

# Conditional Sales Agreement

WITNESSETH THIS AGREEMENT dated **July 31, 2012**, by and between **THE STATE OF INDIANA** acting through the Indiana Department of Administration, ("Seller") and \_\_\_\_\_, ("Buyer").

In consideration of this Agreement, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the following property (collectively, "Property"):

- 1.1 Property. The property commonly known as **16018 North County Road 390 East, Lincoln City, IN, Spencer County, Indiana** described on the attached **Exhibit A** ("Land") together with all buildings, improvements and fixtures constructed or located on the Land ("Buildings") and all easements of record and rights benefiting or appurtenant to the Land (collectively the "Property"), subject to all existing legal rights-of-way, easements, conditions and restrictions of record.
- 1.2 Personal Property. No personal property is being sold or conveyed as a part of this Purchase Agreement.

2. Purchase Price, Buyer's Premium, and Manner of Payment. The total purchase price ("Purchase Price") to be paid for the Property shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Purchase Price shall be payable as follows:

- 2.1 In conjunction with execution of this Agreement (the "Execution Date"), Buyer shall submit \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to Seller as earnest money ("Earnest Money"). In the event this Agreement is not accepted by Seller, the Earnest Money shall be promptly returned to Buyer. Upon acceptance of this Offer by Seller, such Earnest Money shall secure the Buyer's performance of this Agreement and in the event of a default by Buyer in the performance of its obligations herein specified, Seller shall have the right to terminate this Agreement and the Earnest Money shall be paid to Seller as liquidated damages as Seller's sole remedy at law or in equity; and
- 2.2 The balance of the Purchase Price, subject to adjustments as set forth herein, shall be payable in certified funds or by electronic transfer of funds on the "Closing Date" (as hereinafter defined).
- 2.3 In addition to the Purchase Price, Buyer shall, at Closing as hereinafter defined, pay Seller's representative a 10% Buyer's premium pursuant to the terms of a separate addendum to this Agreement.

3. Contingencies and Inspection Period. The obligation of the Seller is contingent upon approval of the transaction contemplated by this Agreement as required by **IC 4-13-2-14.1, IC 4-13-2-14.2 and IC 4-20.5-7**.

4. Closing. In the event that Seller has accepted this Agreement and the parties proceed to closing, the closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur within thirty (30) days following State approval as set forth above (the "Closing Date"), **such final closing is subject to and conditional upon approval by the Office of the Governor and the Indiana Attorney General**, unless extended by mutual agreement of the parties. The Closing shall take place at a time, place, and on a date agreeable by Seller and

Buyer. The Buyer will be responsible for title fees, escrow fees, and costs charged by the company with whom the earnest money is deposited as outlined in Section 5.1.

- 4.1 Seller's Closing Documents. On the Closing Date, Seller shall have executed and delivered or caused to be delivered to Buyer the following (collectively, "Seller's Closing Documents"), all in form and content reasonably satisfactory to Buyer:
  - 4.1.1 Deed. A Quitclaim Deed conveying the Property to Buyer, **an exemplar of such Quitclaim Deed is** attached hereto as **Exhibit B**.
  - 4.1.2 Documents. Copies of all contracts, permits and warranties affecting the Property that will survive the Closing, if any.
  - 4.1.3 Sales Disclosure Form. An Indiana sales disclosure form.
  - 4.1.4 Other Documents. All other documents reasonably determined by Buyer to be necessary to transfer title to the Property to Buyer free and clear except Permitted Exceptions to Title.
- 4.2 Buyer's Closing Documents. On the Closing Date, Buyer will execute and deliver to Seller the following (collectively, "Buyer's Closing Documents"):
  - 4.2.1 Purchase Price. Funds representing the Purchase Price, by electronic transfer of immediately available funds.
  - 4.2.2 Assumption of Contracts, Permits, Warranties and Miscellaneous Documents. An Assumption of Contracts, Permits and Warranties, if any, assuming Seller's obligations under such documents.
  - 4.2.3 Sales Disclosure Form. An Indiana sales disclosure form.
  - 4.2.4 Other Documents. All other documents reasonably determined by Seller or Title Company to be necessary to complete the transaction contemplated by this Agreement. Including a Vendor Information form required by the State of Indiana Auditor's Office, **an exemplar of such Vendor Information form is** attached hereto as **Exhibit C**.
5. Allocation of Costs. Seller and Buyer agree to the following allocation of costs regarding this Agreement:
  - 5.1 Title Insurance and Closing Fee. Buyer shall be solely responsible for the payment of all premiums and fees associated with title insurance, including any and all closing fees or recording charges. Buyer shall be responsible for payment, at or before Closing, of search fees charged by the title company from whom Seller obtained a preliminary title review and commitment. Unless waived by the title company, said closing fees shall be payable by Buyer whether or not Buyer obtains a policy of title insurance.
  - 5.2 Taxes and Assessments. The Property being conveyed is owned by the State of Indiana and is exempt from all real property taxes. The Seller shall assume no responsibility or liability for any real property taxes or other assessments from which it is statutorily exempt. Buyer shall be solely responsible for, and indemnify Seller against, any and all real property taxes assessed with respect to the Real Property on or after Closing.
  - 5.3 Utilities. Seller shall either ensure that utility service to the Property is disconnected as of the Closing Date or shall cooperate with Buyer in having such

