent; and (C) any of the foregoing existing due to compliance with this Lease and/or the AT Documents; and (ii) defend the Water Tower, and the materials to construct the Water Tower, against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Premises, or the materials to construct the Water Tower, for work claimed to have been done for, or materials claimed to have been furnished to, Lessor, then Lessor shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(c) Laws. Lessor shall comply with all Laws in the performance of its obligations under this Lease and the AT Documents.



(d) No Transfer. Except as permitted pursuant to the AT Documents: (i) there shall be no Lessor Transfer by Lessor; and (ii) Lessor shall not cause or permit any Lessor Transfer. The execution by Lessee of the AT Documents shall not be deemed to be a consent by Lessee to any Lessor Transfer.

(e) Lessor Interests. Lessor: (i) shall not: (A) change its name; (B) merge into, or consolidate with, any other entity, or otherwise reorganize; (C) sell, convey, or transfer to any person any interest in Lessor; and/or (D) otherwise permit any change in the members of Lessor or the percentage of ownership in Lessor; if the effect of the foregoing is that Lessor no longer is controlled by, or under common control with, Gregory W. Martz; (ii) shall notify Lessee promptly of any change of the nature specified in the foregoing clause (ii); and (iii) shall not grant any security interest in any interest in Lessor.

(f) No Amendments. Lessor shall not: (i) amend, modify, or restate its articles of organization or operating agreement; (ii) cause or permit any such amendment, modification, or restatement; or (iii) be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(g) Business. Lessor shall not make or permit to be made any material change in the character of its business as currently conducted.

**10. Tax Covenants.** Notwithstanding anything to the contrary set forth herein, neither Lessor nor Lessee shall: (a) take any action; or (b) fail to take any action; that would result in a Taxable Event. Any agreement entered into by Lessor or Lessee that would result in a Taxable Event shall: (a) be of no force or effect; and (b) not convey any rights, or impose any obligation, at law or in equity. If Lessor incurs out-of-pocket costs and expenses to comply with the terms and conditions of this Section, then Lessee shall reimburse Lessor for such costs and expenses.

**11. Purchase Options.**

(a) Grants. Lessor hereby grants to Lessee the option to purchase:

- (i) the Water Tower Premises at a price equal to the Lease Payment Balance, determined on the Conveyance Closing Date; and
- (ii) the Project Site for the nominal price of \$10.00.

(b) Exercise. To exercise either Purchase Option, Lessee shall deliver to Lessor and the Payment Rights Purchaser written notice any time prior to the expiration of the Term. If Lessee exercises either Purchase Option, then Lessee shall: (i) obtain, at its expense, all surveys, title searches, abstracts, title policies and legal services that it determines to be necessary or appropriate; and (ii) pay all costs and expenses in connection with the conveyance of the Water Tower Premises or the Project Site, as applicable, to Lessee.

(b) Lease Payment Balance. If Lessee exercises the WT Purchase Option, then:

- (i) upon request of Lessee, Lessor shall furnish to Lessee an itemized statement setting forth the Lease Payment Balance as of the anticipated Conveyance Closing Date; and
- (ii) at the Conveyance Closing: (i) Lessee shall pay the Lease Payment Balance; and (ii) out of the payment of the Lease Payment Balance, the Payment Rights Purchaser shall be paid all amounts due

and owing to it pursuant to the Participation Agreement; provided that, if the Payment Rights Purchaser is not owed the full amount of the Lease Payment Balance, then any remaining funds shall be paid to Lessor.

(c) **Quitclaim Deed.** If Lessee exercises either Purchase Option then, at the Conveyance Closing, Lessor shall execute and deliver: (i) the applicable Quitclaim Deed, which shall be recorded in the Recorder's Office; and (ii) a bill of sale in form and substance reasonably acceptable to Lessor and Lessee.

(d) **No Obligation.** This Section shall not be construed to: (i) require Lessee to purchase the Project Site or the Water Tower Premises; or (ii) create any obligation of Lessee with respect to any creditors or other security holders of Lessor.

