<u>YOUNG'S CREEK GREENWAY TRAIL PROJECT</u>

PURCHASE AGREEMENT AND DEVELOPMENT AGREEMENT

By and Among

Redevelopment Commission
of the City of Franklin, Indiana

and

Franklin Development Corporation

and

Bastin-Logan Water Services, Inc.

<u>237 West Monroe Street, Franklin, Indiana</u>

This Purchase and Development Agreement (the "Agreement") is entered into by, between, and among the Redevelopment Commission of the City of Franklin, Indiana ("RDC"), as the governing body of the City of Franklin, Indiana Redevelopment District ("District"), Franklin Development Corporation ("FDC"), a Indiana nonprofit neighborhood development corporation, and Bastin-Logan Water Services, Inc. ("Seller"), an Indiana corporation. (Collectively, the RDC, FDC, and the Seller are the "Parties").

RECITALS

WHEREAS, the RDC serves as governing body of the District, pursuant to Indiana Code 36-7-14 et seq., as amended (the "Act"), desires to foster economic development and redevelopment within the City, and has determined that a vital component of the long-term viability of the historic downtown is the preservation and appropriate redevelopment of the area commonly known as the Young's Creek Greenway, an area running along both sides of Young's Creek through downtown Franklin, Indiana. The preservation and appropriate redevelopment of this area, for purposes of this Agreement, is the "Project".

WHEREAS, the RDC desires to purchase and the Seller desires to sell (upon certain conditions discussed below) certain real property and improvements ("Property") commonly referred to as follows, all of which is located within the Project area: 237 West Monroe Street, Franklin, Indiana, comprised of approximately 6.10 acres, identified by parcel identification number 41-08-14-034-120.003-009.

WHEREAS, by entering into this Agreement the Parties specify the terms, process, and timing for a closing of the purchase of the Property.

WHEREAS, the Parties further memorialize below their intention to enter into a development agreement relative to the rehabilitation and repair of other commercial real property, as discussed below, owned by or which will be owned by Seller

NOW THEREFORE, in consideration of the terms and conditions contained in this Agreement, the RDC, FDC, and Seller agrees as follows:

1. **Due Diligence**. The RDC has a Due Diligence Period to examine the Property and determine whether to proceed to Closing. The Due Diligence Period is forty-five (45) days from the date of this Agreement, and may be extended by agreement of the Parties. During the Due Diligence Period, the RDC may investigate the condition of the Property, and the Seller will cooperate with same. If the RDC concludes prior to the end of the Due Diligence Period to terminate this Agreement, it may do so and neither Party will have further obligations under this Agreement. If the RDC determines to proceed to Closing, a Closing will be scheduled as soon as practicable following the end of the Due Diligence Period or earlier, and the RDC will purchase the Property at Closing from the Seller for the sum of Two Hundred Thirty Two Thousand Dollars ($232,00.00), payable in cash at closing, subject to commercially reasonable terms and conditions, including an owner's policy of title insurance in the same amount, said owner's policy of title insurance provided at the Seller' expense. The RDC's purchase of the Property is conditioned upon the Seller's ability to procure and use a suitable alternative location, partially funded with TIF Incentives, all as discussed below.

2. **$150,0000 Rehabilitation Incentive**. As an incentive to the Seller to relocate the business it operates at the Property to another location within the City's Amended Integrated Economic Development Area, the RDC agrees to grant to the FDC, and the FDC agrees to grant to Seller, up to the sum of One Hundred Fifty Thousand Dollars ($150,000.00) ("TIF Incentives") to partially defray the costs of rehabilitating and repairing commercial property to which Seller relocates. The identification of which property will be improved, by how much, in what way, and the procedures to be used by the Parties in funding this redevelopment, will be memorialized by the parties separately, as needed. Unless otherwise agreed, the Parties agree to follow the routine commercial redevelopment programs and procedures used by the RDC and FDC relative to other commercial grant projects. Seller agrees to comply at all times with all applicable local, state, and federal rules and regulations, including those related to obtaining permits, the use and condition of the property, as well as any architectural guidelines adopted by the FDC. Seller agrees to assume any tax liability associated with this incentive. The parties acknowledge that in the event Seller is unable, in its sole determination, to purchase and use a suitable replacement property, then this Agreement will terminate and all parties are released from further obligations and duties with respect to same. For clarity, the parties acknowledge that in the event the Seller is unable to relocate its business operations to a location that suits it (in terms of zoning and use restrictions, costs, environmental conditions, etc.) or is unable to receive the benefit of the TIF Incentives, then this entire Agreement will terminate, any actions any of the parties have taken been will be reversed, the Seller will not sell and the RDC will not purchase the Property, and no TIF Incentives will flow from the RDC through the FDC to the Seller for replacement property rehabilitation.

