



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Agenda

Regular Meeting, December 29, 2016, 9:30 a.m.

1. Roll Call

2. Approval of Minutes

A. Minutes of the Regular Meeting of Thursday, December 15, 2016

3. Claims

4. Old Business

5. New Business

A. River East Development Area

1. Eddy Street Commons

a. Resolution No. 3363 (Eddy Street Commons Phase II)

b. Development Agreement (Kite Realty Group/Eddy Street Commons Phase II)

2. Development Agreement (Wharf Partners, LLC)

B. River West Development Area

1. Real Estate Purchase Agreement (Career Academy of South Bend Inc.)

6. Progress Reports

A. Tax Abatement

B. Common Council



- C. Other
 - a. LangLab

7. Next Commission Meeting:

Thursday, January 12, 2017, 9:30 a.m.

8. Adjournment

NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS
Auxiliary Aid or Other Services are Available upon Request at No Charge.
Please Give Reasonable Advance Request when Possible.



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

December 15, 2016

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard
South Bend, Indiana

The meeting was called to order at 9:32 a.m.

1. ROLL CALL

Members Present:	Marcia Jones, President Dave Varner, Vice President Don Inks, Secretary Greg Downes, Commissioner Gavin Ferlic, Commissioner John Anella, Commissioner
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Members Absent:

Legal Counsel:	Benjamin Dougherty, Esq.
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Redevelopment Staff:	David Relos, Associate Mary Brazinsky, Recording Secretary
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Others Present:	Brian Pawlowski	DCI
	Aaron Kobb	DCI
	Beth Leonard Inks	DCI
	Kyle Copelin	Epoch Architecture & Planning
	James M. Lewis	THK
	Mark Seaman	Prism
	Stephen Cox	SB Fire Chief
	Erin Blasko	SB Tribune
	Mark Peterson	WNDU
	Eric Walton	WNDU

2. APPROVAL OF MINUTES

A. Approval of Minutes of the Rescheduled Regular Meeting of Monday, November 21, 2016

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the minutes of the re-scheduled regular meeting of Monday, November 21, 2016.

3. APPROVAL OF CLAIMS

A. Claims Submitted December 15, 2016

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION		
Redevelopment Commission Claims December 15, 2016 to be ratified and approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
United Consulting	18,878.50	Coal Line Trail Ph I & II
Hull & Associates	2,550.00	Assessment/Remedy Ignition Pk - Oliver Industrial Pk
Kolata Enterprises LLC	1,350.00	Professional Services
Jones Petrie Rafinski	1,373.75	Utility Relocation
DLZ	18,470.00	Marriott Hotel Site Development at HOF
Walsh & Kelly Inc.	182,043.75	Ignition Park Infrastructure Phase IC, Division A
Alta Equipment Company	304,500.00	One Way to Two Way St Conversion
Christopher Burke	25,572.96	Chet Waggoner Court
RealAmerica Development	173,755.11	LaSalle Apartments
Donohue	4,800.00	Fellow & Dubail Neighborhood Improvements
Jones Petrie Rafinski	47,626.00	Coveleski Utility Relocate Construction
St. Joseph County Airport Authority	1,500,000.00	Ramp Project at the Airport
HRP Construction	151,386.78	Chet Waggoner Court
Abonmarche	13,500.00	Western Ave & Olive St Intersection Improvements
Danch, Harner & Associates, Inc.	980.00	Survey Field Crew
Poblocki Sign Co.	141,437.00	Ignition Park Identity Signage
Plews Shalvey Racher & Braun LLP	2,164.50	Union Station
DLZ	7,480.00	Marriott Hotel Site Development at HOF
Donohue	3,015.00	Fellow & Dubail Neighborhood Improvements
Alliance	7,525.00	Century Center S. Entrance Improvements & New Entrance Hall A-B
United Consulting	17,815.25	Coal Line Trail Ph I
Kolata Enterprises LLC	540.00	Professional Services
Hull & Associates	1,420.00	Ignition Park GW Assessment & Remedy Evaluation
Weaver Consultants Group	3,570.41	Ivy Tower
IDEM	862.50	Oliver Plow
Jones Petrie Rafinski	1,166.50	Bartlett Street Roundabout
Christopher Burke	23,038.00	St. Joseph River Low Head Dam Cip
Rieth-Riley Construction Co., Inc.	185,638.47	Western Ave Corridor Improvement
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>		
Lehman & Lehman	470.00	Cemetery Master Plan
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
Walsh & Kelly Inc.	159,072.53	East Bank Sewer Separation - Phase V TIF
Smith Group JJR	28,420.00	So. Bend Riverfront Parks and Trails Master Plan
Indiana Department of Transportation	118,566.00	SRTS project bike/pedestrian facilities for Perley Primary Fine Art
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
Reith Riley Construction Co.	130,629.34	One Way to Two Way Street Conversion
McCormick Engineering, LLC	3,668.00	1670 Bowen St. Drainage
Total	3,279,617.35	

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the Claims submitted December 15, 2016.

4. Old Business

5. New Business

A. Receipt of Bids

(1) Receipt of Bids: Wayne Street Garage Commercial Storefront

David Relos stated the property at Wayne Street Garage Commercial Storefront has been taken through the disposition process and as of 9am this morning on December 15, 2016 no bids were received.

(2) Receipt of Bids: 333 Western Avenue

David Relos stated the property at 333 Western Avenue (the current VA Clinic) has been taken through the disposition process and as of 9am this morning on December 15, 2016 no bids were received.

B. River West Development Area

(1) Resolution No. 3370: Disposition Offering Price S.W. Corner US 20 and Bypass

David Relos presented Resolution No. 3370 for the Disposition of the S.W. corner of US 20 and the Bypass. This will set the offering price of the property. The offering price is the average of the two appraisals.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved Resolution No. 3370 – Disposition Offering Price S.W. Corner US 20 and Bypass submitted December 15, 2016.