## **12. Transfer.**

(a) **Put Right.** At any time following the occurrence of the first Payment Due Date, Lessor may require Lessee to accept fee title to the Project Site. To exercise such right, Lessor shall deliver to Lessee a notice to such effect, which notice shall provide that, within 15 days thereafter, Lessor will execute and deliver a Quitclaim Deed, which Quitclaim Deed shall be recorded in the Recorder's Office.

(b) **Term Expiration.** If, upon the expiration of the Term: (i) Lessee has not exercised either or both of the Purchase Options; and/or (ii) Lessor has not "put" the Project Site to Lessee in accordance with Subsection 12(a); and so long as there is no continuing Event of Default, then each of the Project Site and the Water Tower Premises shall become the absolute property of Lessee; provided that: (i) with respect to the Project Site a Quitclaim Deed shall be recorded in the Recorder's Office; (ii) upon request by Lessee, Lessor shall execute a Quitclaim Deed with respect to the Water Tower Premises; and (iii) Lessee shall pay all costs and expenses incurred by Lessor in connection with reviewing, executing, and recording any such Quitclaim Deed.

## **13. Events of Default.** Each of the following shall be an "Event of Default" by Lessor or Lessee, as applicable:

(a) the failure by the applicable party to pay any amount due hereunder on the date due, and the continuance of such failure for a period of ten days after such payment is due; provided that, notwithstanding the foregoing, the ten-day cure period shall not apply with respect to any failure by Lessee to pay a Lease Payment when due;

(b) the failure by the applicable party to observe or perform any term or condition of this Lease to be observed or performed by it (other than the payment of any amount due hereunder), and the continuance of such failure beyond the Cure Period;

(c) an "Event of Default" by the applicable party under the Participation Agreement;

(d) the filing of a petition or answer seeking arrangement or reorganization of the applicable party under the Laws;

(e) the approval by a court of competent jurisdiction of a petition, filed with or without the consent of the applicable party, seeking arrangement or reorganization under the Laws; or

(f) the assumption by a court of competent jurisdiction of custody or control of the applicable party, or all or a substantial portion of the property of such party, pursuant to the provisions of any Law for the relief or aid of debtors.

#### **14. Remedies.**

(a) Remedies. If there is an Event of Default, then the non-defaulting party, without further notice or demand, shall have the following rights and remedies:

(i) if the defaulting party has failed to perform any of its obligations under this Lease, the right to: (A) enjoin the failure or specifically enforce the performance of such obligation; or (B) perform the obligation that the defaulting party has failed to perform; provided that the performance by the non-defaulting party of such obligation shall not be construed to be a waiver of the Event of Default; and

(ii) if Lessee is the defaulting party, then Lessor may declare the Purchase Option to have been exercised; provided that: (A) the Conveyance Closing Date shall occur on a date designated by Lessor; and (B) if Lessee fails to pay the Lease Payment Balance on the date designated by Lessor as the Conveyance Closing Date, then such failure shall constitute an Event of Default, with the result being that Lessor shall have the right to exercise any rights and remedies available to it at law or in equity.

(b) No Waiver. Neither: (i) a waiver by either party of an Event of Default; nor (ii) a delay in the exercise by either party of any right or remedy with respect to an Event of Default; shall be deemed either to: (i) constitute a waiver of any subsequent Event of Default; (ii) release or relieve the other party from performing any of its obligations under this Lease; or (iii) constitute an amendment or modification of this Lease. If Lease Payments are accepted during the continuance of an Event of Default, then such acceptance shall not be construed as a waiver of: (i) such Event of Default; or (ii) any right or remedy of Lessor or the Payment Rights Purchaser with respect to such Event of Default. The rights and remedies hereunder are cumulative, and, except as specifically limited in this Lease, no: (i) right or remedy shall be deemed to be, or construed as, exclusive of any other right or remedy hereunder, at law, or in equity; or (ii) failure to exercise any right or remedy shall operate to prevent the subsequent exercise of such right or remedy.

(c) Damages. The non-defaulting party may recover from the defaulting party all damages that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 12% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by Lessee of the Premises.