3. **Seller's Representations, Warranties and Covenants**. In order to induce RDC and FDC to enter into this Agreement and to purchase the Property, in addition to warranties, representations and covenants contained elsewhere in this Agreement, Seller hereby makes the

following representations, warranties and covenants, each of which is material and is relied upon by the RDC:

(a) Title to Property. To the best of Seller's knowledge, Seller is the sole owner of good, marketable and insurable fee simple title to all of the Property. Seller shall neither cause nor permit any additional encumbrances on title to the Property between the Date of this Agreement and Closing. Seller shall not sell or otherwise transfer any part of the Property without RDC's prior written consent. Seller shall provide at or before Closing a Vendor's Affidavit in such form as may be reasonably specified by the title company and RDC and sufficient to bring the Seller's representations and warranties current to Closing.

(b) Authority of Seller. Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof. This Agreement, and all of the documents executed by Seller which are to be delivered to RDC at the Closing, when executed and delivered by Seller, will be valid and binding obligations of Seller in accordance with their respective terms, and do not and will not violate any provisions of any agreement to which Seller is a party or to which it is subject.

(c) No Bankruptcy. Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of Seller's assets.

(d) Non-Foreign Person. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and any related regulations.

(e) Options. No options or other contracts have been granted or entered into which are still outstanding and which give any other party a right to purchase or lease any interest in the Property or any part thereof**.**

(f) Lease. No leases or license agreements are in effect with respect to the Property, and no persons have any rights to possess the Property other than the Seller.

(g) Status of Activities. Except as otherwise provided in this Agreement, Seller hereby acknowledges, warranties and represents (a) that any and all business (if any) currently being operated on the Property by the Seller and/or others shall cease operation prior to Closing, (b) Seller shall vacate the Property before Closing, (c) all Personal Property will be removed prior to the Closing, and any Personal Property not removed prior to Closing shall become the Personal Property of RDC, and (d) Seller shall cooperate with RDC in the transferring of any utilities and/or the disconnection of utilities (if any) as requested by RDC. Notwithstanding any provision herein to the contrary, the RDC agrees to permit Seller to remain in possession of the Property for up to one (1) year from the date of this Agreement the Closing in order to give Seller sufficient time to relocate its business operations, remove salvageable material and equipment, and clean the site of junk and debris. During any such post-Closing possession, Seller will maintain insurance against risks and losses in a manner agreeable to the RDC, and will hold harmless, defend, and indemnify the RDC and FDC from any claims or liabilities either may suffer as a result of Sellers' post-Closing possession, including the assessment of real property taxes, utilities, assessments, and the like related to such period of possession.

(h) Contracts. To Seller's knowledge, there are no service contracts, maintenance contracts, management contracts, construction contracts, parking contracts, license agreements or similar agreements which relate to the Property (collectively "Contracts"). Seller shall not modify, amend, or supplement any existing Contracts or enter into any new Contracts that extend after Closing without the prior written consent of RDC.

