

RESOLUTION NO. 4-16-2026-9

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BRISTOL, INDIANA APPROVING THE ACQUISITION OF REAL PROPERTY IN LIEU OF CONDEMNATION PURSUANT TO INDIANA CODE 32-24-1-1, ET SEQ.

WHEREAS, the Town of Bristol, Indiana (the “Town”) is a duly formed municipal corporation within the State of Indiana governed by its duly elected Town Council (the “Council”); and

WHEREAS, pursuant to Ind. Code § 36-1-4-5, the Town is authorized to condemn any real property needed by the Town for a public use pursuant to the procedures set forth in Ind. Code 32-24-1-1, et seq. (the “Act”); and

WHEREAS, the Town has sought to acquire the real property consisting of approximately 0.413 acres and located at 14 Shore Manor, Bristol, Indiana (Parcel Number 20-03-27-104-008.000-031) (the “Property”), utilizing its powers of eminent domain pursuant to the Act, to further and support the expansion and development of the Town’s waterworks and wastewater facilities; and

WHEREAS, based upon appraisals secured for the Property from Iverson C. Grove, MAI, SRA, and Steven W. Sante, MAI, SRA, the Town determined that the fair market value of the Property plus any additional damages to the Property owner as a consequence of a taking under the Act was \$105,000.00 (the “Purchase Price”); and

WHEREAS, on December 4, 2025, the Council, pursuant to Ind. Code § 32-24-1-5 and Resolution 12-04-2025-20, authorized an offer for the Property for the Purchase Price; and

WHEREAS, as a result of good faith negotiations between the Town and the owner of the Property as required by the Act, the parties have reached an understanding as to the applicable terms of the Town’s acquisition of the Property in lieu of filing a complaint for condemnation, which terms are memorialized in the Utility Easement (the “Easement”) and Right of First Refusal and Right to Purchase (the “Option Agreement”) attached hereto as Exhibits A and B, respectively (collectively, the “Acquisition Agreements”); and

WHEREAS, the Council believes that the acquisition of the Property is in the best interest of the Town and its citizens and now desires to approve the acquisition of the Property pursuant to the Acquisition Agreements in lieu of condemnation.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bristol, Indiana that:

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. The Council hereby approves the acquisition of the Property through good faith negotiations pursuant to the Act subject to the terms and conditions set

forth herein and in the Acquisition Agreements. The Council further approves and authorizes the payment for diligence, closing, transfer, and related costs for the acquisition of the Property as provided for in the Acquisition Agreements.

Section 3. The Council hereby authorizes and approves the execution and delivery of the Acquisition Agreements, each in substantially the forms attached hereto, with such changes thereto as the Town Council President or Town Manager deem necessary and appropriate to effectuate this Resolution and to consummate the acquisition of the Property, said officer's execution and attestation thereof to be conclusive evidence of their approval of such changes.

Section 4. The Council hereby approves the purchase price for the Property in accordance with the Acquisition Agreements, plus other closing and related costs as provided for in the Acquisition Agreements. The Clerk-Treasurer is hereby authorized to pay the purchase price for the Property from the funds of the Town on the Closing Date (as defined in the Option Agreement) following the satisfaction of the conditions set forth in the Acquisition Agreements.

Section 5. Each of the Town Council President and Town Manager is hereby authorized to execute and deliver appropriate conveyance instruments, documents, certificates, and agreements in the name of and on behalf of the Town in connection with the transactions set forth in this Resolution and to take any and all actions which such person deems necessary or appropriate regarding such transactions; provided, however, that the terms and conditions of any such document shall be consistent with the terms and conditions approved in this Resolution. Any and all documents executed by the Town Council President or Town Manager in connection with the actions contemplated by this Resolution and any and all actions previously, or to be, taken by the Town Council President, Town Manager, or Town Clerk-Treasurer in connection with the actions contemplated by this Resolution be, and they hereby are, ratified and approved.

Section 6. Each agreement, instrument, certificate, and other document contemplated by this Resolution to be executed and delivered by the Town Council President, Town Manager, or Town Clerk-Treasurer on behalf of the Town shall be in a form approved by, and satisfactory to, the Town Council President or Town Manager upon the advice of counsel, which approval and satisfaction shall be conclusively evidenced by the execution and delivery thereof by the Town Council President or Town Manager.