**15. Assignment.** Lessee shall not assign this Lease or sublet the Premises without the written consent of Lessor and the Payment Rights Purchaser. Lessor shall not assign this Lease without the written consent of Lessee, except in connection with the acquisition of the Payment Rights by the Payment Rights Purchaser.

**16. Notice.** Any notice required or permitted to be given by either party to this Lease shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Lessor at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204; and to Lessee at 100 College Street, PO Box 303, Battle Ground, Indiana 47920, Attn: Chairman. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

**17. Authority.** Each undersigned person executing this Lease on behalf of Lessor and Lessee represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Lessor and Lessee, respectively, to execute and deliver this Lease; (b) he or she has full capacity, power, and authority to enter into and carry out this Lease; and (c) the execution, delivery, and performance of this Lease have been authorized by Lessor and Lessee, respectively.

**18. Miscellaneous.** Subject to Section 13, this Lease shall inure to the benefit of, and be binding upon, each of Lessor, Lessee, and their respective successors and assigns. This Lease constitutes the entire agreement between Lessor and Lessee with respect to the lease of the Premises, and may be modified only by a written agreement signed by both Lessor and Lessee. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Lease shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Lease shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Lease are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

BATTLE GROUND WATER TOWER  
LLC

By: GM Development Companies LLC

By: \_\_\_\_\_  
Gregory W. Martz, Member

ACKNOWLEDGMENT

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, Member of GM Development Companies LLC, Member of Battle Ground Water Tower LLC, who acknowledged the execution of the foregoing Lease (Battle Ground Water Tower) on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

BATTLE GROUND CONSERVANCY DISTRICT

By: \_\_\_\_\_  
Rondell Holladay, Chairman

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Rondell Holladay, the Chairman of Battle Ground Conservancy District, who acknowledged the execution of the foregoing Lease (Battle Ground Water Tower) on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

Return following recording to Lessor at 8561 N. 175 E., Springport, Indiana 47386.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup

**EXHIBIT A**  
**Project Site**

**EXHIBIT B**  
**Rent Addendum**

This Rent Addendum (the "Addendum"), entered into this \_\_\_ day of \_\_\_\_\_, 2018, by and between Battle Ground Water Tower LLC (the "Lessor"), and Battle Ground Conservancy District (the "Lessee"), Witnesses:

Recitals

WHEREAS, Lessor and Lessee have executed that certain Lease (Battle Ground Water Tower) dated \_\_\_\_\_, 2018 (the "Lease");

WHEREAS, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease; and

WHEREAS, the Lease provides for the execution of this Addendum in connection with the AT Closing;

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree as follows:

- 1. Term.** The Term: (a) commences on the date set forth in the introductory paragraph of this Addendum; and (b) expires on the first to occur of: (i) the Payment Due Date occurring on February 15, 2044, which represents 25½ years of Lease Payments; provided that, for purposes of clarity, the final Lease Payment shall be due and payable on such Payment Due Date; or (ii) the date on which the Lease Payment Balance is paid in full.
- 2. Payment Due Date.** The first Lease Payment shall be due on the Payment Due Date occurring on February 15, 2019; provided that the Payment Rights Purchaser shall disburse to itself from the AT Proceeds the amount of such Lease Payment. The first Lease Payment for which Lessee shall be responsible shall be due on the Payment Due Date occurring on August 15, 2019.
- 3. Lease Payments.** The amount of each Lease Payment, separated into the "Amount Attributable to Principal" and the "Amount Attributable to Interest", is set forth on Schedule 1, attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth above.

BATTLE GROUND WATER TOWER  
LLC

By: GM Development Companies LLC

By: \_\_\_\_\_  
Gregory W. Martz, Member

ACKNOWLEDGMENT

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, Member of GM Development Companies LLC, Member of Battle Ground Water Tower LLC, who acknowledged the execution of the foregoing Rent Addendum on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.