(i) Insurance. Risk of casualty loss or damage to the Property shall remain with Seller until possession to the Property is delivered to the RDC after the Closing, and Seller shall maintain in full force current insurance policies, and will cause both the RDC and FDC to be additional insureds. Seller, to the best of Seller's knowledge, has not violated any of the provisions of the existing foregoing insurance policies and all such insurance policies are in full force and effect, and will be so through Closing. . In the event of an insured loss to improvements during Seller's possession of the Property (prior to or after Closing), insurance proceeds relating to same will be used by Seller to repair or clean the improvements, unless the RDC does not require a replacement building for the City's plans for the Property or does not require demolition or clean-up of the Property in which case Seller may retain the proceeds and not make the repairs or conduct clean-up.

(j) Maintenance. Seller shall maintain the Property as needed prior to Closing and during its Tenant's possession post-Closing, including if and to the extent that Seller has any responsibility for maintaining the Property under any other agreement affecting the Property, Seller shall maintain it in conformance therewith through the Closing.

(k) Proceedings and Roadways. To the Seller's actual knowledge, there are no lawsuits, adverse regulatory actions, condemnation or eminent domain proceedings pending or contemplated against the Property or any part thereof and the Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof. If there are any roadways upon the Property, the roadways connect to adjacent public streets or to private streets created by valid public or private easements.

(l) Environmental. Seller is unaware of any hazardous, toxic, environmental waste or other potential environmental liability or risks exists related to the Property, except those already disclosed and well-known to the parties. Seller shall cooperate with RDC in obtaining a third-party environmental assessment, including providing environmental consultants with information as needed.

(m) Mechanic's Liens and Litigation. No payments for work, materials, or improvements furnished to the Property by Seller or at Seller's direction will be due or owing at Closing and no mechanics lien, material man's lien, or other similar lien shall be of record against the Property at the time of Closing. Seller is not aware of any pending lawsuits, condemnation or eminent domain proceedings with respect to the Property.

The representations and warranties set forth above are true and correct as of the Date of this Agreement and shall be true and correct as of the Closing and shall merge into the deed.

4. **RDC and FDC's Warranties and Representations**: The following warranties and representations shall be made by RDC and FDC at Closing:

(a) This Agreement, when executed and delivered by RDC and FDC, will be a valid and binding obligation enforceable in accordance with its terms

(b) Upon the signing and delivery of this Agreement, this Agreement will be legally binding upon RDC and FDC in accordance with all of its provisions.

(c) The person signing this Agreement on behalf of RDC and FDC have been duly authorized to sign and deliver this Agreement on behalf of RDC and FDC, respectively.

(d) RDC and FDC have no knowledge of any litigation, proceeding or action pending or threatened against or relating to RDC or FDC or which questions the validity of this Agreement or any action taken or to be taken by RDC or FDC pursuant to this Agreement.

The representations and warranties set forth above by RDC and FDC are true and correct as of the Date of this Agreement and shall be true and correct as of the Closing and shall merge into the deed.

5. **Closing Costs, Prorations, and Adjustments**. Costs and payments related to the purchase and sale of the Property shall be paid at Closing as follows:

(a) Seller shall satisfy or pay for:

i. all mortgage liens, if any, with respect to the Property and all transfer, servicing, or prepayment penalties or fees assessed by the holders of such mortgages;

ii. one-half (1/2) of the title insurance premiums due in connection with the issuance of RDC's owner's insurance policy in the amount of the Purchase Price;

iii. all of Seller's legal fees;

iv. one-half (1/2) of the fees and costs of Closing Agent,

v. the pro-rated real estate taxes described in paragraph 6 below.

(b) RDC shall pay for:

i. one-half (1/2) of the title insurance premiums due in connection with the issuance of RDC's owner's insurance policy in the amount of the Purchase Price;

ii. all of RDC's legal fees;

iii. the recording cost of the deed conveying title to the Property to RDC;

iv. one-half (1/2) of the fees and costs of Closing Agent.

6. **Prorations**. Real estate taxes shall be prorated as of the date of the Closing. RDC shall receive at Closing a credit for taxes relating to time periods prior to Closing, including the installments due in May 2018 and November 2018, and the prorated portion of the May, 2019 payment. All prorations required under this Agreement shall be computed as of the date of Closing (and RDC shall be deemed to be in title to the Property for the entire day on such date for purposes of this calculation). Seller will also be responsible and pay upon demand to the RDC any additional real property taxes, utilities, assessments, and the like assessed against the Property that stem from the Seller'spost-Closing possession.

