



South Bend

Redevelopment Commission

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

Agenda

Regular Meeting, April 13, 2017 9:30 a.m.

1. **Roll Call**
2. **Approval of Minutes**
 - A. Minutes of the Regular Meeting of Thursday, March 23, 2017
3. **Approval of Claims**
 - A. Claims Submitted April 13, 2017
4. **Old Business**
5. **New Business**
 - A. Public Hearings
 1. Public Hearing on Resolutions
 - a. Resolution No. 3386
 - B. River West Development Area
 1. Real Estate Purchase Agreement (SBCC Development Corp)
 2. Development Agreement (Hibberd Realty Inc)
 3. First Amendment to Real Estate Purchase Agreement (Hibberd Development LLC)
 4. Resolution No. 3375 (Nello Inc.)
 5. Budget Request (Code Enforcement)
 6. Project Budget for Western Avenue Streetscape Improvements
 - C. River East Development Area
 1. Resolution No. 3390 (South Bend Eddy Street Major Moves)
 2. Budget Request (State Road 23 INDOT Remnants)
 - D. Other
 1. License Agreement for Temporary Use of Redevelopment Commission Property (DTSB)
 2. First Amendment to Engineering Services Agreement



6. Progress Reports

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

7. Next Commission Meeting:

Thursday, April 27, 2017, 9:30 a.m.

10. 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

March 23, 2017

9:30 a.m.

Presiding: Dave Varner, Vice-President

227 West Jefferson Boulevard
South Bend, Indiana

The meeting was called to order at 9:33 a.m.

1. ROLL CALL

Members Present:	Dave Varner, Vice-President Don Inks, Secretary Kintae Lark, Commissioner John Anella, Commissioner
Members Absent:	Marcia Jones, President Gavin Ferlic, Commissioner

Legal Counsel: Benjamin Dougherty, Esq.

Redevelopment Staff: David Relos, Associate
Mary Brazinsky, Recording Secretary

Others Present:	Brian Pawlowski	DCI
	Aaron Kobb	DCI
	Elizabeth Leonard Inks	DCI
	Pam Meyer	DCI
	Chris Dressel	DCI
	Kasey Watkins	4100 Edison Lakes
	Conrad Damian	SB Resident
	Mary Lark	SB Resident
	Erin Blasko	SB Tribune
	Elicia Feasel	Exec Dir Historic Preservation Commission SB& St. Joseph Cty

South Bend Redevelopment Commission
 Regular Meeting – March 23, 2017

Introduction of new Commission member Kintae Lark. Kintae Lark is a lifetime South Bend resident. He is married with one daughter. Mr. Lark owns and runs several businesses including a barber shop and child care facility. He and his wife help the community by running special programs that benefit area youth.

2. Approval of Minutes

A. Approval of Minutes of the Regular Meeting of Thursday, February 23, 2017

Upon a motion by Secretary Inks, seconded by Commissioner Lark, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, February 23, 2017.

3. Approval of Claims

A. Claims Submitted March 23, 2017

REDEVELOPMENT COMMISSION Redevelopment Commission Claims March 23, 2017 for ratified and approval	Claims submitted	Explanation of Project
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Milestone Fence LLC	12,530.00	One Way to Two Way Street Conversion
HRP	184,203.35	Chet Waggoner Court / Berlin Place Site Development
Jones Petrie Rafinski	18,577.05	Courtyard by Marriott / Coveleski Utility Relocation
Majority Builders, Inc.	56,880.42	Marriott Hotel Site Development at Hall of Fame
Christopher B. Burke Engineering, LLC	1,470.00	Chet Waggoner Court
Plew Shalley Racher & Braun	28.00	Legal Service
Transpo	100,000.00	Semi-Annual Payment for Maint Calfax Garage Lease
Kolata Enterprises LLC	382.50	Profession Services
RealAmerica	116,774.25	The LaSalle Apartments
Donohue	1,325.00	Fullows and Dubail Neighborhood Improvements
GLC	48,922.65	1st Amendment to Master Lease
Hull & Associates	6,913.55	Consulting Services / Groundwater Remedy & Oliver Ind Pk / Assessment
AT&T	17,214.43	Relocate Underground Cable
Abonmarche	23,520.00	Western Ave & Olive St Intersection Improvements
Indiana Michigan Power Company	311,637.15	Southhold LLC 121 S St. Joseph & E Jefferson Blv /Western Ave & Williams
Edge Adventure Parks, LLC	20,000.00	Retainer Fee East Race Waterway & Riverfront Redevelopment
HGR Group, Inc.	330,569.51	JMS Building New North Stair Tower
HRP	78,954.10	Berlin Pl Site Development
Sherwin-Williams	145,100.00	Equipment Purchase
The Lincoln Electric Company	256,687.34	Equipment Purchase
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>		
Lehman & Lehman	2,420.00	City Cemetery Master Plan
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
Abonmarche	9,200.00	Howard & Seltz Parks
Smithgroup JJR	15,280.00	Riverfront Parks and Trails Master Plan
Walsh & Kelly Inc.	76,496.32	East Bank Sewer Separation - Phase V
<u>430 FUND SOUTH SIDETIF AREA #1</u>		
Reith Riley Construction Co. Inc.	29,949.13	One Way to Two Way St Conversion
<u>436 FUND TIF NORTHEAST RESIDENTIAL</u>		
Edley Street Commons	386,218.00	Loan Amortization Schedule
Triangle Development	60,371.00	Loan NE Residential
Total	2,311,623.75	
Total Of Both Columns		

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved the claims as submitted to the regular meeting of Thursday, March 23, 2017.

4. Old Business

None

5. New Business

A. Public Hearings

1. Public Hearing On Resolutions

a. Resolution No. 3379

Beth Leonard Inks states that Resolution No. 3379 will appropriate an additional \$2M in River West Development Area funds.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Resolution No. 3379 submitted on March 23, 2017.

b. Resolution No. 3380

Beth Leonard Inks states Resolution No. 3380 will appropriate an additional \$30,000 in Southside TIF No. 3. This Resolution will move remaining funds from interest paid from Southside Allocation Area No. 3 to Southside Allocation Area No. 1. This Resolution will move those funds and close the Southside TIF No. 3.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Resolution No. 3380 submitted on March 23, 2017.

No members of the public spoke regarding either Resolution.

B. Receipt of Bids

1. 722-724 S. Michigan Street

David Relos stated that 9:00 a.m. March 23, 2017 was the deadline to submit bids for the disposition property at 722-724 S. Michigan Street. This property includes two vacant lots south of the viaduct on the east side of Michigan Street, and was advertised in the South Bend Tribune and Tri-County News on March 3 and March 10, 2017. No bids were received.

2. 117-131 S. Michigan Street

David Relos stated at 9:00 a.m. March 23, 2017 was the deadline to submit bids for the disposition property at 117-131 S. Michigan Street. These are commonly known as the Michigan Street Shops, and was advertised in the South Bend Tribune and Tri-County News on March 3 and March 10, 2017. No bids were received.

C. River West Development Area

1. Resolution No. 3387 (UEA Property Transfer)

David Relos presented Resolution No. 3387 (UEA Property Transfer). This Resolution is to accept 4 properties from the UEA. The properties will be deeded to the Redevelopment Commission and taken through the disposition process. This property is the Burke Building at Garst & Michigan and three vacant lots mid-block on the west side of Michigan, south of Sample St.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Resolution No. 3387 (UEA Property Transfer) submitted on March 23, 2017.

2. Agreement (Collateral Assignment Berlin Place Project)

Brian Pawlowski presented the Agreement (Collateral Assignment Berlin Place Project). The collateral assignment is with Wintrust Bank for Berlin Place, giving them a collateral interest in our agreement for the loan they are receiving.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Agreement (Collateral Assignment Berlin Place Project) submitted on March 23, 2017.

3. Access Easement Agreement (Cove Lot # 4)

Brian Pawlowski presented the Access Easement Agreement for Cove Lot # 4, the old Michiana Lock & Key site. Brian explained this Agreement allows the Zion Hill Missionary Baptist Church to use a part of this Lot for parking, since Monroe St. is being vacated to allow the Berlin Place project to take place.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Access Easement Agreement (Cove Lot # 4) submitted on March 23, 2017.

4. First Amendment to Real Estate Purchase Agreement (Newmark Grubb Cressy & Everett)

Brian Pawlowski presented the First Amendment to Real Estate Purchase Agreement (Newmark Grubb Cressy & Everett). Mr. Pawlowski states this is a 60 day extension of the due diligence period in regards to the Blackthorn properties, because an environmental issue is being investigated.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved the First Amendment to Real Estate Purchase Agreement (Newmark Grubb Cressy & Everett) submitted on March 23, 2017.