Section 7. This Resolution shall be in full force and effect immediately upon its adoption.

* * * * *

RESOLVED THIS 16th DAY OF APRIL 2026.

TOWN COUNCIL OF THE
TOWN OF BRISTOL, INDIANA

Jeff Beachy, President

Cathy Burke

Gregg Tuholski

Doug DeSmith

[Vacant]

ATTEST:

Cathy Antonelli, Clerk-Treasurer

EXHIBIT A

Utility Easement

[Attached]

Cross Reference: Instrument Nos. 2025-14764
2002-22336

UTILITY EASEMENT

This indenture witnesseth that **TRACY HAYES A/K/A TRACY PEISER** (“Grantor”), the owner of those certain real properties commonly known as 14 and 15 Shore Manor Drive, Bristol, Indiana 46507, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, sell and convey to the **TOWN OF BRISTOL, INDIANA**, a political subdivision of the State of Indiana, whose address is 303 E. Vistula Street, Bristol, Indiana 46507, and its successors and assigns (“Grantee”), a permanent easement and right-of-way (together the “Easement”) to place, construct, operate, control, maintain, reconstruct, relocate, change the size of, repair and/or remove sewer and water mains, pipes and conduits, and all associated grinder pumps, valves, pumps, fittings, meters, manholes, and accessories, and all other necessary, incidental, auxiliary, or related facilities and structures, convenient or proper for the purpose of rendering utility services (the “Facilities”) along, under, over, above, on top of, through and across a strip of land more particularly described as:

ten (10) feet on each side of the entire boundary line between Lots Numbered 14 and 15, both in Shore Manor, an Addition to Bristol, Indiana, as per plat thereof recorded in Plat Book 7, page 19, in the Office of the Recorder of Elkhart County, State of Indiana

(the “Real Estate”), together with the rights of Grantee, its successors and assigns, to: (i) enter into and upon the Real Estate described above and adjoining property of Grantor with men, machinery, vehicles, and materials at any and all times for the purpose of maintaining, repairing, renewing, constructing, replacing, or adding to the aforesaid Facilities; (ii) remove trees, bushes, undergrowth, and other obstructions interfering with the activities authorized herein; and (iii) for doing anything necessary, useful, or convenient for the enjoyment of the easement herein granted and the provision of utility service, including ingress and egress across the subservient real estate. The Grantee shall also have from time to time a temporary construction easement in, under, across, and over that portion of the Real Estate being five (5) feet on the north and south sides of the above-described permanent utility easement for any and all activities necessary, incidental, or related to the installation and/or reconstruction of the aforesaid Facilities.

Grantor shall have the right to fully use and enjoy the Real Estate except for such as may impair, impede, or unreasonably interfere with the exercise by Grantee of the rights granted herein. Grantee covenants that in the installation, maintenance, or operation of its Facilities, it will restore

the portion of the Real Estate disturbed by its work to a condition that is the same or substantially the same condition that existed at the time the portion was disturbed by it. The grants, covenants, and stipulations herein provided shall extend to and be binding upon the respective heirs, successors, and assigns of the parties.

The undersigned executing this Easement on behalf of Grantor represents and certifies that Grantor is the owner of the Real Estate, that the undersigned is duly authorized and fully empowered to execute and deliver this easement, that Grantor has full legal capacity to convey the easement described herein, and that all necessary action for the making of such conveyance by Grantor has been taken and done.

[Signature on following page]

IN WITNESS WHEREOF, Grantor has executed this Utility Easement as of this _____ day of _____, 2026.

GRANTOR:

Tracy Hayes A/K/A Tracy Peiser

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared Tracy Hayes A/K/A Tracy Peiser, who acknowledged the execution of the foregoing instrument as her free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

Prepared by: Alex C. Bowman, Esq., Krieg DeVault LLP, 4101 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545.

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. /s/ Alex C. Bowman, Esq.

Return after recording to: Town of Bristol, Indiana, 303 E. Vistula Street, Bristol, Indiana 46507, Attn: Town Manager.

EXHIBIT B

Right of First Refusal and Right to Purchase

[Attached]

RIGHT OF FIRST REFUSAL AND RIGHT TO PURCHASE

THIS RIGHT OF FIRST REFUSAL AND RIGHT TO PURCHASE AGREEMENT (the "Agreement"), is entered into as of the Effective Date (as defined herein) by and between the TOWN OF BRISTOL, INDIANA, an Indiana municipal corporation (the "Town") and TRACY HAYES (the "Owner"), whose address is 15 Shore Manor Drive, Bristol, Indiana 46507 (the Town and Owner are each a "Party" and together the "Parties").

WHEREAS, Owner is the fee simple owner of that certain improved real property commonly known as 14 Shore Manor Drive, Bristol, Indiana 46507 as more fully described in Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Town has offered Owner the sum of Two Thousand and 00/100 Dollars (\$2,000.00) (the "Easement Payment") as consideration for the execution of a utility easement affecting the Property; and

WHEREAS, the Town desires to acquire the Property for public purposes and has previously approved the acquisition of the Property by eminent domain and has delivered to Owner that certain Uniform Offer Letter to acquire the Property as required by Ind. Code 32-24-1; and

WHEREAS, the Parties have negotiated in good faith and in lieu of condemnation, the Owner has offered, and the Town has accepted, upon the terms provided for herein, an option to purchase the Property.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein and each act done pursuant thereto, the Parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated into this Agreement.
2. **Right of First Refusal and Right to Purchase Real Estate.** Owner hereby grants the Town the right of first refusal and a right to purchase the Property under any of the following circumstances:
 - (a) In the event the Owner receives a good faith, bona fide offer to sell or transfer the Property which is acceptable to the Owner (an "Offer"), the Owner must first offer by notice in writing to sell the Property to the Town on substantially the same terms and conditions provided for in the Offer before entering into a contract to sell the Property, and must include in such notice to the Town an executed copy of such Offer, including, without limitation, any and all amendments, terms and conditions not included within the Offer itself.
 - (b) In the event the Owner decides to sell or transfer the Property and has not received an Offer, the Owner may notify the Town in writing that the Owner requests the Town to purchase the Property (a "Request"). Town shall have the right, but not the obligation to purchase the Property at the Purchase Price as established by Section 7.

(c) The Town may, in its sole discretion, choose to purchase the Property at any time by delivering notice to Owner of its exercise of the option to purchase (the “Option”).

3. **Advance Payment; Consideration.** In consideration of the Owner and Town entering into this Agreement, the Town pays to the Owner Eight Thousand and 00/100 Dollars (\$8,000.00) (the “Advance”), receipt of which is hereby acknowledged by the Owner, and which Advance shall be governed by the terms and conditions of this Agreement.

4. **Notice of Exercise Pursuant to an Offer.** In the event the Owner receives an Offer pursuant to Section 2(a), the Town shall have thirty (30) days from the date of receipt of such notice from Owner to accept in writing substantially all the terms and conditions of the Offer from the Owner. The notice to the Town and the acceptance by the Town are a contract between them to buy and sell the Property. The terms and conditions set forth in this Agreement shall govern the purchase. For purposes of a sale pursuant to this Section 4, the Purchase Price shall be the amount set forth in the Offer.

5. **Notice of Exercise Pursuant to a Request.** In the event the Owner sends notice of a Request to the Town pursuant to Section 2(b), the Town shall have thirty (30) days from the date the Purchase Price is established by Section 7 to agree to purchase the Property at the Purchase Price determined by such Section 7. The terms and conditions set forth in this Agreement shall govern the purchase.

6. **Notice of Exercise Pursuant to Option.** In the event the Town sends notice of the exercise of its Option pursuant to Section 2(c), the Town shall have thirty (30) days from the date the Purchase Price is established by Section 7 to agree to purchase the Property at the Purchase Price determined by such Section 7(c). The terms and conditions set forth in this Agreement shall govern the purchase.

