

**INTERGOVERNMENTAL LEASE AGREEMENT WITH OPTION TO
PURCHASE REAL ESTATE BETWEEN WHEATLAND TOWNSHIP
AND WHEATLAND TOWNSHIP ROAD DISTRICT**

This Intergovernmental Lease Agreement with Option to Purchase Real Estate (herein referred to as "Lease/Option") is entered into this 26th day of August, 2013, by and between the Wheatland Township Board of Trustees, an Illinois township (hereinafter referred to as the "Township/Purchaser"), and Wheatland Township Road District, an Illinois road district (hereinafter referred to as "Road District/Seller") (collectively, the Township/Purchaser and Road District/Seller may be referred to as the "Parties").

WHEREAS, the Township/Purchaser is an Illinois township organized and operating under the Illinois Township Code, 60 ILCS 1/1-1 *et seq.*; and

WHEREAS, the Road District/Seller is an Illinois road district organized and operating under section 6-102 of the Illinois Highway Code, 605 ILCS 5/6-101 *et seq.*; and

WHEREAS, section 30-50 of the Illinois Township Code, 60 ILCS 1/30-50, authorizes the sale or lease of any real property owned by the Township/Purchaser and/or Road District/Seller; and

WHEREAS, the Road District/Seller owns a certain property commonly known as 4232 Tower Court, Naperville, Illinois, 60564 (hereinafter referred to as the "Road District Facility"); and

WHEREAS, Township/Purchaser desires to utilize a portion of the Road District Facility for office and storage space; and

WHEREAS, the Road District/Seller is willing to lease office and storage space with an option to purchase certain property within the Road District Facility to the Township upon the terms and conditions hereinafter set forth; and

WHEREAS, the Illinois Constitution and Statutes, including without limitation the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and Article VII, Section 10 of the 1970 Illinois Constitution, encourage and permit intergovernmental cooperation between units of local government; and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the Parties have determined that it is in their respective best interests, as well as the best interests of the residents and individuals served by the Parties, for the Township/Purchaser to lease with an option to purchase a portion of the space at the Road District Facility.

NOW THEREFORE, IN CONSIDERATION OF the mutual covenants herein contained and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, covenant and promise as follows:

1. INCORPORATION OF RECITALS

The recitals in the foregoing preamble are hereby incorporated in this Lease/Option by reference, and all covenants, terms and conditions of this Lease/Option shall be construed and enforced in conformity therewith.

2. DESCRIPTION OF PREMISES

The Road District/Seller hereby leases to the Township/Purchaser for the term and upon the covenants hereinafter set forth, approximately 2,400 total square feet, in a footprint that is mutually agreed to by the Parties, to be utilized for office space, meeting room and storage space, in the Road District Facility. The leased space shall hereinafter be referred to as the "Demised Premises." The Township/Purchaser shall have access to the Demised Premises and the Road District Facility's common areas, lobby, bathrooms, and parking areas at all times that the Road District Facility is open for business and at such other times as agreed to in advance by the Parties.

3. TERM

The term of this Lease/Option shall commence on September 1, 2013 (the "Commencement Date"). This Lease/Option shall expire at midnight on February 28, 2014 (the "Expiration Date"), or upon such earlier time as Township/Purchaser exercises its option to purchase the Demised Premises. Liability for payment will not extend beyond notice to terminate this agreement. The period from the Commencement Date to the Expiration Date is hereinafter referred to as the "Lease Term."

4. RENT

The Township/Purchaser shall pay to the Road District/Seller a total amount of One Dollar (\$1.00), payable at the time of execution of this Lease/Option, as rent of the Demised Premises (hereinafter referred to as the "Rent") for the whole of the Lease Term.

5. OPTION TO PURCHASE

Provided the Township/Purchaser is not in default, Township/Purchaser shall have the option to purchase the Demised Premises at any time during the initial Lease/Option term pursuant to the terms contained in Paragraph 12 of this Lease/Option.

6. USE OF PREMISES

The Demised Premises shall be used for the purposes of the Township/Purchaser's business. The Township/Purchaser shall restrict its use to such purposes, and shall not use or permit the use of the Demised Premises for any other purpose without the prior, express, and written consent of Road District/Seller, or the Road District/Seller's authorized agent. The Township/Purchaser shall not make any alterations, additions or improvements on the Demised Premises without prior written consent of Road District/Seller.