7. **Conditions to RDC and FDC's Obligations**. RDC and FDC's obligations to consummate the purchase and sale transaction contemplated by this Agreement is subject to the satisfaction or waiver of the following conditions ("RDC and FDC's Conditions Precedent"):

(a) Title Policy. The title company shall have unconditionally committed to issue, at the Closing, an ALTA Owner's Extended Coverage Policy of Title Insurance, insuring the RDC's interest in the Land and Improvements with liability in the amount of the Purchase Price subject only to the Permitted Exceptions ("Title Policy").

(b) No Breaches. Seller shall not have materially breached any of Seller's obligations set forth in this Agreement.

(c) Accuracy of Representations and Warranties. Seller's representations and warranties shall be true and correct as of the Closing. Seller shall provide a Vendor's Affidavit acceptable to Buyer and its title company. Seller shall at Closing certify that other than as expressly agreed in writing by Seller, RDC, and FDC, no lease or other property interest has been granted to any person.

(d) Contracts. Seller shall provide evidence of the termination of any Contracts (if any) RDC and FDC have requested to be terminated.

(e) Due Diligence. RDC shall have completed its due diligence analysis and elected to proceed to Closing.

8. **Seller's Deliveries**. In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to RDC all of the following documents and items, the delivery and accuracy of which shall be a further condition precedent to RDC's obligations to consummate the purchase and sale herein contemplated:

(a) Items Delivered With This Agreement. If not previously delivered, Seller shall deliver all of the following items currently in the possession or control of Seller as soon as practicable after the full execution of this Agreement. Any subsequent documents within these descriptions of which Seller subsequently possesses or learns of shall be delivered with five (5) business days of such discovery or receipt:

i. Seller's Owner's Title Insurance Policy, along with a copy of all recorded documents referenced as exceptions in the Policy in Seller's possession;

ii. Existing Survey(s) and improvement location reports for the Real Estate;

iii. Copies of all Contracts servicing the Property;

iv. Copies of all warranties related to the Property or its maintenance;

v. Documents concerning any pending or threatened litigation, eminent domain, or governmental regulatory actions related to the Property;

vi. All soil boring tests, asbestos removal reports, environmental studies, reports, and permits with respect to the Real Estate, including Phase 1 and 2 environmental reports and any and all records relating to environmental contamination and/or remediation at the site;

vii. An accounting of any and all charges incurred or charged, of which Seller has notice will be charged, with regard to the Property (including but not limited to common area, utility, or maintenance charges, easement charges, business taxes, business license fees, detention facility maintenance fees, or any other fees and charges whatsoever).

b. Seller shall deliver the following items to Closing Agent prior to the Closing:

i. A Warranty Deed executed by Seller and acknowledged by a notary conveying title to the Land, Appurtenant Rights and Improvements subject only to encumbrances permitted by this Agreement ("Deed") with the legal description from RDC's survey;

ii. Typical affidavits required by RDC's title insurance company, and evidence of authority and capacity to execute the deeds and documents;

iii. "Payoff" letters from the holders of all liens to be satisfied under the terms of this Agreement, if any;

iv. One (1) original FIRPTA affidavit (along with one (1) original of any state or local equivalent affidavit) each executed by Seller (together "FIRPTA");

v. One (1) original of a bill of sale conveying all personal property or detached fixtures remaining on or associated with the Property, (including without limitation parts to the boiler or steam systems, detached trim or panels, detached plumbing, light or other fixtures, detached fin covers and elements of the heat system, and all other personal property, equipment, items, or elements from, currently at, or related to the building).

vi. One (1) original of an assignment and assumption agreement executed by Seller with respect to any leases, licenses agreements and contracts applicable to the Property, if any,

vii. Seller's counterpart of a closing statement for this transaction;

viii. The pro-rated tax payments for the Property,

ix. Seller's net portion of Closing costs, and

x. Any other documents, instruments or agreements reasonably necessary to effectuate the transaction contemplated by this Agreement.