7. **Fair Market Value Determination; Purchase Price.** In the event the Owner sends a Request to the Town, or the Town exercises its Option, the Town may purchase and the Owner shall sell at a price determined by appraisals as of the date of exercise, as follows:

(a) The Town and Owner shall each retain an appraiser, who shall each be licensed and/or certified as commercial real estate appraisers by the Indiana Real Estate Appraisal Licensure and Certification Board, and the Property shall be appraised separately by each of them. The appraisal reports of the two appraisers so selected shall be provided to the parties within sixty (60) days of the date of receipt of the applicable notice of Request or Option.

(b) The purchase price (“Purchase Price”) shall be determined as follows:

(i) If the appraised value according to each report differs by ten percent (10%) or less, then the average of the two appraisals shall be the Purchase Price.

(ii) If the appraised value according to each report differs by more than ten percent (10%), then (a) the Town may in its sole discretion elect to pay the higher of the two appraisals, in which case the higher of the two appraisals shall be the Purchase Price, or (b) the Town and Owner shall then select a third appraiser to undertake a third appraisal of the Property; provided, however, that should the Town and Owner not be able to mutually agree upon a third appraiser, the original appraisers retained by the Town and Owner, respectively, shall select an independent third appraiser licensed and/or certified as a commercial real estate appraiser by the Indiana Real Estate Appraisal Licensure and Certification Board, to undertake a third appraisal of the Property. In any event, the average of the fair market value

of the two of the three appraisals having the closest valuation to each other shall be averaged to determine the Purchase Price.

(c) If the Town exercises its Option under Section 2(c), the Purchase Price shall be adjusted as follows:

- (i) If such Option is exercised within one (1) year of the Effective Date, the Purchase Price shall be increased by twenty percent (20%).
- (ii) If such Option is exercised more than one (1) year after the Effective Date, the Purchase Price shall be increased by ten percent (10%).

8. **Failure to Exercise.** In the event Town fails to exercise its right of first refusal and right to purchase in response to a notice of an Offer or a Request, within the time periods prescribed therein, or the Town otherwise informs the Owner that Town waives its rights hereunder to so exercise, the Owner shall have the right to sell the Property on such terms and conditions as the Owner determines in its sole discretion. Notwithstanding the foregoing, the Town shall not intentionally fail or decline to exercise any such right, or waive the same, for the purpose of subsequently acquiring the Property through eminent domain at a lower price or on more favorable terms. In any condemnation and/or eminent domain proceeding commenced by the Town following its failure or waiver to exercise its rights hereunder, the purchase price for the Property shall be not less than the greater of (i) the price and material terms set forth in the applicable Offer or Request, or (ii) the fair market value of the Property determined as of the date of such Offer or Request, adjusted for commercially reasonable changes in market conditions. Except as expressly limited above, any failure by the Town to exercise an option provided for in this Agreement shall not constitute a waiver of the Town's right to otherwise acquire the Property by eminent domain.

9. **Terms and Conditions of Sale.** In the event the Town exercises its right of first refusal to purchase under Section 2(a), the Owner makes a Request under Section 2(b), or the Town exercises the Option under Section 2(c), the terms and conditions of the sale shall be as follows:

(a) **Title Insurance Commitment and Policy.** Within twenty (20) days after the date upon which Town accepts an Offer or Owner makes a Request, the Town shall, at Owner's expense, obtain a commitment for an owner's policy of title insurance (the "Commitment") issued by a title company selected by the Town (the "Title Company"), pursuant to which the Title Company shall agree to and insure good and marketable title to the Property in the name of the Town for the full amount of the Purchase Price upon delivery of a deed to the Town from Owner. Such commitment shall provide for issuance of a final title insurance policy on an ALTA Owner's Form free and clear of any all liens, encumbrances, or other exceptions, except current taxes which are not delinquent and other exceptions as the Town, in its sole discretion, may elect to approve after examinations of the title. Owner agrees to execute a Vendor's Affidavit at Closing in a form generally used in residential real estate purchases. The title insurance premium shall be paid by Owner at Closing.

(b) **Title Objections.** The Town shall have a period of ten (10) days following the later of the receipt of the Commitment or survey, if ordered by the Town, in which to examine the same and notify Owner in writing of any title or survey objections or further requirements. Owner then shall have a period of ten (10) days after receipt of any notice from the Town within which to correct any such objections to title and to satisfy any other title requirements of the Town. If Owner is unable or unwilling to correct the Town's title objections and satisfy the Town's requirements within ten (10) days after receipt of written notice thereof, then the Town shall have the right any time at its election to cancel and terminate this Agreement, unless the Town elects in writing to waive such title objections and requirements.