utility services transferred to Seller's account. All contracts relating to operating the Property shall be canceled as of the Closing Date.

5.4 Attorney's Fees. Each of the parties will pay its own attorney's fees.

6. Evidence of Title. In the event that Buyer does not order and receive a commitment for title insurance, Seller shall, at its expense, within ten (10) days after written request from Buyer, furnish to Buyer a copy of the documents by which the State obtained or otherwise holds title or a letter from the State Land Office describing the documents by which the State obtained and otherwise holds title. Seller will cooperate with the Buyer or its title company in clarifying or resolving any perceived deficiencies or clouds in the title, but shall not be required to incur any expense beyond commitment of the time of the State Land Office. If such issues cannot be resolved to Buyer's satisfaction, Buyer may terminate this Agreement, and the Earnest Money, if any, shall be returned.

7. Maintenance of the Real Property Prior to Closing. During the period from the date of Seller's acceptance of this Agreement to the Closing Date, Seller shall maintain the Property and improvements in a reasonably prudent manner. Seller shall execute no contracts, leases or other agreements regarding the Property between the date hereof and the Date of Closing that are not terminable on or before the Closing Date, without the prior written consent of Buyer, which consent may be withheld by Buyer at its sole discretion.

8. Representations and Warranties by Seller. Seller represents and warrants to Buyer as follows:

- 8.1 Existence; Authority. Seller has the requisite power and authority to enter into and perform this Agreement and to execute and deliver Seller's Closing Documents; such documents have been duly authorized by all necessary action.
- 8.2 Contracts. Seller has made available to Buyer a correct and complete copy of any Contract and its amendments which will survive a closing hereunder, if any.
- 8.3 Operations. Seller has received no written notice of actual or threatened cancellation or suspension of any utility services for any portion of the Property. Seller has received no written notice of actual or threatened special assessments or reassessments of the Property.
- 8.4 Litigation. To Seller's knowledge, there is no litigation or proceeding pending or threatened against or relating to the Property, nor does Seller know of or have reasonable grounds to know of any basis for any such action or claim.
- 8.5 Physical Condition. Seller makes no representation or warranty concerning the physical condition of the Property and puts Buyer to the obligation to satisfy itself pursuant to the contingency contained in Section 3 above.

9. Casualty; Condemnation. If all or any part of the Property is materially damaged by fire, casualty, the elements or any other cause, Seller shall immediately give notice to Buyer, and Buyer shall have the right to terminate this Agreement and receive back all Earnest Money by giving notice within thirty (30) days after Seller's notice. If eminent domain proceedings are threatened or commenced against all or any part of the Property, Seller shall immediately give notice to Buyer, and Buyer shall have the right to terminate this Agreement and receive back all Earnest Money by giving notice within thirty (30) days after Seller's notice. Termination of this Agreement and return of all Earnest Money are Seller's sole remedies

10. Notices. Any notice required or permitted hereunder shall be given by personal delivery upon an authorized representative of a party hereto; or if mailed by United States certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed

notice; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Seller: Commissioner  
Indiana Department of Administration  
402 W. Washington St., W479  
Indianapolis, IN 46204

With Copy to: Attorney General  
Office of the Indiana Attorney General  
302 W. Washington St.  
Indianapolis, IN 46204

If to Buyer:

With a Copy to:

Notices shall be deemed effective on the date of receipt. Any party may change its address for the service of notice by giving notice of such change ten (10) days prior to the effective date of such change.