The Township/Purchaser shall at its own cost and expense obtain any and all licenses and permits necessary for any such use. The Township/Purchaser shall comply will all governmental laws, ordinances and regulations applicable to the use of the Demised Premises and its occupancy thereof, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of any violations or nuisances in or upon, or connected with, the Demised Premises, all at the Township/Purchaser's sole expense. If, as a result of any change in the governmental laws, ordinances and regulations, the Demised Premises must be altered to lawfully accommodate the Township/Purchaser's use and occupancy thereof, such alternations shall be made only with the prior written consent of Road District/Seller, but the entire cost thereof shall be borne by the Township/Purchaser; provided, that, the necessity of Road District/Seller's consent shall in no way create any liability against Road District/Seller for failure of the Township/Purchaser to comply, or alter the Demised Premises to comply with such laws, ordinances and regulations. The Township/Purchaser shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Demised Premises, nor take any other action which would constitute a nuisance or permit any use which would adversely affect the reputation of the building in which the Demised Premises is situated. The Township/Purchaser will not permit the Demised Premises to be used for any purpose in any manner which would render the insurance thereon void or increase the insurance rate thereof, and the Township/Purchaser shall immediately cease and desist from such use, paying all costs and expense resulting from such improper use.

7. QUIET ENJOYMENT

The Township/Purchaser shall be entitled to quiet enjoyment of the Demised Premises, and the Road District/Seller shall not interfere with the right as long as the Township/Purchaser performs all of its obligations under this Lease/Option.

Notwithstanding the above, the Road District/Seller and its authorized representatives, provided they do not unreasonably interfere with the Township/Purchaser's use of the Demised Premises, shall have the right to enter the Demised Premises at all reasonable times (and at all times during an emergency) to inspect the Demised Premises.

8. UTILITIES AND CUSTODIAL SERVICES

The Township/Purchaser shall reimburse Road District/Seller the sum of fifty percent (50%) of all utility and custodial charges and bills, including, but not limited to water, sewer, gas, electric, and janitorial which may be assessed or charged against the Road District Facility. Road District/Seller shall present a copy of all utility and custodial charges and bills to Township/Purchaser by the 15th day of each month for reimbursement from Township/Purchaser. Township/Purchaser shall reimburse Road District/Seller for its fifty percent (50%) portion of the cost of all utility and custodial charges and bills within thirty (30) days of receipt.

Notwithstanding the above, internet installation and service shall be paid and maintained by the Township/Purchaser. The Road District/Seller shall be permitted to utilize the Township/Purchaser's internet services after the installation of internet services.

9. IMPROVEMENTS, REPAIRS AND MAINTENANCE

The Parties understand and agree that, during the duration of this Lease/Option, the Township/Purchaser may need to undertake improvements to the Demised Premises. The Township/Purchaser shall be responsible for all improvements at the Demised Premises required to maintain the Township/Purchaser's business activities. The Township/Purchaser will submit plans for said improvements to the Road District/Seller for its review and comment. The Township/Purchaser will not make any alterations, additions or improvements on the Demised Premises unless each alteration, addition, or improvement is mutually agreed to by the Parties. The Road District/Seller's consent is required to insure that the Road District/Seller's use of the Road District Facility will not be negatively impacted by the Township/Purchaser's proposed alterations, additions or improvements. The Road District/Seller's consent to the Township/Purchaser's proposed alterations, additions or improvements will not be unreasonably withheld. Notwithstanding the foregoing, if damage to the fixtures and furnishings in the Road District Facility are determined to have resulted from the Township/Purchaser's activity, the Township/Purchaser agrees that it shall reimburse the Road District/Seller for all of its direct cost of necessary repairs and replacements to the fixtures and furnishings. Any request by Road District/Seller for reimbursement in this regard shall include a complete itemization of all damages sustained and costs incurred to repair or replace the furnishings and fixtures, including statements and/or bills for materials and services. The Township/Purchaser shall, at its expense, maintain the Demised Premises and keep the Demised Premises in good repair and condition and shall collect and dispose of any trash accumulated therein, except that side and rear exterior walls, the roof, common areas, and those portions of the mechanical systems serving both the Demised Premises and other areas of the Road District Facility will be maintained in good condition by Road District/Seller.

10. LIABILITY AND INDEMNIFICATION

A. Cross-Indemnity. The Parties agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) negligent acts or omissions in the operations or activities on or affecting the Road District Facility by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease/Option. The party seeking indemnification shall give the indemnifying party written notice of any claim which may give rise to an obligation to indemnify the other party within 60 days of its first receiving knowledge of such claim. Notwithstanding anything to the contrary in this Lease/Option, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease/Option. Notwithstanding the above, neither party waives any right, defense or immunity available to it under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

B. Insurance. During the term of this Lease/Option, the Parties shall maintain, or cause to be maintained, in full force and effect and at their respective sole cost and expense, the following types and limits of insurance:

(i) Workers' compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident.

(ii) Comprehensive commercial general liability insurance with minimum limits of Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence of bodily injury and property damage.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by the Party, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

(iv) All policies other than those for workers' compensation shall be written on an occurrence and not on a claims-made basis.

(v) The coverage amounts set forth above may be met by a combination of conventional insurance or participation in a self-insurance pool, so long as in combination the limits equal or exceed those stated.

C. Evidence of Insurance. Certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums, shall be tendered to the other party within sixty (60) days of execution of this Lease/Option.

D. Non-Waiver. Nothing herein shall be construed to represent a waiver of all privileges and immunities granted, by statute or at common law, to the Parties as units of local government. No failure by either party to demand evidence of insurance, or to identify any deficiency described by such evidence, shall constitute a waiver of the insurance requirements described herein. The Parties agree the insurance requirements are non-waivable.

11. LIABILITY INSURANCE

The Township/Purchaser shall procure and maintain in force at its expense during the term of this Lease/Option and any extension of such term, public liability insurance. Such coverage shall be adequate to protect against liability for damage claims through public use of or arising out of accidents occurring in or around the Demised Premises, in a minimum amount of Five Million Dollars (\$5,000,000) for each person injured, Five Million Dollars (\$5,000,000) for any one accident, and One Million Dollars (\$1,000,000) for property damage.

12. MECHANIC'S LIEN

Township/Purchaser agrees to keep the Demised Premises free of all liens and claims for labor performed on and material delivered to the Demised Premises. If a lien is placed on the Demised Premises resulting from any such labor or material, or construction on or to the Demised Premises resulting from any act of the Township/Purchaser, the Township/Purchaser shall cause such lien to

be removed. If said lien is not removed within thirty (30) days after written notice thereof from the Road District/Seller to the Township/Purchaser, then the Road District/Seller shall have the right and privilege at the Road District/Seller's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid will become additional rent due from the Township/Purchaser to the Road District/Seller.

13. ASSIGNMENT AND SUBLETTING

Township/Purchaser shall not assign this Lease/Option or sublet the Demised Premises to any other party.

14. OPTION PURCHASE TERMS

A. Price and Terms. The Township/Purchaser agrees to pay for said Demised Premises the sum of One Dollar (\$1.00), such sum to be paid in cash, certified check, or cashier's check at closing. The Parties will enter into a separate written agreement for the sale of the property and to address post sale repair and maintenance issues. All costs to subdivide the Road District Facility and/or transfer an ownership interest in the Road District Facility to the Township/Purchaser shall be the sole responsibility of the Township/Purchaser.

B. Included in Purchase. The Demised Premises shall also include all land, together with all improvements thereon, all appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, plumbing, air conditioning fixtures and facilities.

C. Title. Subject to compliance with all governmental laws, ordinances and regulations applicable to the subdivision of the Road District Facility, the Road District/Seller shall convey marketable title to the Demised Premises with the above described inclusions, by General Warranty Deed free, clear, and unencumbered. However, if any governmental laws, ordinances or regulations prohibit the Road District Facility from being legally subdivided, then the Road District/Seller shall convey marketable title to the Road District Facility to Township/Purchaser on an equal share basis, or as a percentage interest of the whole property based on a proportionate share of the square footage, as shall be mutually agreed and authorized by the Parties.

D. Closing. The deed shall be delivered and the purchase money shall be paid at a time and place of Township/Purchaser's choice, no later than 60 days after notification to the Road District/Seller of the Township/Purchaser's exercise of the option to purchase.

15. WAIVERS

Waiver by either party of any breach of any covenant or duty of the other under this Lease/Option is not a waiver of a breach of any other covenant or duty of the breaching party, or of any subsequent breach of the same covenant or duty.

16. SEVERABILITY

Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

17. GOVERNING LAW AND VENUE

This Lease/Option shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois. All litigation arising from this Lease/Option shall be in the Circuit Court of Twelfth Judicial Circuit, Will County, Illinois.

18. ENTIRE AGREEMENT

This Lease/Option shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Lease/Option shall not be binding upon either party except to the extent incorporated in this Lease/Option.

19. MODIFICATION OF AGREEMENT

Any modification of this Lease/Option or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

20. NOTICES

All notices, demands, or other writings that this Lease/Option requires to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

To Road District/Seller:
Mark Troyanowski
Highway Commissioner
Wheatland Township Road District
4232 Tower Court
Naperville, Illinois 60564

To Township/Purchaser:
Chuck Kern
Supervisor
Wheatland Township
12337 S. Route 59, Suite 117
Plainfield, Illinois 60585

With a copy to:
Doug E. Ibendahl
Attorney at Law
165 N. Canal Street, Suite 1215
Chicago, Illinois 60606
(312) 648-0061
dibendahl@mail.com

Sean D. Brady
Mahoney, Silverman & Cross, LLC.
822 Infantry Drive, Suite 100
Joliet, Illinois 60435
(815) 730-9500
(815) 730-9598 - FAX

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

21. BINDING EFFECT

This Lease/Option shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties.

22. SUCCESSORS

This Lease/Option shall be binding upon the successors of the Parties.

In witness, each party to this Lease/Option has caused it to be executed this 26th day of August, 2013.

WHEATLAND TOWNSHIP

**WHEATLAND TOWNSHIP
ROAD DISTRICT**

By: _____
Chuck Kern
Supervisor

By: _____
Mark Troyanowski
Highway Commissioner

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____