If to Owner: Tracy Hayes
15 Shore Manor Drive
Bristol, IN 46507

Notices by a party may be given on its behalf by its attorney. All such notices, requests and other communications shall be effective (i) if delivered by hand, when delivered; (ii) if sent by mail in the manner provided herein, two (2) business days after deposit with the United States Postal Service; (iii) if sent by overnight delivery service, on the next business day after deposit with such service; or (iv) if sent by electronic mail or facsimile transmission, on the date that such notice, request or other communication is sent as indicated on a copy of the electronic mail or the facsimile transmission confirmation page.

11. **Broker Commissions.** Each party represents and warrants to the other that it has not dealt with any real estate broker in connection with this Agreement, and each party shall indemnify the other against all costs, expenses, and liabilities, including, without limitation, reasonable attorney's fees, arising out of any breach by it of the foregoing.

12. **Binding Effect.** This right of first refusal and right to purchase shall run with the Property and bind and benefit the parties and their successors in interest and successors in title to the Property. The term of this Agreement begins on the date this document is signed by Owner and expires on the date which is thirty (30) years following that date, unless otherwise terminated as provided for herein. The Parties shall record this Agreement, or, in lieu thereof, shall execute and record a memorandum of this Agreement. This right of first refusal and right to purchase applies to all of the Property and includes and is applicable to a transfer of title by deed, land contract or any other means which has the effect of transferring to another person, firm or entity a leasehold interest, title to the Property or any other right to use it exclusively.

13. **Indiana Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, without regard to conflict of laws principles.

14. **Severability.** In case any one or more of the provisions (or any portion thereof) contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or provisions (or any portion thereof) had never been contained herein.

15. **Assignment.** This Agreement may be assigned by the Town to any of its departments, boards, commissions without Owner's consent.

16. **Effective Date.** The Effective Date of this Agreement shall be the last date of signature of a party hereto as indicated on the attached signature page.

17. **Leases; Town Consent.** From the Effective Date, any lease, license, occupancy agreement, or other right of possession affecting all or any portion of the Property shall be subject and subordinate to this Agreement and shall provide for termination upon acquisition of the Property by the Town pursuant to this Agreement, without cost or penalty to the Town; provided, however, that any existing or subsequently created month-to-month tenancy of the Property shall be permitted to continue from and after the Effective Date and shall be terminable in accordance with applicable Indiana law. In the event Owner requires additional time to deliver any lease termination notice or for any notice period to expire, the Closing Date shall be extended for a reasonable period necessary to comply with applicable law.

[Signature Pages Follows]

IN WITNESS WHEREOF, Owner and the Town have executed this Right of First Refusal and Right to Purchase Agreement as of the Effective Date.

OWNER:

Dated: _____

Tracy Hayes

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared Tracy Hayes, who acknowledged the execution of the foregoing instrument as her free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

[Executions Continued on Following Page]

TOWN:

TOWN OF BRISTOL, INDIANA

Dated: _____

By: _____
Jeff Beachy, Town Council President

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, a Notary Public, in and for said County and State, personally appeared Jeff Beachy, in his capacity as the Town Council President of the Town of Bristol, Indiana, who acknowledged the execution of the foregoing instrument, acting for and on behalf of said Town of Bristol, Indiana, and who acknowledged the execution of the foregoing instrument as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

(SEAL)

Printed Signature

My Commission Expires:

My County of Residence:

Prepared by: Alex C. Bowman, Esq., Krieg DeVault LLP, 4101 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545.

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. /s/ Alex C. Bowman, Esq.

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot Numbered 14 in Shore Manor, an Addition to Bristol, Indiana, as per plat thereof recorded in Plat Book 7, page 19, in the Office of the Recorder of Elkhart County, State of Indiana.

Commonly known as 14 Shore Manor, Bristol, Indiana 46507

Key No.: 20-03-27-104-008.000-031