11. Miscellaneous. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement, and no waiver of any of its terms will be effective unless in a writing executed by the parties. This Agreement binds and benefits the parties and their successors and assigns. This Agreement has been made under the laws of the State of Indiana, and any suit must be brought in an Indiana court of competent jurisdiction.

12. Remedies. If Buyer defaults, and if Buyer fails to cure such default within ten (10) days of the date of notice of such default from Seller, then Seller shall have the right to terminate this Agreement by giving written notice of termination to Buyer. In the event of termination Seller will receive the Earnest Money as liquidated damages, time being of the essence of this Agreement. The termination of this Agreement and retention of the Earnest Money will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages or specific performance. Buyer's sole remedy for any default by Seller shall be termination of this Agreement and return of the Earnest Money.

13. Buyer's Examination. Buyer is relying solely upon its own examination of the Property and inspections in determining its physical condition, character, and suitability for Buyer's intended use of the Property and is not relying upon any representation by Seller or any broker, except for those made by Seller directly to Buyer in writing in **Exhibit D, which is attached to this agreement**. Buyer agrees and acknowledges that it is accepting the Property "AS IS" subject to all faults of every kind and nature whatsoever, whether latent or patent, and whether now or hereafter existing, and Buyer acknowledges that it has based its decision to purchase the Property solely upon information obtained independently by Buyer. Buyer shall sign a Hold Harmless Affidavit, **an exemplar of such Hold Harmless Affidavit is attached hereto as**

**Exhibit E.** Buyer shall acquire the Property subject to all laws imposed upon the Property by any governmental or quasi-governmental authority having jurisdiction thereof. Buyer represents and warrants to Seller that Buyer has not relied, and will not rely, upon the representation or statement, or the failure to make any representation or statement, by Seller or Seller's agents, employees or by any person acting or purporting to act on the behalf of Seller with respect to the physical condition of the Property.

14. Compliance with Telephone Privacy. As required by IC 5-22-3-7:

(1) the Buyer and any principals of the Buyer certify that (A) the Buyer, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Buyer will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Buyer and any principals of the Buyer certify that an affiliate or principal of the Buyer and any agent acting on behalf of the Buyer or on behalf of an affiliate or principal of the Buyer (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

15. Withdrawal of Offer. This Agreement shall be deemed to be withdrawn, unless accepted by Seller, after one-hundred-fifty (150) days of delivery to Seller. In the event of a withdrawal under this section, Buyer shall be entitled the return of the Earnest Money.

16. Additional terms.

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17. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that he/she is the Buyer, or that he/she is the properly authorized representative, agent, member or officer of the Buyer, that he/she has not, nor has any other member, employee, representative, agent or officer of the Buyer, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Property Purchase Agreement other than that which appears upon the face of this Agreement.

**In Witness Whereof,** Buyer and the Seller have, through their duly authorized representatives, entered into this Property Purchase Agreement. The parties, having read and understood the foregoing terms, do by their respective signatures dated below hereby agree to the terms thereof.

**BUYER:**

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Printed Name

Title

**BUYER SHALL TAKE TITLE OF THE PROPERTY AS FOLLOWS:**

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**BUYERS PRIMARY ADDRESS:**

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**SELLER:**

State of Indiana acting through the Indiana Department of Administration.

