

RESOLUTION NO. 3361

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPROVING THE TRANSFER OF THE WAYNE STREET PARKING GARAGE TO
THE SOUTH BEND BOARD OF PUBLIC WORKS AND THE ASSIGNMENT OF
CERTAIN GARAGE-RELATED AGREEMENTS TO THE SOUTH BEND BOARD OF
PUBLIC WORKS**

WHEREAS, the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment (the “Commission”), exists and operates pursuant to Ind. Code 36-7-14 (the “Act”); and

WHEREAS, the City of South Bend, Indiana, Board of Public Works (the “Board”) has custody of and may maintain real property owned by the City of South Bend, Indiana (the “City”) pursuant to Ind. Code 36-9-6-3 and may maintain and operate municipal parking facilities pursuant to Ind. Code 36-9-11; and

WHEREAS, following the retirement of the bonds issued by the South Bend Redevelopment Authority (the “Authority”) for the construction of the parking facility located at 121 E. Wayne Street in the City and commonly known as the Wayne Street Parking Garage (the “Wayne Street Garage”), the Authority, pursuant to its Resolution No. 197, conveyed the Wayne Street Garage to the Commission by the warranty deed dated November 18, 2015, and recorded on November 18, 2015 as Document No. 1530954 in the Office of the Recorder of St. Joseph County; and

WHEREAS, pursuant Section 12.2(a)(3) of the Act, the Commission desires to convey the Wayne Street Garage to the Board consistent with the Board’s powers under Ind. Code 36-9-11; and

WHEREAS, in order to consolidate and clarify certain contractual arrangements concerning the Wayne Street Garage, the parking facility located at 126 N. Main Street (the “Main Street Garage”), and the parking facility located at 118-131 S. Michigan Street (the “Leighton Garage”) (collectively, the “Garages”), the Commission desires to assign to the Board certain agreements pertaining to the Garages; and

WHEREAS, the Board is expected to adopt a corresponding resolution accepting the Wayne Street Garage and accepting the Commission’s assignment of the Garage-related agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission hereby approves, and will execute simultaneously with this Resolution, the warranty deed attached hereto as Exhibit A (the “Warranty Deed”) conveying the Wayne Street Garage to the Board.

2. The Commission hereby approves, and will execute simultaneously with this Resolution, the Assignment And Assumption Of Garage-Related Agreements attached hereto as Exhibit B (the “Assignment”).

3. The Commission hereby authorizes and instructs David Relos or Aaron Kobb, each of the City’s Department of Community Investment, to deliver the Warranty Deed and the Assignment to an authorized representative of the Board and to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution.

4. This Resolution will be in full force and effect upon its adoption by the Commission.

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on September 15, 2016, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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EXHIBIT A

Warranty Deed

WARRANTY DEED

THIS INDENTURE WITNESSETH THAT the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND WARRANTS TO Civil City of South Bend for the use and benefit of its Board of Public Works, 1300 N. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantee") for and in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following real estate (the "Property"):

Lots 1 and 2 of the recorded plat of Wayne Street Parking Garage Minor Subdivision recorded on February 19, 2016, as Document No. 1604082 in the Office of the Recorder of St. Joseph County, Indiana.

Grantor hereby conveys the Property in fee simple to Grantee subject to all easements, covenants, restrictions, and other matters of record.

Each undersigned person executing this Warranty Deed on behalf of the Grantor represents and certifies that he or she has been fully empowered and authorized to execute this Warranty Deed and that all action necessary to complete this conveyance on Grantor's behalf has been duly taken.

Dated this ____ day of _____, 2016.

GRANTOR:

South Bend Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this ____ day of _____, 2016, personally appeared Marcia I. Jones and Donald E. Inks, to me known to be the President and Secretary, respectively, of the South Bend Redevelopment Commission, the Grantor, and acknowledged execution of the foregoing Warranty Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL)

_____, Notary Public
Commission expires: _____ Resident of _____ County, _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

Prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT B

Assignment And Assumption Of Garage-Related Agreements

**ASSIGNMENT AND ASSUMPTION
OF GARAGE-RELATED AGREEMENTS**

This Assignment And Assumption Of Garage-Related Agreements (this “Assignment”) dated as of September 27, 2016 (the “Effective Date”), is entered into by and between the City of South Bend, acting by and through its Board of Public Works (the “Board”), and the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”) (each a “Party” and collectively the “Parties”).

RECITALS

A. The City of South Bend (the “City”), through its governing bodies, has constructed, equipped, maintained, and operated the parking facilities located at 126 N. Main Street (the “Main Street Garage”), 118-131 S. Michigan Street (the “Leighton Garage”), and 121 E. Wayne Street (the “Wayne Street Garage”) (collectively, the “Garages”).

B. The Board holds equitable title to the Main Street Garage and the Leighton Garage.

C. By the warranty deed dated September 15, 2016, which the Board accepted on September 27, 2016, as stated in Resolution No. 44-2016, the Commission conveyed to the Board legal title to the Wayne Street Garage.

D. Consistent with the consolidation of the Board’s ownership of the Garages, the Commission desires to assign to the Board all of the Commission’s rights, interests, and obligations in, to, and under certain agreements with respect to the Garages, and the Board desires to accept the assignment thereof and assume the Commission’s rights, interests, and obligations thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Assignment. The Commission hereby transfers, assigns, and conveys, all of the Commission’s rights, interests, and obligations in, to, and under the following agreements (collectively, the “Assigned Agreements”):

- (a) Ground and Airspace Lease by and between the Commission and Leighton Plaza Offices, LLC, as successor-in-interest to Riggs & Company, a division of Riggs Bank N.A., trustee of the Multi-Employer Property Trust, dated March 6, 1998, attached hereto as Exhibit 1 (for property located at 130 S. Main Street and adjacent to and above the Leighton Garage);
- (b) Ground Lease by and between the Commission and Memorial Hospital of South Bend, Inc., dated January 23, 1998, attached hereto as Exhibit 2 (for

property located at 111 W. Jefferson Boulevard and adjoining and above the Leighton Garage);

- (c) Lease by and between the Commission and J Weldy, LLC, as successor-in-interest to Bruno Cataldo, dated August 1, 2010, as amended by the Second Amendment to Lease, dated January 13, 2014, collectively attached hereto in reverse chronological order as Exhibit 3 (for property located in the ground level of the Leighton Garage);
- (d) Lease by and between the Commission and First Church of Christ Scientist South Bend, dated September 7, 2007, as amended by the First Amendment to Lease, dated August 16, 2012, collectively attached hereto in reverse chronological order as Exhibit 4 (for property located in the ground level of the Leighton Garage);
- (e) Lease by and between the Commission and Le Peep of South Bend, Inc., dated October 20, 2000, as amended by the First Amendment to Lease, dated February 13, 2003, the Second Amendment to Lease, dated November 2, 2007, the Third Amendment to Lease, dated November 1, 2008, and the Fourth Amendment to Lease, dated May 10, 2011, collectively attached hereto in reverse chronological order as Exhibit 5 (for property located in the ground level of the Leighton Garage);
- (f) Lease by and between the Commission and Gordon Ventures, LLC d/b/a Edible Arrangements, dated October 11, 2012, attached hereto as Exhibit 6 (for property located in the ground level of the Leighton Garage);
- (g) Lease by and between the Commission and Times Five, LLC d/b/a Linden Grill, dated April 27, 2016, attached hereto as Exhibit 7 (for property located in the ground level of the Leighton Garage);
- (h) Lease by and between the Commission and Michiana Brewer's Supply LLC, dated June 1, 2014, as amended by the First Amendment to Lease dated June 13, 2016, collectively attached hereto in reverse chronological order as Exhibit 8 (for property located in the ground level of the Leighton Garage);
- (i) Lease by and between the Commission and Sonja Young d/b/a Vesuvio's Pizza, dated July 26, 2011, as amended by the First Amendment to Lease, dated December 22, 2014, collectively attached hereto in reverse chronological order as Exhibit 9 (for property located in the ground level of the Wayne Street Garage); and
- (j) Commercial Property Management and Leasing Agreement by and between the Commission and Bradley Company, LLC, dated February 1, 2015, attached hereto as Exhibit 10 (relating to management and leasing of retail space in the Leighton Garage and the Wayne Street Garage).

2. Assumption. The Board hereby assumes all rights, interests, and obligations of the Commission under the terms and provisions of the Assigned Agreements, whether presently existing or arising after the date of this Assignment.

3. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the Commission and the Board and their respective successors-in-interest and permitted assigns.

4. Consent. In accordance with the respective terms of the Assigned Agreements, no third party's consent is required to carry out the assignment and assumption stated herein.

IN WITNESS WHEREOF, the Commission and the Board have executed this Assignment And Assumption Of Garage-Related Agreements as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS

Marcia I. Jones, President

Gary Gilot, President

ATTEST:

Therese Dorau, Member

Donald E. Inks, Secretary

Elizabeth Maradik, Member

James Mueller, Member

David Relos, Member

ATTEST:

Linda Martin, Clerk

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