(2) Approval of Bid Specifications and Design Considerations – S.W. Corner US 20 and Bypass

David Relos presented the Bid Specifications and Design Considerations for the S.W. corner US 20 and the Bypass. The Bid Specifications outline the uses and development requirements that will be considered for this site.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved Approval of Bid Specifications and Design Considerations – S.W. Corner US 20 and Bypass submitted December 15, 2016.

(3) Request to Advertise – S.W. Corner US 20 and Bypass

David Relos presented the Request to Advertise for the S.W. corner US 20 and the Bypass. This disposition property will be advertised in both the South Bend Tribune and the Tri-County News on December 23 and December 30, 2016.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Request to Advertise – S.W. Corner US 20 and Bypass submitted December 15, 2016.

(4) Budget Request: Fire Station No. 4

Brian Pawlowski introduced the Budget Request: Fire Station No. 4, a not-to-exceed of \$3.3 million.

Chief Steve Cox stated that this fire station used to be the City Fire Department's Maintenance Garage. The current fire station was not intended to house both male and female firefighters and does not have separate facilities for both. The new facility will have a two-bay garage that will be deep enough to house the ladder truck within the building. There will be adequate ambulance space as well. Bids have been received, which included everything starting with demolition except for the sidewalks and curbs which covers approximately two city blocks. Chief Cox felt that there is substantial savings having the curbs and sidewalks bid out separately. Green space would be added for neighborhood use with a run/walk track approximately a quarter mile long. The project is slated to start in March 2017 and will be finished in March 2018.

Upon a motion by Vice President Varner, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Budget Request: Fire Station No. 4 submitted December 15, 2016.

(5) Real Estate Purchase Agreement: Hibberd Development, LLC

Brian Pawlowski presented the Real Estate Purchase Agreement with Hibberd Development, LLC. The parcel this Agreement is for are located across from the St. Joseph County Library which also will undergo changes in the near future. Hibberd will develop the adjacent building in to twelve to sixteen apartments with residents having rooftop access with event space. The initial investment will be \$3 million dollars with possibly more in the future.

James Lewis, THK spoke about the historic Hibberd building. This will be a two phase project. The first phase will include redevelopment of the building itself while Gates Automotive will continue their lease until mid-2019. The second phase will take place once their lease expires.

Kyle Copelin addressed the Commission about the future plans for Hibberd Development, LLC. Phase I will include a rooftop that is enclosed where the residents will have access. Occupancy is projected for March 2018. The pedestrian alley will be kept open for the adjacent property access.

Mr. Dougherty notes that the Conflict of Interest Disclosure Statement was signed prior to the meeting and will be submitted to the State and County after the meeting.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Real Estate Purchase Agreement: Hibberd Development, LLC submitted December 15, 2016.

(6) AEP Utility Easement: Ignition Park South

A request was made by David Relos to table this item.

Upon a motion by Secretary Inks, seconded by Vice President Varner the motion carried unanimously, the Commission tabled the AEP Utility Easement: Ignition Park South on December 15, 2016.

(7) Second Amendment to Real Estate Purchase Agreement: Heading for Home, LLC

David Relos presented Second Amendment to Real Estate Purchase Agreement: Heading for Home, LLC. This is a 60 day extension request for the due diligence period for environmental site condition due to the weather.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Second Amendment to Real Estate Purchase Agreement: Heading for Home, LLC LLC submitted December 15, 2016.

(8) Second Amendment to Real Estate Purchase Agreement: 410 W. Wayne Street, LLC

David Relos presented Second Amendment to Real Estate Purchase Agreement: 410 W. Wayne Street, LLC. This is a 60 day extension request for the due diligence period.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Second Amendment to Real Estate Purchase Agreement: 410 W Wayne Street, LLC LLC submitted December 15, 2016.

C. River East Development Area

(1) Agreement for Professional Services: Abonmarche Consultants, Inc. Riverfront Parks & Trails Plan

Elizabeth Maradik presented an Agreement for Professional Services, Abonmarche Consultants, Inc. Riverfront Parks & Trails Plan. Staff requests approval of the professional services agreement with Abonmarche Consultants in an amount not-to-exceed \$19,700 to complete a topographic survey of Seitz and Howard Parks as well as a boundary survey of Howard Park. The survey work will allow for the development of more detailed plans for Seitz and Howard Parks as part of the Riverfront Parks and Trails Plan effort currently underway.

Upon a motion by Commissioner Downes, seconded by Commissioner Ferlic the motion carried unanimously, the Commission approved the Agreement for Professional Services: Abonmarche Consultants, Inc. Riverfront Parks & Trails Plan submitted December 15, 2016.

D. Other

(1) Nationstar Mortgage LLC v Gilvin, et al.

Benjamin Dougherty presented Nationstar Mortgage LLC v Gilvin, et al. The Commission is contained within the et al. The foreclosure litigation is on South Ironwood in which the Commission has second mortgage position in this property arising out of a loan with the South Bend Home Improvement Program from 2011. Nationstar is primary as the purchasers took the initial loan from them. This is mostly a formality to participate in the litigation for foreclosure. We ask Commission approval to participate in the litigation of the foreclosure of this property to respond to the lawsuit on behalf of the Commission.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved Nationstar Mortgage LLC v Gilvin, et al. submitted December 15, 2016.

(2) Resolution No. 3369: Commending Greg Downes

Marcia Jones presented Resolution No. 3369 Commending Greg Downes. Ms. Jones read the Resolution and presented Mr. Downes a signed plaque detailing his extraordinary years of service with the Commission.

Mr. Downes thanked the Mayors of South Bend that elected him and the staff that has guided him. He talked about public/private partnership and how many projects have come to pass in his years of service that he never thought were possible. He closed that it has been an honor and a privilege to serve the City of South Bend.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried unanimously, the Commission approved Resolution No. 3369 by acclamation submitted December 15, 2016.