BATTLE GROUND CONSERVANCY DISTRICT

By: \_\_\_\_\_  
Rondell Holladay, Chairman

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Rondell Holladay, the Chairman of Battle Ground Conservancy District, who acknowledged the execution of the foregoing Rent Addendum on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

Return following recording to Lessor at 8561 N. 175 E., Springport, Indiana 47386.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup

**EXHIBIT C**  
**Completion Addendum**

This Completion Addendum (the "Addendum"), entered into this \_\_\_ day of \_\_\_\_\_, by and between Battle Ground Water Tower LLC (the "Lessor"), and Battle Ground Conservancy District (the "Lessee"), Witnesses:

Recitals

WHEREAS, Lessor and Lessee have executed that certain Lease (Battle Ground Water Tower) dated \_\_\_\_\_, 2018, as added to by that certain Rent Addendum dated \_\_\_\_\_, 2018 (collectively, the "Lease");

WHEREAS, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease; and

WHEREAS, the Lease provides for the execution of this Addendum upon the occurrence of the Substantial Completion Date;

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree that the Substantial Completion Date occurred on \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth above.

BATTLE GROUND WATER TOWER  
LLC

By: GM Development Companies LLC

By: \_\_\_\_\_  
Gregory W. Martz, Member

ACKNOWLEDGMENT

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, Member of GM Development Companies LLC, Member of Battle Ground Water Tower LLC, who acknowledged the execution of the foregoing Completion Addendum on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

BATTLE GROUND CONSERVANCY  
DISTRICT

By: \_\_\_\_\_  
Rondell Holladay, Chairman

ACKNOWLEDGMENT

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Rondell Holladay, the Chairman of the Battle Ground Conservancy District, who acknowledged the execution of the foregoing Completion Addendum on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

Return following recording to Lessor at 8561 N. 175 E., Springport, Indiana 47386.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup

**EXHIBIT D-1  
Quitclaim Deed  
Water Tower Premises**

**[If the entirety of the Premises is being conveyed at one time, then this Exhibit and Exhibit D-2 may be combined into a single Quitclaim Deed]**

Battle Ground Water Tower LLC (the "Grantor") QUITCLAIMS to Battle Ground Conservancy District (the "Grantee"), for the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, all of its right, title, and interest in and to all improvements located on that certain real estate in Tippecanoe County, Indiana, that more particularly is described in Exhibit A, attached hereto and incorporated herein by reference, including, without limitation, the water tower.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this \_\_\_ day of \_\_\_\_\_.

BATTLE GROUND WATER TOWER  
LLC

By: GM Development Companies LLC

By: \_\_\_\_\_  
Gregory W. Martz, Member

ACKNOWLEDGMENT

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, Member of GM Development Companies LLC, Member of Battle Ground Water Tower LLC, who acknowledged the execution of the foregoing Quitclaim Deed on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

Return following recording to 100 College Street, PO Box 303, Battle Ground, Indiana 47920.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup.

**EXHIBIT D-2  
Quitclaim Deed  
Project Site**

**[If the entirety of the Premises is being conveyed at one time, then this Exhibit and Exhibit D-1 may be combined into a single Quitclaim Deed]**

Battle Ground Water Tower LLC (the "Grantor") QUITCLAIMS to Battle Ground Conservancy District (the "Grantee"), for the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, all of its right, title, and interest in and to that certain real estate located in Tippecanoe County, Indiana, that more particularly is described in Exhibit A, attached hereto and incorporated herein by reference (the "Real Estate"); provided that the foregoing quitclaim conveyance shall apply only with respect to the Real Estate, and not with respect to any improvements located thereon.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this \_\_\_ day of \_\_\_\_\_.

BATTLE GROUND WATER TOWER  
LLC

By: GM Development Companies LLC

By: \_\_\_\_\_  
Gregory W. Martz, Member

ACKNOWLEDGMENT

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, Member of GM Development Companies LLC, Member of Battle Ground Water Tower LLC, who acknowledged the execution of the foregoing Quitclaim Deed on behalf of such entity.

WITNESS my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

I am a resident of \_\_\_\_\_ County, Indiana.

My commission expires \_\_\_\_\_.

Return following recording to 100 College Street, PO Box 303, Battle Ground, Indiana 47920.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup.