

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is made and entered into this 11th day of February, 2008, and is between the Town of Whitestown ("Town"), Commissioners of the County of Boone ("Commissioners"), and Brenwick Associates, LLC ("Brenwick"):

RECITALS

A. The Town, Commissioners, and Brenwick are involved in litigation in Hamilton Circuit Court, Cause No. 29D02-0705-PL-0595, that concerns the proposed creation of a new town called Fayette ("Fayette Litigation"). The boundaries of the proposed Fayette are depicted in the map attached hereto as Exhibit A ("Fayette Area").

B. In an effort to preserve their respective resources and put into place a mechanism to ensure sewer and water service to the area, the parties desire to settle the Fayette Litigation.

C. In recognition that the Town and Commissioners must approve this Memorandum in a public meeting, this Memorandum will be executed by the president of the respective bodies, and thereafter recommended to the full Boards for their approval.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

ARTICLE I

Terms and Conditions

Section 1.1. Fayette Litigation. Upon execution of this Memorandum, the parties agree that the hearing currently scheduled for February 12, 2008, shall be continued for a period of not more than sixty (60) days. The Fayette Litigation, however, will not be dismissed until such time as this Memorandum is fully approved by all of the parties and all the conditions of this Memorandum have been satisfied.

Section 1.2. Ordinance Creating Fayette. Consistent with this Memorandum, the Commissioners shall amend or withdraw the ordinance creating a Fayette that overlaps with the Town's boundaries. Such amendment or withdrawal shall not occur for a period of at least sixty (60) days ("60 Day Period"). During the 60 Day Period, property owners within the Fayette Area may file petitions for voluntary annexation into the Town under Ind. Code § 36-4-3-5 or 5.1. After the 60 Day Period, the Commissioners may pass a new ordinance incorporating Fayette; however, such incorporation shall not include any area within the Town's municipal boundaries as of the date of this Memorandum including, without limitation, any properties that are within the Town's municipal boundaries pursuant to the Town's Ordinance 2006-20, as modified by the Town's Ordinance 2007-01, any properties subject to a petition for voluntary annexation pending before the Town as of the date hereof, or any of the properties that filed petitions for voluntary annexation with the Town during the 60 Day Period. This provision is not intended to restrict the Commissioners' ability to redraw the boundaries of Fayette as the Commissioners deem appropriate. Rather, this provision is intended to prevent the creation of a Fayette that

overlaps with the Town's existing boundaries or includes the property owners that have chosen to be in the Town by filing petitions for annexation with the Town.

Section 1.3. Conditions for Creation of Fayette. Unless the Commissioners completely withdraw or abandon the ordinance creating Fayette, the amended ordinance creating Fayette must contain a provision that the creation of Fayette is contingent upon the new governing body for Fayette executing a long-term agreement with the Town that allows the Town to own and operate sewer and water facilities within Fayette. The Commissioners' amended order creating Fayette shall require, and be conditioned upon, the Town and Fayette entering into an interlocal agreement containing the following provisions:

In recognition that the Town has made a significant investment to serve this area of Boone County, the Town shall, for a period of fifty (50) years, without interference, curtailment, limitation, or encroachment, either directly or indirectly, from Fayette or the County, exercise exclusively any and all of Fayette's power and authority over sewer and water service in and around Fayette's boundaries, including but not limited exclusive authority to provide and regulate sewer and water service and the location of facilities therein. This paragraph shall be broadly interpreted to permit the Town to exclusively exercise sewer and water authority within Fayette to the same extent and without interference, curtailment, limitation, or encroachment as the Town is entitled to exercise such authority within its own boundaries. Furthermore, the protection from interference, curtailment, limitation, or encroachment outlined herein shall be broadly interpreted and shall include, but not be limited to, the type and manner of protections afforded under 7 U.S.C.A. § 1926(b). The Town shall be entitled to recover any and all of its costs and attorneys' fees in any action brought to enforce, apply, or defend this provision.

Upon the termination of this provision, whether by expiration, agreement of the parties, or court order, should Fayette acquire or otherwise interfere, curtail, limit, or encroach upon the Town's facilities, the Town shall be entitled to full compensation including an amount not less than all costs associated with replacement facilities, including but not limited to the locating, designing, constructing, and all other provisional fees associated with such replacement facilities, plus two and one-half times the amount of the Town's revenue from all customers within the area for the previous twelve months.

Such agreement shall also contain the following provision:

The Town agrees to provide service to the Fayette Area in accord with good utility practices and the Town's practice and policy of extending service to new areas. Consistent with the cost of service and ratemaking principles set forth in the American Waterworks Association Manual of Water Supply Practices, *Principles of Water Rates, Fees, and Charges* ("AWWA M1 Manual"), the Town will assess rates and charges to sewer and water users in this area.

Section 1.4. Authority of Signatories. This Memorandum has been signed by the president of the Town Council and Board of Commissioners. Because the Town and

Commissioners are public bodies that must approve any and all agreements in a public meeting, the respective signatories agree to recommend execution of this Memorandum to their full governing bodies at a public meeting as soon as possible. Upon approval of this Memorandum at a public meeting, the Memorandum shall be in full force and effect.

ARTICLE II
Miscellaneous

Section 2.1. Entire Agreement. This Memorandum sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties pertaining to the subject matter hereof.

Section 2.2. Binding on Successors and Assigns. The parties agree that the terms of this Memorandum shall be binding upon and inure to the benefit of the parties hereto, as well as their successors and assigns.

Section 2.3. Amendment and Waiver. Neither this Memorandum, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by a written instrument. Failure to insist upon strict adherence to any term of this Memorandum shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Memorandum.

Section 2.4. Counterparts. This Memorandum may be executed in counterparts, including facsimile or photocopy counterparts, each of which shall be deemed an original, by all of which taken together shall constitute a single document.

Section 2.5. Captions. The captions to this Memorandum shall be given full force and effect for the term of this Memorandum.

Section 2.6. Notices. All notices, consents, and other communications (collectively, "notices") shall be given to the Town, Commissioners, or Brenwick in writing to the addresses set forth below:

Town: Town of Whitestown
3 South Main Street
P.O. Box 325
Whitestown, IN 46075

With Copy To: Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 N. Pennsylvania Street
Indianapolis, IN 46204
Attn: J. Christopher Janak

Commissioners: Boone County Board of Commissioners
116 West Washington Street, Room 103
Lebanon, IN 46052

With Copy To: Kirtley, Taylor, Sims, Chadd & Minnette, P.C.
127 W. Main Street, Suite 400

Brenwick: Lebanon, IN 46052
Attn: Eileen Sims
Brenwick Associates, LLC
12821 East New Market Street
Suite 200
Carmel, IN 46032

With Copy To: Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204-3535
Attn: David R. Warshauer

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision.

Section 2.7. Severability. If any provision of this Memorandum is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as part of this Memorandum is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 2.8. Governing Law. This Memorandum shall be governed by and construed under the laws of the State of Indiana.

Section 2.9. Incorporation of Recitals. The recitals are hereby incorporated into this Memorandum.

[The remainder of this page intentionally left blank.]

BOONE COUNTY COMMISSIONERS

M. Applegate

STATE OF INDIANA)
COUNTY OF Boone)SS:
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Before me, a Notary Public in and for said County and State, personally appeared Marc Applegate, by me known to be the President of the Board of Commissioners of Boone County, Indiana, who acknowledged the execution of the foregoing "Memorandum of Understanding" on behalf of the Board of Commissioners of Boone County.

WITNESS my hand and Notarial Seal this 15th day of February, 2008.

Karen Losley
Notary Public

Karen Losley
(Printed Signature)

My Commission Expires:
10/24/13

My County of Residence:
Boone

TOWN OF WHITESTOWN

Jason Tribby, President

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Jason Tribby, President of the Town Council for the Town of Whitestown, who acknowledged the execution of the foregoing "Memorandum of Understanding" on behalf of the Council for the Town of Whitestown.

WITNESS my hand and Notarial Seal this _____ day of _____, 2008.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

BRENNICK ASSOCIATES, LLC

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the President of Brenwick Associates, LLC, who acknowledged the execution of the foregoing "Memorandum of Understanding" on behalf of Brenwick Associates, LLC.

WITNESS my hand and Notarial Seal this _____ day of _____, 2008.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:
