

DEVELOPMENT AGREEMENT

by and among

THE SOUTH BEND REDEVELOPMENT COMMISSION,
THE SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION,

and

KITE REALTY GROUP, L.P.

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement"), made on _____, 2016 is by and among the South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment (the "Commission"); the South Bend Economic Development Commission, a separate body corporate and politic and an instrumentality of the City (as hereinafter defined) (the "EDC"); and Kite Realty Group, L.P, a Delaware limited partnership (the "Developer") (each sometimes being referred to herein as a "Party" or collectively as the "Parties").

RECITALS

WHEREAS, the Commission exists and operates under the provisions of Indiana Code § 36-7-14, commonly known as the "Redevelopment of Cities and Towns Act of 1953," as amended from time to time ("Act"); and

WHEREAS, the Indiana legislature has determined that the clearance, replanning and development of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the area described on Exhibit A-1 attached hereto and incorporated herein (the "Development Site") is located within the corporate boundaries of the City of South Bend, Indiana (the "City") and further is located within that area formerly known as the "Northeast Neighborhood Development Area" and now known as the "River East Development Area" (the "Area"), an area previously determined by the Commission to be a redevelopment area under the Act; and

WHEREAS, (i) Developer's wholly-owned subsidiary, KRG Eddy Street FS Hotel, LLC, owns a leasehold interest in that portion of the Development Site, consisting of the Eddy Street Commons Full Service Hotel Area depicted in Exhibit A-2, pursuant to that certain FS Hotel Ground Lease dated as of April 30, 2015, as amended, with the University of Notre Dame du Lac, an Indiana non-profit corporation (the "University"), and (ii) Developer anticipates that it will own a fee simple interest in, leasehold interest in, and/or obtain site control with respect to the balance of the real estate comprising the Development Site pursuant to separate agreements to be entered into by and between Developer (or a subsidiary or affiliate entity of Developer) and the University; and

WHEREAS, the Commission has designated and declared and the Common Council of the City (the "Common Council") has approved of the designation and declaration of the entire Area to be a tax increment financing allocation area formerly known as the "Northeast Neighborhood Development Area, Allocation Area #1" and now known as the "River East Allocation Area No. 1" (the "Allocation Area No. 1"); and

WHEREAS, the Commission has amended this designation so that a portion of the Area and Allocation Area No. 1 is deemed a housing program named the "Northeast Neighborhood Development Area Housing Program" and a housing allocation area formerly known as the "Northeast Neighborhood Development Area, Allocation Area #2" and now known as the "River

East Development Area, Allocation Area #2" (the "Allocation Area No. 2") as described on Exhibit B attached hereto and incorporated herein; and

WHEREAS, the Commission has previously adopted a development plan for the Area (the "Development Plan") and a Housing Program Plan ("Housing Plan") with respect to Allocation Area No. 2; and

WHEREAS, the Development Plan and the Housing Plan have subsequently been amended and contemplate certain public improvements in support of the development project commonly known as Eddy Street Commons (the "Project") located in the Area pursuant to that certain Development Agreement dated February 15, 2008, by and among the South Bend Redevelopment Commission, the South Bend Redevelopment Authority, the City of South Bend, Indiana, and Kite Realty Group, L.P., as amended by the First Amendment to Development Agreement dated June 6, 2008, and the Second Amendment to Development Agreement dated December 31, 2013 (collectively, the "Phase I Development Agreement"), which agreement described the first phase of the Project ("Phase I") and contemplated Phase II of the Project; and

WHEREAS, Developer desires to complete Phase II of the Project in Allocation Area No. 2 as a continuation of Phase I of the Project pursuant to the Development Plan and the Housing Plan; and

WHEREAS, the Commission believes that further development of the Development Site and accomplishing Phase II of the Project as described herein is in the best interests of the health, safety and welfare of the City and its residents and complies with the public purposes and provisions of the Act and all other applicable federal, state and local laws under which Phase II of the Project has been undertaken and is being assisted; and

WHEREAS, the Commission, the EDC and the City desire to facilitate Phase II of the Project in accordance with the powers granted the Commission and the EDC under the Act and the powers granted the EDC, the Commission and the City under the Indiana Code by undertaking public improvements and the financing thereof subject to the conditions contained herein; and

WHEREAS, the Parties agree that it is of mutual benefit for the Parties to enter into this Agreement relating to Phase II of the Project, construct the Public Improvements (as defined herein) and certain other matters described herein that will include the commitments of each Party with respect thereto.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Agreement, the adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Defined terms are indicated by initial capital letters. Defined terms shall have the meaning set forth herein, whether or not such terms are used before or after the definitions are set forth, the following terms are more specifically defined below:

1.1. Funding Amount. "Funding Amount" shall mean the proceeds of the EDC Bonds in the approximate amount of Eighteen Million Five Hundred Thousand Dollars and 00/100 (\$18,500,000.00) from the proceeds of the EDC Bonds which the City, the Commission and/or the EDC shall cause to be deposited into one or more accounts, after paying costs of issuance and funding the reserve account for the EDC Bonds, to be used for paying the costs (including both soft and hard costs to be incurred and/or expended) to undertake the Public Improvements. The Funding Amount shall be distributed as follows so long as the Developer is in substantial compliance with the terms of this Agreement: (a) twenty-five percent (25%) of the Funding Amount shall be disbursed to Developer (or its assignee or designee) within ten (10) days after the Bond Closing Date (as defined in Section 4.2 hereof) (the "Initial Advance Date"), and (b) thereafter, disbursements shall be made to Developer (or its assignee or designee), following submission of a requisition by the Developer to the City and the Trustee for the distribution of a portion of the Funding Amount (or the remaining amount thereof) to pay (or reimburse) for costs for development and construction of the Public Improvements (hereinafter, each a "Request for Advance"). Each Request for Advance shall include: (i) the requested amount to be disbursed (the "Disbursement Amount") and (ii) documentation evidencing the costs and expenses paid in connection with the completion of the Project in an amount equivalent to the Funding Amount previously drawn. Upon receipt of such documentation, the City shall approve the disbursement request within ten (10) business days, and following the City's approval, the Trustee shall disburse the requested funds. The Funding Amount shall be exclusive of all costs and expenses incurred by or for the benefit of the City, the Commission and/or the EDC in connection with obtaining any financing that will yield the Funding Amount. The Funding Amount may be increased or reduced by an amount equal to the difference (if any) between the projected EDC Bond proceeds, as mutually determined by the City and Developer prior to the Bond Closing Date, and the actual proceeds, to the extent that the difference is the result of (i) an inability to obtain a surety policy for the EDC Bonds in lieu of a cash reserve requirement and (ii) any difference in the actual interest rate of the EDC Bonds from the interest rate assumption, as mutually determined by the City and Developer prior to the Bond Closing Date (provided, that any reduction in the Funding Amount attributable to item (i) shall be offset by any increase in the EDC Bond proceeds resulting from a decrease in the actual interest rate on the EDC Bonds from the assumed interest rate; and the Funding Amount shall be increased if, prior to the Bond Closing Date, the City and Developer mutually determine, that based on the projected TIF Revenue and the actual interest rate of the EDC Bonds, after such increase, a projected debt service coverage for the EDC Bonds of 1.40 or greater will still be achieved. Notwithstanding anything contained herein to the contrary, prior to the disbursement of the Funding Amount, if Developer deems it necessary, the Parties hereby agree to enter into an amendment to this Agreement providing that disbursements of the Funding Amount will be made to such legal entity controlled by Developer as Developer may determine is appropriate for taxation purposes. Said amendment shall not change the material terms of this Agreement, including the amount to be paid by City, the structure of the funding or the obligation of Developer with respect to the Completion Guarantee (as hereinafter defined), and such agreement shall otherwise be in a form reasonably acceptable to the Parties.

1.2. Phase II of the Project. Phase II of the Project means the construction of the following improvements: (i) an Embassy Suites (or similar full-service hotel), consisting of a minimum of 150 hotel rooms (the "Hotel"), (ii) two (2) four story mixed-use buildings, consisting of approximately 215,000 square feet, in the aggregate, which shall contain a

combination of retail space, office space, flex space, and residential apartments (the "Mixed-Use Buildings"), (iii) a new building for the Robinson Community Learning Center (the "Robinson Building"), (iv) a sub-grade parking facility serving Phase II of the Project (the "Parking Improvements"), (v) three (3) three story residential apartment buildings, consisting of approximately 230,000 square feet, in the aggregate (the "Apartment Buildings"), (vi) if in Developer's judgment, market conditions permit, certain other residential buildings and improvements, consisting of row houses and townhomes, and certain other retail improvements, such as a grocery store or market, and (vii) certain sitework and infrastructure improvements, including utility, drainage and road improvements necessary for the completion and operation of Phase II of the Project. Since EDC Bonds are being used to fund Phase II of the Project, only activities permitted to be conducted with EDC Bonds will be undertaken for Phase II of the Project. Therefore, it is understood that EDC Bonds will not be used for any of the following purposes in connection with Phase II of the Project: (i) private or commercial golf course, (ii) country club, (iii) massage parlor, (iv) tennis club, (v) skating facility (including roller skating, skateboarding, or ice skating), (vi) racquet sports facility (including any handball or racquetball court), (vii) hot tub facility, (viii) suntan facility, (ix) racetrack, (x) airplane, (xi) skybox or other private luxury box, (xii) health club, (xiii) any facility primarily used for gambling, (xiv) any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (xv) any other uses of EDC Bonds which are not permitted under Indiana law.

1.3. Pledged Funds. Pledged Funds means the TIF Revenues from Allocation Area No. 2, the proceeds received from the sale of the EDC Bonds (until disbursement in accordance with the terms of this Agreement), and certain money and securities from time to time held by a trustee under the terms of a trust indenture.

1.4. Private Investment. Private Investment means the sum of the construction and improvement costs associated with Phase II of the Project, including architectural and engineering costs and any other costs directly related to construction of Phase II of the Project.

1.5. Public Improvements. Public Improvements means the improvements needed in connection with Phase II of the Project, as described in Section 1.2 above, and located in or serving the Housing Plan, to be financed with the Funding Amount.

1.6. EDC Bonds. EDC Bonds means the Economic Development Revenue Bonds issued by the EDC payable from the Pledged Funds.

1.7. TIF Revenues. TIF Revenues means the incremental real property tax revenues, that are collected in Allocation Area #2 and pledged to the payment of the EDC Bonds.

SECTION 2. EFFECTIVE DATE, INTERPRETATION AND TERM.

2.1. Effective Date. This Agreement shall be effective as of the date first written above (the "Effective Date").

2.2. Interpretation.

(a) The terms "herein", "hereto", "hereunder" and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article, Section or Exhibit to this

Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) "Section ____" or "Article ____" shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) "Exhibit ____" shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this "Agreement" shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms "include", "including" and "such as" shall each be construed as if followed by the phrase "without being limited to".

2.3. Term. The "Term" of this Agreement shall commence upon the Effective Date and continue until the date of the first real estate tax assessment for the components of Phase II of the Project that follows the investment of the amount required in Section 3.3 as the full amount of the Private Investment. Notwithstanding the foregoing, those obligations which by the terms of this Agreement are expressly stated to continue after expiration or termination, shall survive beyond the Term of this Agreement. Within thirty (30) days after the expiration of the Term, the Parties shall execute a certificate confirming the same.

2.4. Recitals. The Recitals set forth above are a part of this Agreement for all purposes.

SECTION 3. DEVELOPER'S OBLIGATIONS.

3.1. Generally. The Parties acknowledge and agree that the Commission's and the EDC's agreements to perform and abide by the covenants and obligations set forth in this Agreement are a material consideration of Developer's commitment to perform and abide by the covenants and obligations of Developer contained in this Agreement.

3.2. Phase II Project Improvements.

(a) Developer shall use commercially reasonable efforts to construct or cause to be constructed the improvements associated with Phase II of the Project as described in Section 1.2 at the locations identified in the Drawings (as defined in Section 3.7 hereof).

(b) Subject to extension for any delay caused by an event of Force Majeure (as hereinafter defined), Developer expects initial construction of Phase II of the Project to commence within ninety (90) days after the Bond Closing Date, and expects the construction of those components of Phase II of the Project, consisting of the Hotel, the Robinson Building, the two Mixed-Use Buildings, the Parking Improvements, and the Apartment Buildings, to continue for approximately thirty-six (36) months.

(c) The City, the EDC and the Commission shall make the first portion of the Funding Amount available to Developer no later than the Initial Advance Date.

3.3. Private Investment. Developer agrees to a minimum Private Investment amount for Phase II of the Project of One Hundred Million Dollars and 00/100 (\$100,000,000.00). Said minimum Private Investment amount may be met through equity, debt and/or third party investment.

3.4. Cooperation. Developer hereby agrees to endorse and support the Commission's efforts to expedite Phase II of the Project through the required planning, design, permitting, waiver, and related regulatory processes; provided, however, Developer shall not be required to expend any money in connection therewith.

3.5. Employment of Local Labor. Developer hereby agrees to cause the general contractor(s) engaged for Phase II of the Project to provide notice to local contractors of requests for bids, of pre-bid meetings and of related meetings and information with respect to Phase II of the Project so as to use commercially reasonable efforts to employ qualified local contractors and other related local labor during construction of Phase II of the Project. Developer will use commercially reasonable efforts to cause the general contractor(s) engaged for Phase II of the Project to meet with the business agents of applicable skilled trade unions in order to give them the details of Phase II of the Project prior to contracting for the completion of Phase II of the Project.

3.6. Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of Phase II of the Project and again upon substantial completion of Phase II of the Project, Developer hereby agrees to report to the City the number of local contractors and local laborers involved in the commercial (which includes the hotel) portions of Phase II of the Project, the amount of bid awards for each contract related to the commercial (which includes the hotel) portions of Phase II of the Project, and information regarding which contractor is awarded each contract with respect to the commercial (which includes the hotel) portions of Phase II of the Project.

(b) On or before April 15, June 30, September 30 and December 31 of each year until substantial completion of Phase II of the Project, Developer shall submit to the City a report demonstrating Developer's good-faith compliance with the terms of this Agreement. This report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, and (iii) an itemized accounting generally identifying the Private Investment to date.

(c) On or before April 15 of the year that is one year after substantial completion of Phase II of the Project and on each April 15 thereafter until April 15 of the year which is five years after substantial completion of Phase II of the Project, Developer shall submit to the City a report with the following information: (i) the number of jobs created as a result of Phase II of the Project and wage and benefit information for the jobs created; and (ii) a detailed description of the of the job and wage details for the number of people employed by Phase II of the Project. This provision shall survive the expiration of the Term of this Agreement.

3.7. Submission of Plans and Specifications. Developer has made available to the City certain preliminary site plans, specifications and other planning materials, including the

Eddy Street Phase II Master Plan depicted in Exhibit A-3, with respect to Phase II of the Project (as may be hereinafter, amended or modified by Developer, subject to Developer's compliance with any applicable planning, zoning and other City ordinances, codes, standards and specifications relating thereto, collectively, the "Drawings"). Subject to the terms and conditions of this Agreement, Developer shall construct, or cause to be constructed, Phase II of the Project: (i) in substantial accordance with the Drawings; and (ii) in accordance with all planning, zoning and other City ordinances, codes, standards and specifications, whether now existing or enacted in the future. Upon completion of plans and specifications for Phase II of the Project, Developer shall deliver a complete set thereof to the City.

3.8. Costs and Expenses of Construction of Development. Developer hereby agrees to pay, or cause to be paid, all costs and expenses of construction for Phase II of the Project (including legal fees, architectural and engineering fees), exclusive of the Funding Amount to be paid as set forth in Section 1.1 hereof, for costs associated with the Public Improvements.

3.9. Non-Interference. In order to minimize disruption for those living and working in or near the Development Site during construction of Phase II of the Project, Developer agrees to comply with all applicable laws and regulations relating to construction activities in the City.

3.10. Taxes; Appeals and Abatement. Developer shall timely pay when due all taxes assessed against Phase II of the Project on real or personal property owned or leased by Developer (or Developer's subsidiaries or affiliated entities) in accordance with law, but subject to appeals expressly permitted under this Section 3.10. Failure to timely pay any such taxes shall constitute an event of default hereunder. Developer will not be permitted to appeal tax assessments for Phase II of the Project, and Developer agrees that it will not join or support any appeal of tax assessments initiated by the University; provided, that, Developer (or its successor or assign) shall not be prohibited from appealing said tax assessments if: (i) Developer (or its successor or assign) determines the assessment is wrong due to mathematical or clerical error or (ii) the total assessed valuation for Phase II of the Project exceeds the amount of the target assessed valuation for Phase II of the Project that is necessary to achieve a debt service coverage for the EDC Bonds of 1.1 or greater. Further, Developer will not be permitted to file for or pursue a tax abatement for any portion of Phase II of the Project. The covenants and agreements set forth in this Section 3.10 shall survive until the first to occur of (A) the date that is twenty (20) years from the Bond Closing Date, and (B) the date upon which the EDC Bonds are no longer outstanding.

3.11. Insurance. Developer shall purchase and maintain, or cause to be purchased and maintained, Commercial General Liability Insurance as is appropriate for the work being performed with respect to Phase II of the Project. Developer shall provide proof of such adequate insurance to the City, the EDC and the Commission and shall notify the City, the EDC and the Commission of any change in or termination of such insurance. The City, the Commission and the EDC shall be named as additional insureds for the minimum amounts or greater when required by law as described in Exhibit C attached hereto and incorporated herein (but not on any worker's compensation policies).

3.12. Public Announcements, Press Releases and Marketing Materials. Developer hereby agrees to (a) coordinate a Phase II Project "kick off" press release with the City, (b)

coordinate a Phase II Project groundbreaking ceremony with the City, and (c) use commercially reasonable efforts to coordinate other significant public announcements with the City, subject, in each case, to any securities laws or securities exchange requirements or guidelines that would prevent Developer from engaging in such coordination. Developer agrees to allow the City, the EDC and the Commission to distribute and use those marketing materials, which have been provided by Developer to the City, the EDC and the Commission for disbursement to the public (or which have already been made publicly available by Developer), in order to promote Phase II of the Project.

3.13. Information. Developer hereby agrees to provide any information reasonably requested in writing by the City and the Commission relating to the assessed value of the property located within the area of Phase II of the Project to assist the City and the Commission in accurately determining the projected TIF Revenues for purposes of paying debt service on the EDC Bonds, Developer further agrees to provide any and all physical condition due diligence items with respect to Phase II of the Project reasonably requested by the City and/or the Commission.

3.14. Compliance with City Zoning and Standards. All current zoning, planned unit development ordinances, development standards and commitments to adjacent property owners which are applicable to Phase II of the Project shall be honored by Developer, subject to modifications, amendments, re-zonings or variances obtained through the legal process. Developer shall be responsible for compliance with all City ordinances, codes, standards and specifications, whether now existing or enacted in the future. Developer (or Developer's subsidiaries, affiliated entities or assignees) shall be responsible for the payment of all fees and assessments that are required to be paid in connection with the development of Phase II of the Project (e.g. building permits, inspection fees, impact fees, etc.), whether now existing or enacted in the future.

3.15. Costs. All costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to Phase II of the Project, if any, and all other fees and costs expressly provided for herein as a cost of Developer, shall be the responsibility of the Developer. The Parties shall each be responsible for their own costs of entering into and closing this Agreement.

3.16. Completion Guarantee. Developer hereby irrevocably and unconditionally, guarantees the substantial completion of those components of Phase II of the Project, consisting of the Hotel, the two Mixed-Use Buildings, the Robinson Building, the Parking Improvements and the Apartment Buildings in accordance with the Drawings and all other provisions of this Agreement (the "Completion Guarantee"), within five (5) years after the Bond Closing Date, subject to extension for any delay caused by an event of Force Majeure (the "Completion Date"). The City, the Commission and/or the EDC may make demand for completion of Phase II of the Project upon the expiration of the Completion Date. The City, the Commission and/or the EDC shall have the sole, but reasonable, discretion to determine the reasonableness of the period of time which may elapse after the Completion Date for Developer to cause the substantial completion of Phase II of the Project. If the Developer fails to cause Phase II of the Project to be substantially completed in accordance with a demand for completion, then the Developer's

failure to perform shall constitute an event of default hereunder (provided, that, Developer shall be entitled to the notice and cure periods set forth in Section 7.1 hereof).

SECTION 4. COMMISSION'S AND EDC'S OBLIGATIONS.

4.1. Generally. The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's and the EDC's commitment to perform and abide by the covenants and obligations of the Commission and the EDC contained in the Agreement.

4.2. Completion of and Financing of Public Improvements; Notice to Proceed. The Commission and the EDC hereby agree to cause the Funding Amount to be deposited into one or more funds created pursuant to a Trust Indenture at the time of the closing on the EDC Bonds, which closing shall occur within thirty (30) days after Developer has provided the Commission and the EDC with written notice (the "Notice to Proceed") of its intention to proceed with Phase II of the Project (hereinafter, the "Bond Closing Date"). As set forth in this Agreement, the Funding Amount is to be used for paying the costs to undertake the Public Improvements. All amounts deposited into such accounts shall be used exclusively to satisfy the Commission's and the EDC's obligation to pay the costs to undertake the Public Improvements. Notwithstanding anything contained in this Agreement to the contrary, if, prior to the delivery of the Notice to Proceed, Developer determines after the use of commercially reasonable efforts that Phase II of the Project is no longer feasible, then Developer shall have the right to terminate this Agreement upon written notice to the Commission and the EDC prior to the Bond Closing Date, in which event, this Agreement shall terminate and be of no further force and effect, and the Parties shall be relieved of any further obligations hereunder other than those obligations (if any) which are set forth herein to specifically survive termination of this Agreement. If Developer terminates this Agreement pursuant to this Section 4.2, then Developer shall be required to pay any and all outside third party fees incurred by the City, the Commission and/or the EDC up to and including the date of termination; provided, that, in no event shall Developer's payment obligation exceed the sum of Fifty Thousand Dollars (\$50,000.00).

4.3. Cooperation. Consistent with City policy, the Commission and the EDC hereby agree to endorse and support Developer's efforts to expedite Phase II of the Project through the required planning, design, permitting, waiver and related regulatory processes; provided, however, the City, the Commission and the EDC shall not be required to expend any money in connection therewith. The Commission and the EDC further agree to permit Developer or its agents access to the Development Site through the use of the public roads surrounding the Development Site necessary to accomplish the actions contemplated by this Agreement. This cooperation, however, in no way guarantees planning, design, permitting or any other City approval.

4.4. Costs and Expenses. The Commission and the EDC hereby agree to bear their own costs and expenses related to this Agreement and the issuance of the EDC Bonds, which shall include legal fees, architectural and engineering fees, and any other costs and expenses related to the planning, and financing of the Public Improvements and the issuance of the EDC Bonds, except as may otherwise be provided in this Agreement.

4.5. Reserved.

4.6. Zoning, Variance, Special Permits, Etc. The Commission and the EDC hereby agree to continue to assist Developer in its efforts to seek zoning, variance, right-of-way vacation, environmental, sign, health, safety, lane closure, construction and other necessary permits, consents and/or approvals to complete Phase II of the Project (to the extent they have not yet been obtained and completed), however, the Commission and the EDC cannot guarantee approval in such efforts.

4.7. Reserved.

4.8. Information. The Commission and the EDC hereby agree to provide any and all due diligence items within its control with respect to Phase II of the Project reasonably requested by the Developer.

4.9. Connection to Water, Sewer and Utilities. The City, by and through the Commission and the EDC, hereby agrees to allow Developer to connect to any and all water lines, sanitary and storm sewer lines, and other utilities within or serving the area of Phase II of the Project, subject to the City's prior review of all plans and specifications for such connections and any other approval, inspection or other permit requirements. The permissions granted pursuant to this Section 4.9 shall not negate or impact the Developer's (or Developer's subsidiaries, affiliated entities, or assignees) obligations to obtain all applicable applications and permits, complete all applicable reviews, inspections, and/or approval processes required by the City and/or any other applicable agency, or otherwise continuously maintain compliance with the City's ordinances, whether now existing or enacted in the future, and pay all fees and assessments of City applicable to Phase II of the Project, whether now existing or enacted by the City in the future.

4.10. Public Announcements, Press Releases and Marketing Materials. The Commission and the EDC hereby agree to coordinate all public announcements and press releases relating to Phase II of the Project with Developer.

SECTION 5. RESERVED.

SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

6.1. Cooperation. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission, the EDC or the City be required to bear the fees and costs of Developer's attorneys nor shall Developer be required to bear the fees and costs of the Commission's, the EDC's or the City's attorneys. The Parties agree that this Section 6.1 shall constitute a separate agreement entered into concurrently with this Agreement, and that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

6.2. Jurisdiction and Venue. Developer further agrees to and hereby submits to jurisdiction before any state or federal court with jurisdiction in St. Joseph County, Indiana, and Developer hereby specifically waives any right to raise questions of personal jurisdiction or venue in any action the City, the Commission, or the EDC may bring against Developer in any such court.

SECTION 7. DEFAULT.

7.1. Default.

(a) Any material failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period (such a failure, if not so cured, being an "Event of Default"). Upon the occurrence of an Event of Default and except as set forth in Section 7.1(b) of this Agreement, the non-defaulting Party may institute legal proceedings at law for actual damages; provided, that in no event shall any Party have the right to terminate this Agreement. If the default is cured, then no Event of Default shall exist and the noticing Party shall take no further action.

(b) If Developer provides the City with notice of the contact information for Developer's Phase II Project lender, then such lender shall be provided any notice of default of Developer hereunder and the opportunity to cure such default.

7.2. Indemnity.

(a) To the extent permitted by law, the Commission and the EDC agree to indemnify, defend and hold Developer harmless from and against any third party claims suffered by Developer as a result of negligent acts or omissions of the EDC or the Commission relating to the completion of Phase II of the Project and/or the Public Improvements unless such claims arise by reason of the negligent act or omission of Developer.

(b) To the extent permitted by law, Developer agrees to indemnify, defend and hold the City, the Commission and the EDC harmless from and against any third party claims suffered by the City, the Commission or the EDC as a result of the negligent act or omission of Developer relating to the completion of Phase II of the Project and/or the Public Improvements unless such claims arise by reason of the negligent act or omission of the City, the Commission or the EDC.

7.3. Enforced Delay in Performance for Causes Beyond Control of Party; Extension of Time of Performance. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of

terrorism, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, an extension of time for such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

SECTION 8. NO AGENCY, JOINT VENTURE OR PARTNERSHIP; CONFLICT OF INTEREST.

8.1. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties that:

(a) Phase II of the Project is a private development;

(b) Neither the Commission, the EDC nor Developer have any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the EDC and/or Developer accepts the same pursuant to the provisions of this Agreement; and

(c) The Commission, the EDC and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the EDC and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the EDC and Developer.

8.2. Conflict of Interest; Commission and EDC Representatives Not Individually Liable. No member, official, or employee of the Commission or the EDC shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official, or employee of the Commission or the EDC shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to Developer or successor or assign or on any obligations under the terms of the Agreement. No partner, employee or agent of Developer or successors of them shall be personally liable to the Commission, the City or the EDC under this Agreement.

SECTION 9. MISCELLANEOUS.

9.1. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

9.2. Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to accomplish the Project contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain permits, consents and/or approvals (to the extent they have not yet been obtained and completed) will be required in order for Developer to construct Phase II of the Project and that such permits, consents and/or approvals will require independent action by persons, agencies or entities not a party to this Agreement.

9.3. Waiver of Jury Trial. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each party irrevocably waives the right to trial by jury in any action, counterclaim, dispute or proceeding based upon, or related to the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally and voluntarily made by both parties.

9.4. Attorneys' Fees. In the event of any litigation, mediation or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.5. Equal Employment Opportunity. Developer, for itself and its successors and assigns, agrees that during the construction of Phase II of the Project:

(a) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.6. Titles of Articles and Sections. Any titles of the several parts, sections, and paragraphs of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.7. Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed originals.

9.8. Notices and Demands. A notice, demand, or other communication under this Agreement by either Party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Developer, is addressed to or delivered personally to:

Developer:

Kite Realty Group, L.P.
30 South Meridian St.
Indianapolis, IN 46204
Attn: Thomas K. McGowan, President and Chief

Operating Officer

With a copy to:

Kite Realty Group, L.P.
30 South Meridian St.
Indianapolis, IN 46204
Attn: Scott E. Murray, Executive Vice President
and General Counsel

In the case of the City, the Commission, or EDC, is addressed to or delivered personally to:

City, Commission, or EDC:

1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director of Community Investment

With copies to:

Frost Brown Todd LLC
201 N. Illinois St., Suite 1900
Indianapolis, IN 46244
Attn: Denise Barkdull

and

South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

or at such other address with respect to such Party as that Party may from time to time designate in writing and forward to the other as provided in this Section 9.8.

9.9. Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

9.10. Authority. The undersigned persons executing and delivering this Agreement on behalf of each of the Parties represent and certify that they are the duly authorized officers of such Party and have been fully empowered to execute and deliver this Agreement on behalf of such Party and that all necessary action to execute and deliver this Agreement has been taken by such Party. Notwithstanding anything contained herein to the contrary, the Parties acknowledge and agree that this Agreement and the issuance of the EDC Bonds, are subject to and conditioned upon certain approvals of the Commission and/or the EDC (the "Approvals"). The procedures for obtaining said Approvals, require, among other actions, that public bodies have open meetings and, in some cases, conduct public hearings. The Commission and the EDC hereby agree that, from and after the Effective Date, they will use their best efforts to obtain the Approvals no later than December 31, 2016, subject to extension by mutual agreement of the Parties.

9.11. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.12. Assignment. Developer's rights under this Agreement shall be personal to Developer and shall not run with the land. Developer may perform its obligations hereunder directly or through controlled affiliates or subsidiaries, or pursuant to agreements with other third parties, without the same being deemed an assignment. Developer may assign all or a portion of its rights and obligations under this Agreement to another party not affiliated with or controlled by Developer, and upon such assignment and the assumption of such obligations by the assignee thereof, Developer's obligations as to the component so assigned shall terminate; provided however, the Developer's obligation under the Completion Guarantee may not be assigned. Additionally, Developer's lender for Phase II of the Project may receive an assignment of Developer's or its assignee's interests in this Agreement, it being understood, however, that the obligations of the Commission and the EDC under this Agreement will remain subject to satisfaction of the obligations of Developer or assignee as described herein.

9.13. Reserved.

9.14. Further Assurances. The Parties agree that they will each undertake in good faith as permitted by law any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

9.15. Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Any version of a manually executed original sent via telecopy or PDF shall be deemed a manually executed original.

9.16. Entire Agreement. This Agreement (together with the documents anticipated herein) contains the entire agreement between the Parties with respect to the subject matter hereof, and all prior agreements and understandings between the Parties with respect to the subject matter hereof are merged herein.

SECTION 10. AMENDMENTS.

10.1. Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties, in accordance with this Agreement.

IN WITNESS WHEREOF, the Parties below hereby execute this Agreement on the date first written above.

COMMISSION:

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Title: _____

Attest:

DEVELOPER:

KITE REALTY GROUP, LP

By: _____
Title: _____

IN WITNESS WHEREOF, the Party below hereby executes this Agreement on the date first written above.

EDC:

SOUTH BEND ECONOMIC DEVELOPMENT
COMMISSION

By: _____
Title: _____

Attest:

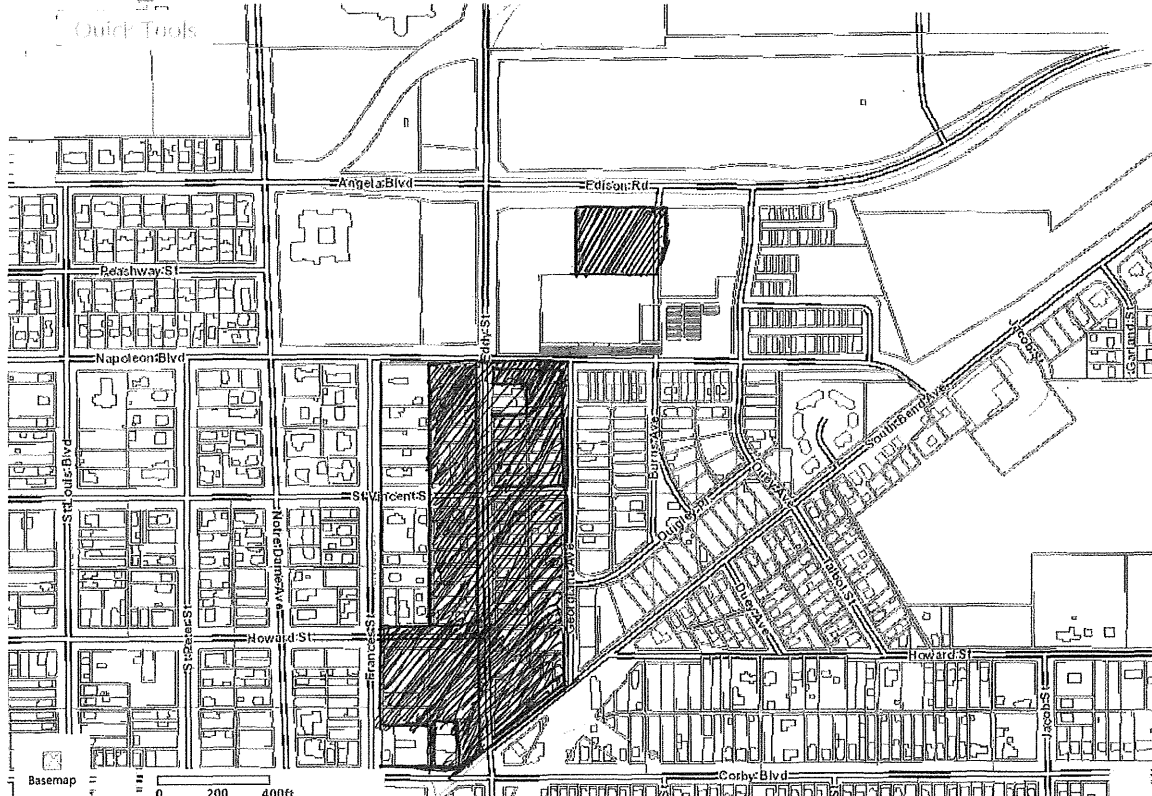
EXHIBIT A-1

DEVELOPMENT SITE

12/29/2016

Michiana Area Council of Governments

GIS Elkhart & St. Joseph Counties, IN



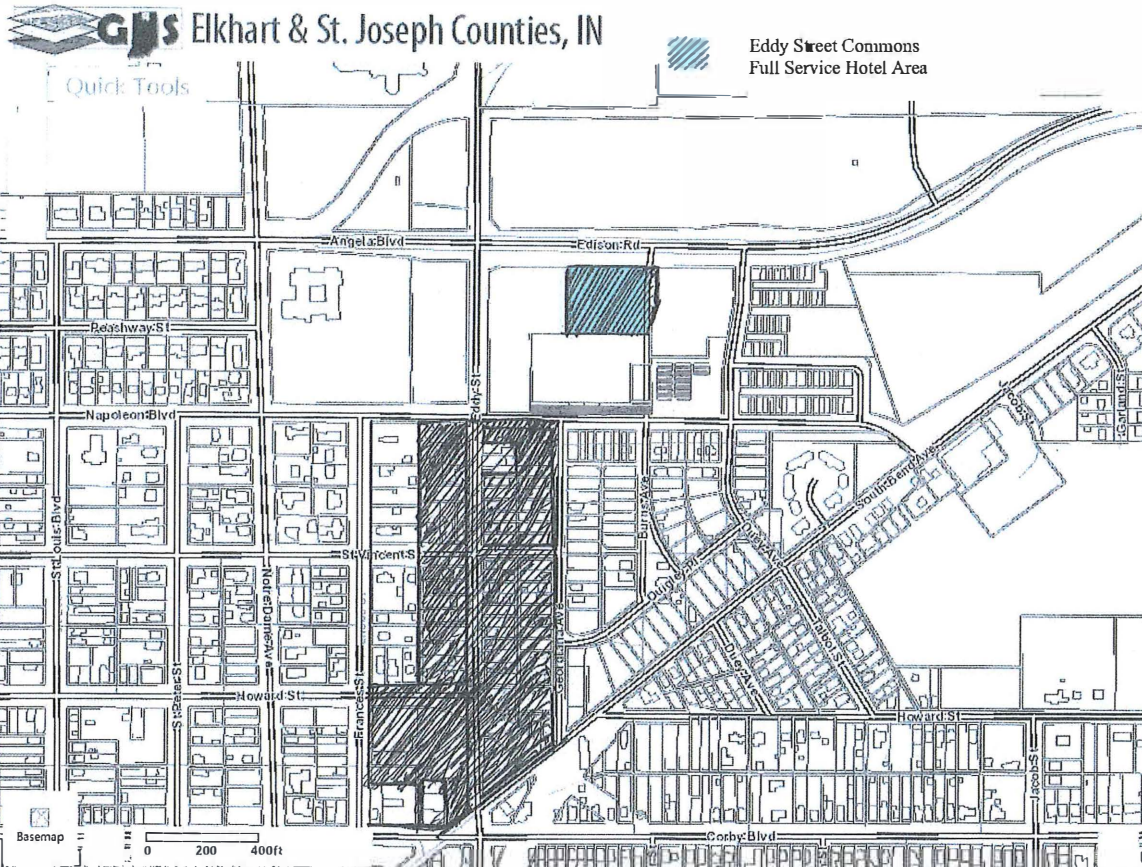
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EXHIBIT A-2

EDDY STREET COMMONS FULL SERVICE HOTEL AREA DEPICTION

12/20/2016

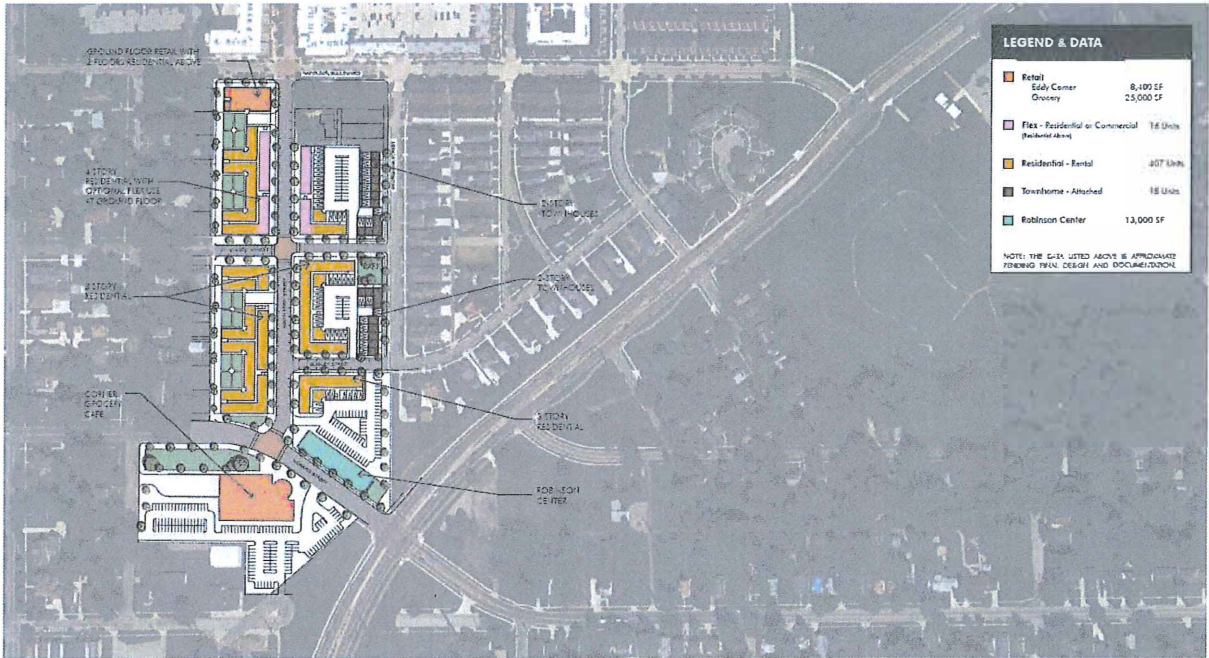
Michiana Area Council of Governments



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EXHIBIT A-3

EDDY STREET PHASE II MASTER PLAN



	Eddy Street Phase II	Master Plan	
	SOUTH BEND, IN	LRK INC. :: KITE REALTY GROUP :: 01-P3311-00 :: DECEMBER 8, 2016	

EXHIBIT B

ALLOCATION AREA 2

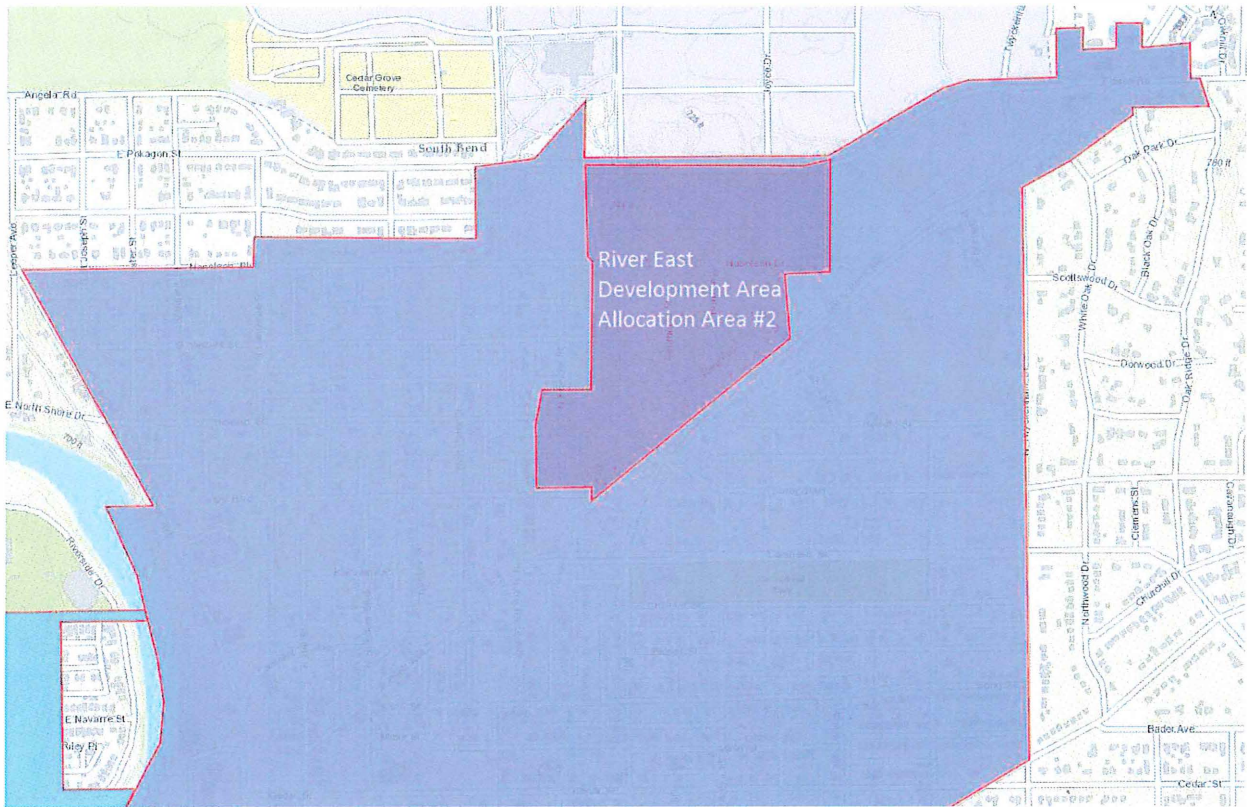


EXHIBIT C

MINIMUM INSURANCE AMOUNTS

- A. Worker's Compensation
 - 1. State Statutory
 - 2. Applicable Federal Statutory
 - 3. Employer's Liability \$100,000.00

- B. Comprehensive General Liability
 - 1. Bodily Injury
 - a. \$1,000,000.00 Each Occurrence
 - b. \$5,000,000.00 Annual Aggregate Products and Completed Operation
 - 2. Property Damage
 - a. \$1,000,000.00 Each Occurrence
 - b. \$5,000,000.00 Annual Aggregate

- C. Comprehensive Automobile Liability
 - 1. Bodily Injury
 - a. \$500,000.00 Each Person
 - b. \$500,000.00 Each Accident
 - 2. Property Damage
 - a. \$500,000.00 Each Occurrence

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