6. Progress Reports

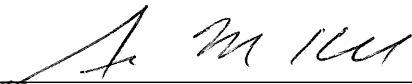
- A. Tax Abatement
- B. Common Council
- C. Other

7. Next Commission Meeting:

Thursday, December 29, 2016, 9:30 a.m.

8. Adjournment

Thursday, December 15, 2016, 10:04 a.m.



Aaron Kobb, Director of Economic Resources

Marcia I. Jones, President

RESOLUTION NO. 3363

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
PLEDGING TIF REVENUES TO PAY THE CITY'S TAXABLE ECONOMIC
DEVELOPMENT REVENUE BONDS, SERIES 2017 (EDDY ST. PHASE II)**

WHEREAS, the Redevelopment Commission (the "Commission") of the City of South Bend (the "City") exists and operates under the provisions of I.C. 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, the area located within the corporate boundaries of the City formerly known as the Northeast Neighborhood Development Area and now known as the River East Development Area (the "Area"), is an area previously determined by the Commission to be a redevelopment area under the Act; and

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

WHEREAS, the Commission has designated a portion of the Area a housing allocation area formerly known as the Northeast Neighborhood Development Area, Allocation Area No. 2 and now known as the River East Development Area, Allocation Area No. 2 (the "Allocation Area No. 2") and has adopted a housing program named the Northeast Neighborhood Development Area Housing Program (the "Housing Plan") for such Allocation Area No. 2; and

WHEREAS, the Commission has previously adopted a development plan (the "Development Plan") for the Area and the 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 a certain Development Agreement dated February 15, 2008, by and among the Commission, the City's Redevelopment Authority, the City, and Kite Realty Group, L.P. (the "Developer"), 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"); 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 Housing Plan; 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 to the EDC, the Commission and the City under the Indiana Code by undertaking public improvements and the financing thereof in accordance with a certain

Development Agreement by and among the Commission, the EDC and the Developer (the “Phase II Development Agreement”) in connection with the Developer’s development and construction of a hotel, two (2) high-density mixed-use buildings, and a new building for the Robinson Community Learning Center, three (3) residential apartment buildings and a sub-grade parking facility (collectively, the “Phase II Project”); and

WHEREAS, the City has agreed to issue its Taxable Economic Development Revenue Bonds, Series 2017 (Eddy Street Phase II) (the “Bonds”) in an amount not to exceed \$25,000,000 for the purpose of (i) financing the construction of a portion of the Phase II Project related to the Project, (ii) funding a reserve for the Bonds, and (iii) paying costs of issuance of the Bonds; and the proceeds of the Bonds will be deposited with an institutional trustee pursuant to a Trust Indenture (the “Indenture”) between the City and such trustee and disbursed to the Developer during construction of the Phase II Project, as provided for in the Phase II Development Agreement; and

WHEREAS, in order to finance the Phase II Project and facilitate completion of the Project, the Commission has determined that it is in the best interest of the City and its residents to pledge all real property tax proceeds from the assessed valuation of property in Allocation Area No. 2 in excess of the assessed valuation described in I.C. 36-7-14-39(a)(1), as such statutory provision exists on the date of issuance of the Bonds (“Pledged TIF Revenues”); and

WHEREAS, Developer has requested that the Phase II Development Agreement attached hereto be amended to permit to Developer to change organizational structure of the Developer entity named therein and avoid certain tax implications.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SOUTH BEND REDEVELOPMENT COMMISSION, THAT:

1. The Commission hereby finds that the pledge of the Pledged TIF Revenues to the payment of principal of and interest on the Bonds used to finance a portion of the Phase II Project and facilitate completion of the Project will help accomplish the Development Plan and Housing Plan for the Area and will promote the economic development of the City and the Area.

2. The Commission hereby irrevocably pledges the Pledged TIF Revenues to the payment of principal of and interest on the Bonds on parity with other Obligations payable therefrom from time to time as provided in the Indenture.

3. The Commission hereby acknowledges and agrees that it may not enter into additional obligations payable from Pledged TIF Revenues unless the Commission provides an Accountants Report (as defined in the Indenture) showing that Pledged TIF Revenues in the fiscal year immediately preceding the issuance such additional obligations were not less than one hundred fifty percent (150%) of the maximum annual interest and principal requirements of the then outstanding obligations payable from the Pledged TIF Revenues and the new obligations to be issued; provided, however, that if the Developer provides any sort of direct security for the Bonds, such additional obligations may not be issued without Developer’s consent.

4. The Commission hereby approves the Phase II Development Agreement as presented to this meeting and approves a future amendment thereof as described above, which amendment shall be approved by Counsel to the Commission and executed by the President, without additional Commission approval.

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ADOPTED this 29th day of December, 2016.

CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

By: _____
Marcia Jones, President

David Varner, Vice President

Don Inks, Secretary

Gavin Ferlic, Member

Gregory Downes, Member

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:

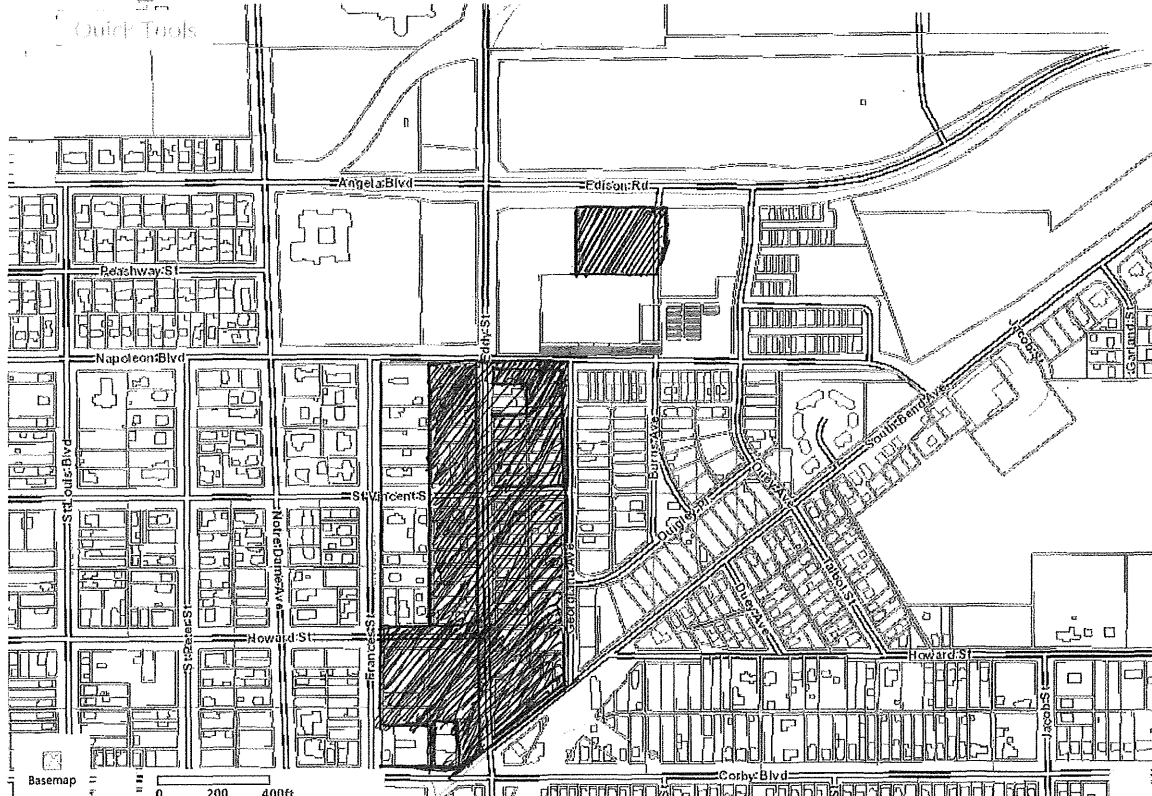
EXHIBIT A-1

DEVELOPMENT SITE

12/29/2016

Michiana Area Council of Governments

GIS Elkhart & St. Joseph Counties, IN



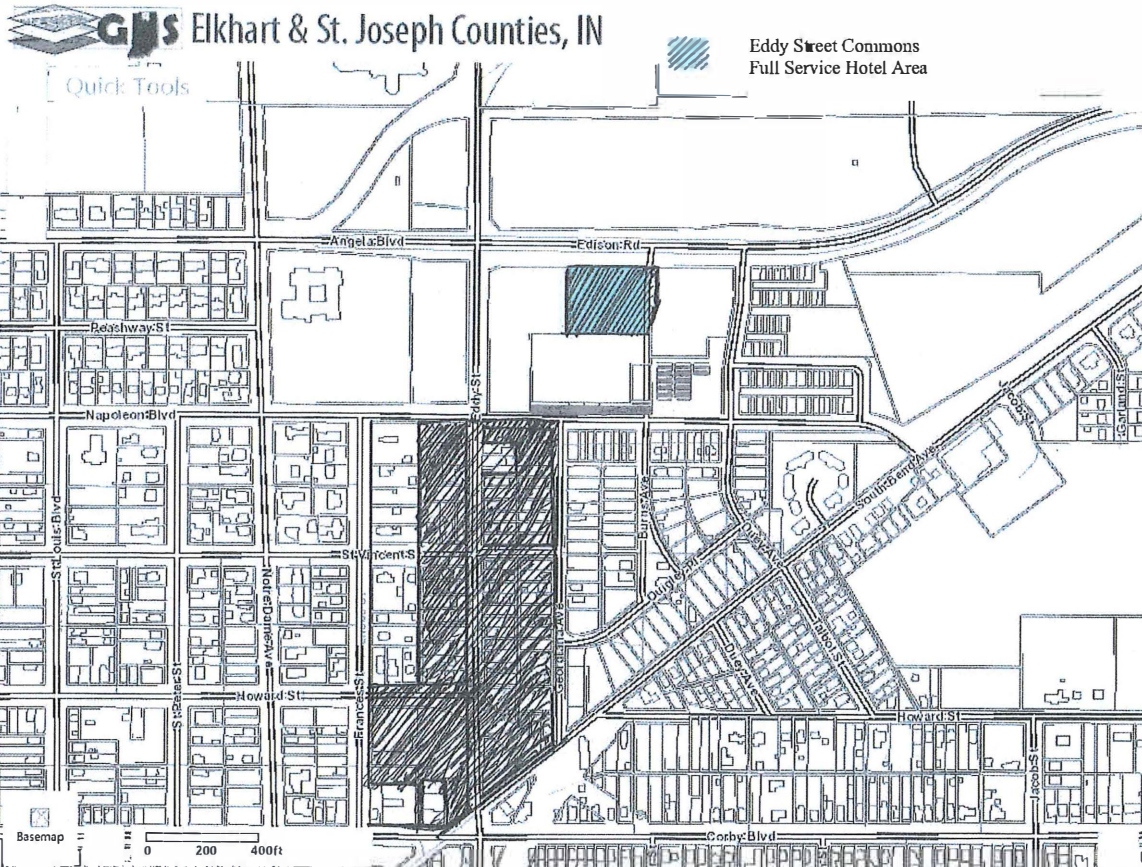
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EXHIBIT A-2