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

# EXHIBIT "A"

Project: NH-075-3(018)

Sheet 1 of 1

Code: 3098

Parcel: 28, Excess Land

Form \_\_\_\_\_

A part of the Southeast Quarter of the Southeast Quarter of Section 32, Township 4 South, Range 5 West, Spencer County, Indiana, and being All that portion of Parcel 28, Indiana Department of Transportation L.A. Code 3098 (Instrument Number 2009R-01378), that lies outside of the Limited Access Right-of-Way Lines as shown on the attached Parcel Plat marked Exhibit "B", described as follows: Commencing at the southeast corner of said quarter-quarter section, said point being designated as point "5100" on said Parcel Plat; thence along the south line of said section, (basis of bearings being the Location Control Route Survey recorded as Instrument 2003R-03572 and re-recorded as Instrument 2004R-00952), South 89 Degrees 52 Minutes 02 Seconds West, a distance of 181.872 meters (596.69 Feet) [596.57 feet per D.R. 167, pg. 734 and 603.00 feet per D.R. 161, pg. 680] to the prolonged west line of the grantor's land; thence along said west line and the prolongation thereof, North 00 Degrees 25 Minutes 38 Seconds West, a distance of 30.362 meters (99.61 Feet) to point "342" on said Parcel Plat, said point being the POINT OF BEGINNING; thence continuing along said west line, North 00 Degrees 25 Minutes 38 Seconds West, a distance of 59.713 meters (195.91 Feet) more or less to the northwest corner of the grantor's land; thence North 89 Degrees 54 Minutes 22 Seconds East, a distance of 87.441 meters (286.88 Feet) to the northeast corner of the grantor's land; thence along the east line of the grantor's land, South 05 Degrees 44 Minutes 40 Seconds West, a distance of 29.557 meters (96.97 Feet) to a point on the line formed between points "1710" & "1514" on said Parcel Plat; thence North 84 Degrees 16 Minutes 02 Seconds West, a distance of 6.074 meters (19.93 Feet) to point "1514" on said Parcel Plat; thence South 17 Degrees 02 Minutes 19 Seconds West, a distance of 15.542 meters (50.99 Feet) to point "1506" on said Parcel Plat; thence South 05 Degrees 43 Minutes 37 Seconds West, a distance of 14.476 meters (47.49 Feet) to point "345" on said Parcel Plat; thence Westerly 72.019 meters (236.28 Feet) along an arc to the left, having a radius of 3,016.000 meters (9894.99 Feet) and subtended by a long cord having a bearing of South 88 Degrees 34 Minutes 34 Seconds West and a length of 72.017 meters (236.28 Feet) to the POINT OF BEGINNING; said described tract containing 0.4699 Hectares (1.161 Acres), more or less.

[This description is subject to any and all easements, rights of way, covenants, or restrictions; recorded or observable. Also, subject to the permanent extinguishment of all rights and easements of ingress and egress to, from, and across the limited access facility (known as U.S.R. 231 and Project NH-075-3(18)) to and from the above described abutting lands; in particularly the 15.542 meter (50.99 Feet), 14.476 meter (47.49 Feet), 72.019 meter (236.28 Feet) courses described above. This restriction shall be a covenant running with the land and shall be binding upon all successors in title to the said abutting lands.]



*This description was prepared for the Indiana Department of Transportation by Richard Paul Croix Hodges, Indiana RLS # 20400026, this 21<sup>st</sup> day of June, 2010.*

*Richard Paul Croix Hodges, 06/21/2010*

This description was written from information obtained from the County Recorder's Office and other sources which were not necessarily checked by a field survey.







**EXHIBIT D**  
**Property Conditions**

**The site reconnaissance, government records analysis, interviews, and review of historic records indicate that no hazardous conditions exist in the project area at this time. There are no environmental considerations that will likely impact or impede the PR231 new road construction project.**

**EXHIBIT E**

**Hold Harmless Affidavit**

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

**AFFIDAVIT**

Comes now the Affiant(s), \_\_\_\_\_, and swear and affirm to the following:.

- 1) That the above Affiant(s) shall **hold harmless and indemnify** the State of Indiana and its agent Indiana Department of Transportation and accept the property transfer through Quit Claim Deed without any Warrants and receive property As-Is.

SUBSCRIBED AND SWORN TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ Affiant's printed name

\_\_\_\_\_ Affiant's signature

State of Indiana        )  
  )SS:  
County of \_\_\_\_\_ )

Subscribed and sworn to before me a Notary Public this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ Notary Public

A Resident of \_\_\_\_\_ County Indiana  
My Commission expires: \_\_\_\_\_