8. **RDC's Deliveries at Closing**. On or before the day of Closing, RDC shall deliver the following to Closing Agent: The Purchase Price (as adjusted pursuant to the Closing Statement and this Agreement), and any and all other documents reasonably required to be executed by RDC to consummate this transaction.

9. **Closing Agent**. RDC will select a title company to act as the Closing Agent (the "Closing Agent") with respect to the transaction contemplated by this Agreement. RDC shall deposit a duplicate original of this Agreement with Closing Agent. This Agreement, together with such further instructions, if any, as the parties shall provide to Closing Agent by written agreement shall constitute the title closing escrow instructions. If any requirements relating to the duties or obligations of Closing Agent hereunder are not acceptable to Closing Agent, or if Closing Agent requires additional instructions, the parties agree to make such deletions, substitutions and additions hereto as counsel for RDC and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly agreed to by Seller and RDC.

11. **Disbursements and Other Actions by Closing Agent**. Upon the Closing, Closing Agent shall promptly undertake all of the following:

i. Recordation of Deeds. Cause the Deed and any other documents which the parties hereto may mutually direct to be recorded in the Official Records of

Johnson County and obtain conformed copies thereof for distribution to RDC and Seller.

ii. Calculation and Disbursement. Disburse all funds deposited with Closing Agent by RDC.

iii. Title Policy. Direct the title company to issue the Title Policy to RDC.

iv. Deliveries to Seller. Deliver to Seller a conformed copy of the recorded Deed and other pertinent documents.

v. Deliveries to RDC. Deliver to RDC: one (1) original Bill of Sale; one (1) original Lease, License and Contract Assignment (if applicable); the original FIRPTA; a conformed copy of the recorded Deed, and other pertinent documents.

12. **Real Estate Commission**. Seller and RDC represent and warrant to each other that no brokerage fees or real estate commissions are or shall be due or owing in connection with this transaction or in any way with respect to the Property. Seller agrees to defend, indemnify, and hold RDC harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through Seller. RDC agrees to defend, indemnify, and hold Seller harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through RDC.

13) Buyer acknowledges that the Property is located within a flood plain, and has been subject to prior flood events.

14) The parties specifically agree that this Agreement is conditioned on the Seller receiving the benefit of the $150,000 TIF Incentive for a property acceptable to Seller in all respects and in its sole discretion.

15) Notwithstanding any provision herein to the contrary, Seller shall be permitted to retain possession of the Property for up to one (1) year subsequent to the Closing, as previously provided in Paragraph 3(g).

16) This Agreement amends, supersedes, and replaces the parties' prior agreements.

17) **Exchange Cooperation Clause**. Notwithstanding anything to the contrary, Buyer hereby acknowledges that it is the intent of the Seller to affect an IRC Sec. 1031 tax deferred exchange, which will not delay the closing or cause additional expense to Buyer. Seller's rights under this agreement may be assigned to another other appropriate entity, as Qualified Intermediary, for the purpose of completing such an exchange. Buyer agrees to cooperate with Seller and its selected Qualified Intermediary in a manner necessary to complete the exchange.

IN WITNESS WHEREOF, the RDC, FDC, and the Seller have caused this Agreement to be executed by their authorized officers and/or representatives, all effective as of the ___ day of _______________, ________ (the “Effective Date”).

SELLER

By: ___________________________________
Bastin-Logan Water Services, Inc.
By Joseph R. Paszek, President

BUYER

CITY OF FRANKLIN, BY AND THROUGH THE FRANKLIN REDEVELOPMENT COMMISSION

By: ___________________________________
Robert D. Heuchan, President

By: ___________________________________
Brian J. Deppe, Secretary

FDC

Franklin Development Corporation

By:_________________________________
Jeff Mercer, President