EDDY STREET COMMONS FULL SERVICE HOTEL AREA DEPICTION

12/20/2016

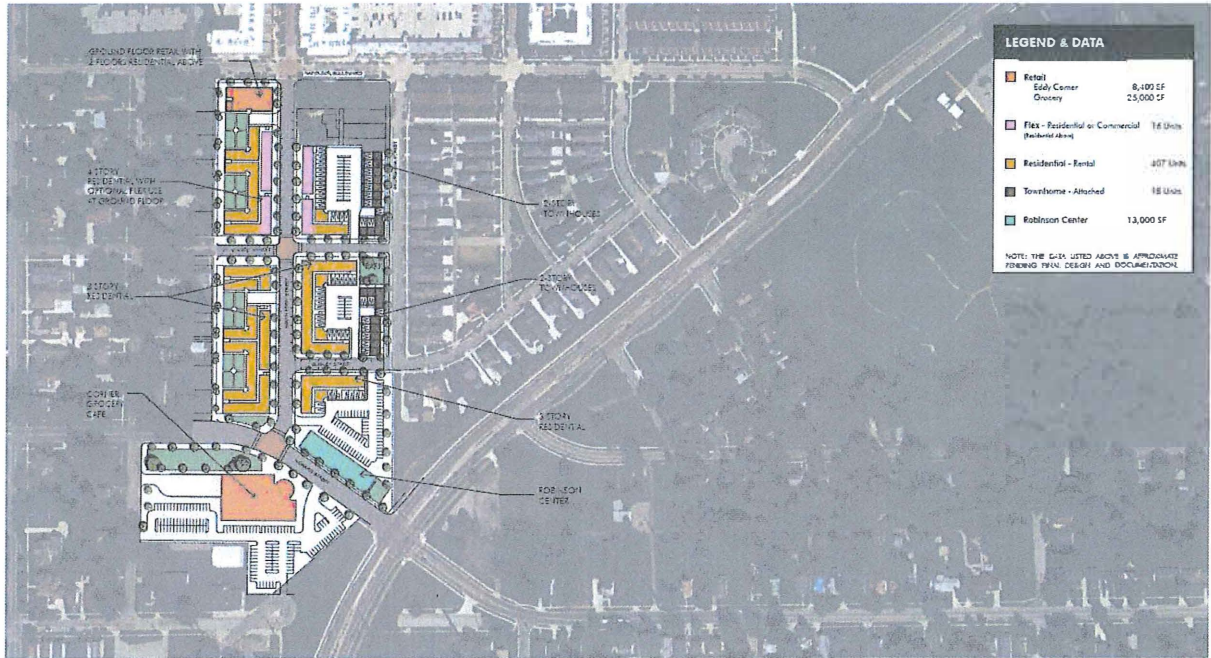
Michiana Area Council of Governments



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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

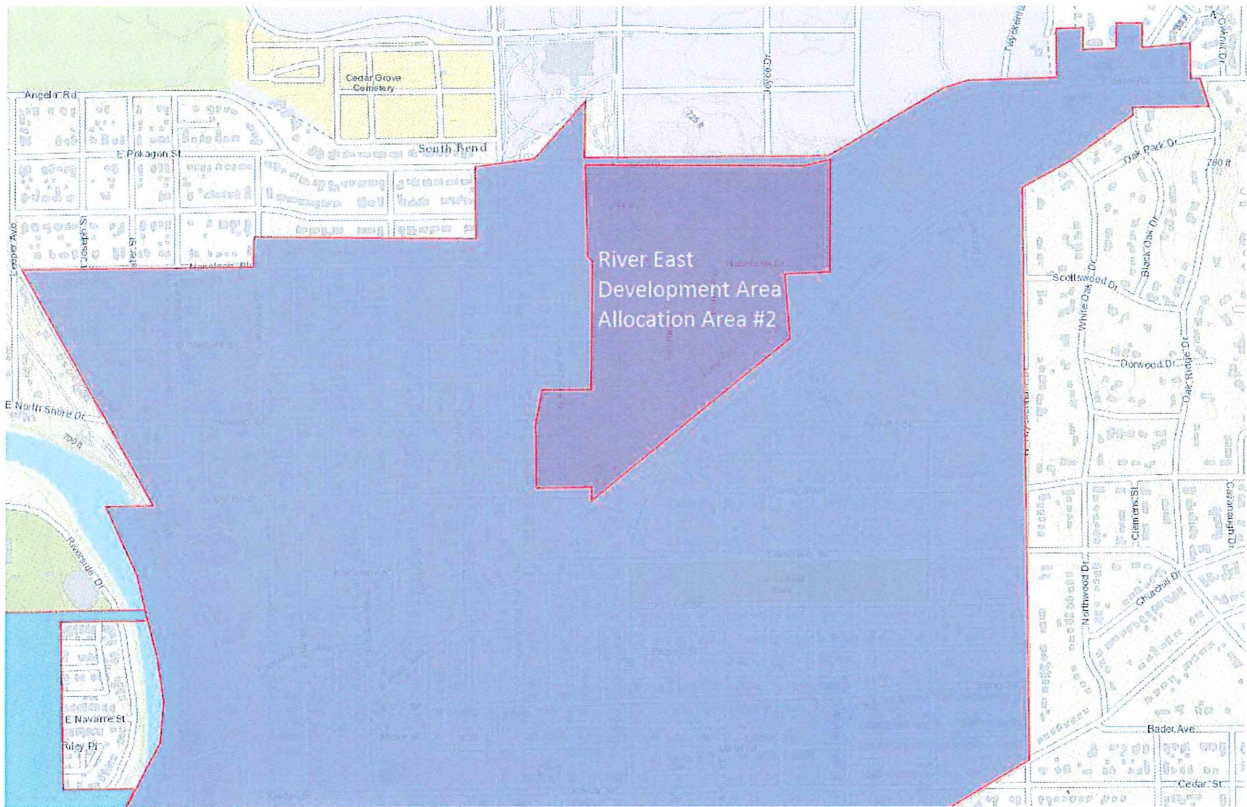


EXHIBIT C

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

0127802.0638220 4844-7444-8954v11

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of December 29, 2016 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Wharf Partners, LLC, an Indiana limited liability company with its registered address at P.O. Box 148, South Bend, Indiana 46624 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the “Act”); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the Developer owns certain real property described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”); and

WHEREAS, the Developer desires to construct, renovate, or otherwise rehabilitate certain elements of the Developer Property (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as **Exhibit B**; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”) and within the River East Development Area (the “Area”); and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in **Exhibit C** (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

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

SECTION 1. DEFINITIONS.

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means an amount no less than Sixteen Million Dollars (\$16,000,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property.

SECTION 2. INTERPRETATION, TERMS, AND RECITALS.

2.1 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 of, Section of, 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.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 3. ACCESS.

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the "Easement") in the form attached hereto as **Exhibit D**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) inure to the benefit of the Commission and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works.

SECTION 4. DEVELOPER'S OBLIGATIONS.

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

4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be submitted to the Commission pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be submitted to the Commission pursuant to Section 4.8 of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the Commission's efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement by June 1, 2018 (the "Mandatory Project Completion Date"). Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to complete the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a

default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.6 Developer's Employment Obligations. In connection with the improvements included in the Project Plan attached as Exhibit B, the Developer shall create thirty (30) new full-time jobs located at the Developer Property, with average hourly wages of no less than Eleven Dollars (\$11.00) per hour for each employee (the "Job Creation Requirement") by the date that is twelve (12) months after the Developer receives a certificate of occupancy for any part of the Project (the "Job Creation Deadline") and maintain said jobs for at least the period of time described in Section 4.7(c) below. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy the Job Creation Requirement by the Job Creation Deadline will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.7 Reporting Obligations.

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

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The 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, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

(c) On or before April 15 of the year that is one year after substantial completion of the Project and on each April 15 thereafter until April 15 of the year which is five (5) years after substantial completion of the Project, the Developer shall submit to the Commission a report with the following information: (i) the number of jobs created as a result 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 the Developer in connection with the Project.

4.8 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, the Developer shall deliver a complete set thereof to the Commission. In the course of preparing the plans and specifications, or changes thereto, the Developer will cooperate in good faith with the City to address any modifications to the same requested by the City's planning department or the City's Director of Redevelopment Engineering.

4.9 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of construction for the Project (including legal

fees, architectural and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.10 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City's Director of Redevelopment Engineering. The Director of Redevelopment Engineering may approve or disapprove said bid specifications for the Project in his sole discretion and may request revisions or amendments to be made to the same.

4.11 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Project.

4.12 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in Exhibit E attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.13 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

SECTION 5. COMMISSION'S OBLIGATIONS.

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

5.2 Completion of Local Public Improvements.

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit C attached hereto on a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.8 of this Agreement, and (b) the Engineering Department will have received satisfactory bid specifications for the Local

Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount. In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

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 be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree 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.

SECTION 7. DEFAULT.

7.1 Default. Any 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, 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. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this

Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand. In the event that the Developer fails to satisfy the Job Creation Requirement by the Job Creation Deadline, then upon the written demand of the Commission, the Developer will repay the Commission an amount equal to One Hundred Twenty-Five Thousand Dollars (\$125,000.00) multiplied by the number of jobs by which the Developer fell short of the Job Creation Requirement as of the date of the Commission's demand.

7.3 Force Majeure. 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 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, a reasonable extension of any date or deadline set forth in this Agreement due to 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; INDEMNITY.

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

- (a) The Project is a private development;
- (b) None of the Commission, the Board of Works, or the Developer has 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 Board of Works, and/or the Developer expressly accepts the same; and
- (c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the 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 Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the 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 the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Local Public Improvements or the Project.

SECTION 9. MISCELLANEOUS.

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement 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 Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements 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 actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.3 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. 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. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The 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) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.6 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.7 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: Wharf Partners, LLC
P.O. Box 148
South Bend, IN 46624
Attn: Frank Perri

With a copy to: Wharf Partners, LLC
c/o Panzica Building Corporation
416 East Monroe St., Suite 320
South Bend, IN 46601
Attn: Phil Panzica

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Brian Pawlowski, Acting Executive Director,
South Bend Department of Community Investment

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

9.8 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.9 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has 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.

9.10 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.

9.11 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which consent the Commission will not unreasonably withhold. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.12 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.

9.13 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

9.14 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.15 Time. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

WHARF PARTNERS, LLC

Frank Perri, Member

4000.0000084 48150561.006

EXHIBIT A

Description of Developer Property

A PARCEL OF LAND IN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, CITY OF SOUTH BEND, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 2 IN OPELIKA MINOR SUBDIVISION, AS PER PLAT THEREOF, RECORDED IN INSTRUMENT NUMBER 9341067 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE THE FOLLOWING (3) COURSES AND DISTANCES ALONG SAID LOT 2, S 00°56'55"E, 186.74 FEET (186.67'PLAT), S 87°52'18"W, 47.33 FEET (47.34'PLAT), S 15°07'45"E, 87.74 FEET (87.70'PLAT), THENCE S 89°57'11"W, 94.34 FEET; THENCE N 44°32'36"W, 263.37 FEET; THENCE N 44°23'57"W, 120.62 FEET TO THE SOUTH RIGHT OF WAY OF COLFAX AVENUE; THENCE S 89°54'05"E ALONG SAID SOUTH RIGHT OF WAY, 384.80 FEET TO THE POINT OF BEGINNING, CONTAINING 1.51 ACRES, MORE OR LESS, AND SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND COVENANTS OF RECORD.

Parcel Key Nos. 018-5001-000202 and 018-5001-000201

EXHIBIT B

Project Plan

The Developer will complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

Developer plans on constructing up to 3 buildings in a phased fashion as follows:

- I. 1st phase shall consist of a single building containing a minimum of 12 condominiums and commercial space of approx. 6,000 sq. ft., plus a private parking garage
- II. 2nd phase/3rd phase, sequence depending on market conditions shall consist of either:
 - a. A single 4-5 story building containing approximately 16,000 – 24,000 sq. ft. of space. This space shall be both commercial and residential, with the split determined based on market conditions.
 - b. A single 5-6 story building containing between 50,000 – 60,000 sq. ft. of space to be used commercially either as a hotel or multi-family residential.

EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

Site preparation, infrastructure elements, and/or other improvements to the Developer Property necessary for the Developer's completion of the Project, to be further specified by the Developer as soon as reasonably practicable.

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the December 29, 2016 (the “Effective Date”), by and between Wharf Partners, LLC, an Indiana limited liability company with its registered address at P.O. Box 148, South Bend, Indiana 46624 (the “Grantor”), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the “Grantee”).

WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”), together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated December 29, 2016 (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee’s contractors acting on Grantee’s behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the “Construction Termination Date”) of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

Wharf Partners, LLC, an Indiana limited liability company

Frank Perri, Member

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared Frank Perri, to me known to be the Member of the Grantor in the above Grant of Temporary Easement, and acknowledged the execution of the same as the Grantor's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 201__.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

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

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.

EXHIBIT 1

Description of Property

A PARCEL OF LAND IN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, CITY OF SOUTH BEND, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 2 IN OPELIKA MINOR SUBDIVISION, AS PER PLAT THEREOF, RECORDED IN INSTRUMENT NUMBER 9341067 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE THE FOLLOWING (3) COURSES AND DISTANCES ALONG SAID LOT 2, S 00°56'55"E, 186.74 FEET (186.67' PLAT), S 87°52'18"W, 47.33 FEET (47.34' PLAT), S 15°07'45"E, 87.74 FEET (87.70' PLAT), THENCE S 89°57'11"W, 94.34 FEET; THENCE N 44°32'36"W, 263.37 FEET; THENCE N 44°23'57"W, 120.62 FEET TO THE SOUTH RIGHT OF WAY OF COLFAX AVENUE; THENCE S 89°54'05"E ALONG SAID SOUTH RIGHT OF WAY, 384.80 FEET TO THE POINT OF BEGINNING, CONTAINING 1.51 ACRES, MORE OR LESS, AND SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND COVENANTS OF RECORD.

Parcel Key Nos. 018-5001-000202 and 018-5001-000201

EXHIBIT E

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. | \$5,000,000.00 |
| | | b. | \$5,000,000.00 |
| | | | Each Occurrence
Annual Aggregate Products
and Completed Operation |
| | 2. | Property Damage | |
| | | a. | \$5,000,000.00 |
| | | b. | \$5,000,000.00 |
| | | | Each Occurrence
Annual Aggregate |
| C. | Comprehensive Automobile Liability | | |
| | 1. | Bodily Injury | |
| | | a. | \$500,000.00 |
| | | b. | \$500,000.00 |
| | | | Each Person
Each Accident |
| | 2. | Property Damage | |
| | | a. | \$500,000.00 |
| | | | Each Occurrence |

ITEM: 5B1

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “Agreement”) is made on December 29, 2016 (the “Contract Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Career Academy of South Bend, Inc., an Indiana non-profit corporation with its principal place of business at 3801 Crescent Circle, South Bend, Indiana 46628 (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

A. Seller exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Ind. Code 36-7-14 (the “Act”).

B. In furtherance of its purposes under the Act, Seller owns certain real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

C. Pursuant to the Act, Seller adopted its Resolution No. 1148 on March 19, 1993, whereby Seller established an offering price of Forty Thousand Dollars (\$40,000.00) per acre for the tract of land encompassing the Property.

D. Pursuant to the Act, on March 19, 1993, Seller authorized the publication, on March 26, 1993, and April 2, 1993, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before April 16, 1993.

E. As of April 16, 1993, Seller received no bids for the Property, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Property to Buyer on the terms stated in this Agreement.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

1. OFFER AND ACCEPTANCE

A copy of this Agreement, signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement and shall be delivered to Seller, in care of the following representative (“Seller’s Representative”):

Brian Pawlowski, Acting Executive Director
Department of Community Investment
City of South Bend
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, Indiana 46601

This offer shall expire thirty (30) days after delivery unless accepted by Seller. To accept Buyer's offer, Seller shall return a copy of this Agreement, counter-signed by Seller in accordance with applicable laws, to the following ("Buyer's Representative"):

Alex Hammel, Director of Career and Technical Education
Career Academy of South Bend, Inc.,
3801 Crescent Circle
South Bend, Indiana 46628

2. PURCHASE PRICE

The purchase price for the Property shall be One Dollar (\$1.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 10 below (the "Closing," the date of which is the "Closing Date").

3. BUYER'S DUE DILIGENCE

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to use the Property for the construction of outdoor learning, event, and sporting facilities serving Buyer's educational operations in the building located immediately north of and adjacent to the Property (the "Buyer's Use"). Seller acknowledges that Buyer's determination whether Buyer's Use is feasible requires investigation into various matters (Buyer's "Due Diligence"). Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Due Diligence Period. Buyer shall have a period of ninety (90) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the "Due Diligence Period").

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, upon Buyer providing Seller with evidence that Buyer has general liability insurance reasonably acceptable to Seller, in the amount of at least One Million Dollars (\$1,000,000), naming Seller as an additional insured and covering the activities, acts, and omissions of Buyer and its representatives at the Property, to

(i) enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, that Buyer may not take any action upon the Property which reduces the value thereof and Buyer may not conduct any invasive testing at the Property without Seller's express prior written consent; further provided, that if the transaction contemplated herein is not consummated, Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this

Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives; and

(ii) file any application with any federal, state, county, municipal or regional agency relating to the Property for the purpose of obtaining any approval necessary for Buyer's anticipated use of the Property. If Seller's written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any such application, Buyer may request from Seller such consent or signature, which Seller shall not unreasonably withhold. Notwithstanding the foregoing, any zoning commitments or other commitments that would further restrict the future use or development of the Property, beyond the restrictions in place as a result of the current zoning of the Property, shall be subject to Seller's prior review and written approval.

D. Termination of Agreement. If at any time within the Due Diligence Period Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller's Representative.

4. SELLER'S DOCUMENTS; ENVIRONMENTAL SITE ASSESSMENT

Upon Buyer's request, Seller will provide Buyer a copy of all known environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative with or without a written request by Seller. In addition to reviewing any environmental reports provided by Seller, Buyer may, at Buyer's sole expense, obtain a Phase I environmental site assessment of the Property pursuant to and limited by the authorizations stated in Section 3 above.

5. PRESERVATION OF TITLE

After the Contract Date, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any interests, liens, restrictions, easements, covenants, reservations, or other matters affecting Seller's title (such matters are referred to as "Encumbrances"). Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for title insurance on the Property (the "Title Commitment") and a survey of the Property (the "Survey") identifying all Encumbrances as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in Section 7 below).

6. TITLE COMMITMENT AND POLICY REQUIREMENTS

Buyer shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days of the Contract Date. The Title Commitment shall (i) agree to insure good, marketable, and indefeasible fee simple title to the Property (including public road access) in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed (the "Deed") from the Seller to the Buyer, and (ii) provide for issuance of

a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company's title search charges and all costs of the Title Commitment and owner's policy.

7. REVIEW OF TITLE COMMITMENT AND SURVEY

Buyer shall give Seller written notice, within twenty (20) days after the Contract Date, of any objections to the Title Commitment or Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If the Seller is unable or unwilling to correct the Buyer's title and survey objections within the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

8. DISPUTE RESOLUTION

A. Forum. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution.

B. Waiver of Jury Trial. Both Parties hereby waive any right to trial by jury with respect to any action or proceeding relating to this Agreement.

9. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller in care of Seller's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel), or to Buyer in care of Buyer's Representative at their respective addresses stated in Section 1 above. Either Party may, by written notice, modify its address or representative for future notices.

10. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

B. Closing Procedure.

(i) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of the Deed, in the form attached hereto as **Exhibit B**, conveying the

Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than Permitted Encumbrances, and the Title Company's delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer in accordance with Section 6 above.

(ii) Possession of the Property shall be delivered to the Buyer at Closing, in the same condition as it existed on the Contract Date, ordinary wear and tear and casualty excepted.

C. Reserved.

D. Closing Costs. Buyer shall pay all of the Title Company's closing and/or document preparation fees and all recordation costs associated with the transaction contemplated in this Agreement.

11. ACCEPTANCE OF PROPERTY AS-IS

Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Seller as to the condition of the Property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to the condition or fitness of the Property, and nothing in this Agreement will be construed to constitute such a representation or warranty as to the condition or fitness of the Property.

12. TAXES

Buyer, and Buyer's successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. Seller shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller's liability therefor.

13. REMEDIES

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties' respective rights and remedies concerning this Agreement and the Property are cumulative.

14. COMMISSIONS

The Parties mutually acknowledge and warrant to one another that neither Buyer nor Seller is represented by any broker in connection with the transaction contemplated in this Agreement.

Buyer and Seller agree to indemnify and hold harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement.

15. INTERPRETATION; APPLICABLE LAW

Both Parties having participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this Agreement be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

16. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between Seller and Buyer and supersedes all prior discussions, understandings, or agreements, whether written or oral, between Seller and Buyer concerning the transaction contemplated in this Agreement.

17. ASSIGNMENT

Buyer and Seller agree that this Agreement or any of Buyer's rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Seller may request and Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee.

18. BINDING EFFECT; COUNTERPARTS; SIGNATURES

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed and delivered by Buyer and Seller. This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original agreement. Electronically transmitted signatures will be regarded as original signatures.

19. AUTHORITY TO EXECUTE; EXISTENCE

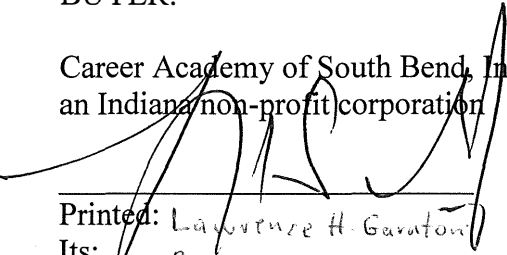
The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, the undersigned representative of Buyer represents and warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of Indiana.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this Real Estate Purchase Agreement to be effective as of the Contract Date stated above.

BUYER:

Career Academy of South Bend, Inc.,
an Indiana non-profit corporation



Printed: Lawrence H. Garnton

Its: President

Dated: December 14, 2016

SELLER:

City of South Bend, Department of Redevelopment,
by and through its governing body, the South Bend
Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

4000.0000047 42043093.002

EXHIBIT A

Description of Property

Lot 2 as shown on the recorded plat of Blackthorn Corporate Office Park Minor Subdivision #7 recorded on July 13, 1998, as Document No. 9836274, in the Office of the Recorder of St. Joseph County. [Parcel Key No. 025-1018-062204]

and

Lot 3 as shown on the recorded plat of Blackthorn Corporate Office Park Minor Subdivision #8 recorded on September 4, 1998, as Document No. 9846533, in the Office of the Recorder of St. Joseph County. [Parcel Key No. 025-1018-062212]

EXHIBIT B

Form of Special Warranty Deed

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to Career Academy of South Bend, Inc., an Indiana non-profit corporation with its principal place of business at 3801 Crescent Circle, South Bend, Indiana 46628 (the "Grantee"),

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

Lot 2 as shown on the recorded plat of Blackthorn Corporate Office Park Minor Subdivision #7 recorded on July 13, 1998, as Document No. 9836274, in the Office of the Recorder of St. Joseph County. [Parcel Key No. 025-1018-062204]

and

Lot 3 as shown on the recorded plat of Blackthorn Corporate Office Park Minor Subdivision #8 recorded on September 4, 1998, as Document No. 9846533, in the Office of the Recorder of St. Joseph County. [Parcel Key No. 025-1018-062212]

The Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses, except as agreed; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's development area plan dated affecting the area in which the Property is situated and any design review guidelines associated therewith.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex,

age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 201__.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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.

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