D. West Washington Development Area

1. Budget Request (City Cemetery Improvements)

Chris Dressel presented a Budget Request (City Cemetery Improvements). Mr. Dressel gave a history outline of the City Cemetery in which the Commission previously approved a budget request of \$300,000. A preservation assessment was prepared in 2009. Meetings were held to engage the public in the cemetery improvement process in 2013. In 2014 the West Side Main Street plan was approved. A Cemetery Master Plan was released in 2015. Key strategies will be connecting the cemetery to the surrounding neighborhoods and making it more accessible, with a focus on the people in the area and creating useable green space. The lack of connection to the entryway was the number one comment received from public discussions. Mr. Dressel asked for approval of \$450,000 to proceed with improvements including the entrance, landscaping, lighting, green space, design and off-street parking that will make on-street parking more attractive.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Budget Request (City Cemetery Improvements) submitted on March 23, 2017.

E. Other

1. Resolution No. 3385 (Fund 439 Setting Public Hearing 4/13: Certified Technology Park)

Beth Leonard Inks presented Resolution No. 3385 (Setting Public Hearing: April 13, 2017). This Resolution sets the public hearing date for appropriating additional funds in the amount of \$2.2M for Certified Technology Park.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Resolution No. 3385 (Setting Public Hearing 4/13: Certified Technology Park) submitted on March 23, 2017.

2. Recommendation (Seven Entropy Design Studio Inc.: 701 Portage Avenue)

Davis Relos presented the recommendation (Seven Entropy Design Studio Inc.: 701 Portage Avenue). 701 Portage Avenue went through the disposition process with Seven Entropy Design Studio Inc. presenting a sealed bid. The sealed bid was opened at the previous Commission meeting with packet content sent to staff for review and recommendation. The bid met all requirements therefore staff is asking Commission approval for acceptance of the bid and to move forward with a Purchase Agreement. The intent is for a mixed use building including an apartment, small offices and a possible restaurant/café.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Recommendation (Seven Entropy Design Studio Inc.: 701 Portage Avenue) submitted on March 23, 2017.

3. Resolution No. 3388 (Honoring Aaron Kobb for Extraordinary Service to the South Bend Community & South Bend Redevelopment Commission)

Dave Varner, Vice-President of the Redevelopment Commission read and presented Aaron Kobb with Resolution No. 3388, honoring him for extraordinary service to the South Bend community & South Bend Redevelopment Commission.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Resolution No. 3388 (Honoring Aaron Kobb for Extraordinary Service to the South Bend Community & South Bend Redevelopment Commission) submitted on March 23, 2017.

6. Progress Reports

A. Tax Abatement

B. Common Council

C. Other

Mr. Pawlowski thanked Beth Leonard Inks for the work she provides to Community Investment. Brian introduced Austin Gammage, Business Development and Angelina Billo, Economic Resources.


Austin Gammage and Angelina Billo introduced themselves to the Commissioners each giving the Commissioners a brief background history.

7. Next Commission Meeting:

Thursday, April 13, 2017, 9:30 a.m.

8. Adjournment

Thursday, March 23, 2017, 10:16 a.m.



Brian Pawlowski, Acting Executive Director

Marcia I. Jones, President

ITEM: 3A

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION Redevelopment Commission Claims April 13, 2017 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Christopher B. Burke Engineering, LLC	14,468.00	South Bend Dam Capital Planning
Kolata Enterprises LLC	742.50	Professional Services
Plew Shadley Racher & Braun LLP	225.50	Bosch/Honeywell
IDEM	1,012.50	Site Assessment Oliver-Plow
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>		
Lehman & Lehman	2,420.00	City Cemetery Master Plan
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
C & S Masonry Restoration, LLC	143,526.00	Newman Center Masonry Repairs
Smithgroup JJR	18,336.00	Riverfront Parks and Trails Master Plan
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
McCormick Engineering, LLC	3,442.50	Bowen St Drainage
Total	184,173.00	

RESOLUTION NO. 3386

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPROPRIATING FUNDS FROM THE CERTIFIED TECHNOLOGY PARK FUND
FOR THE PAYMENT OF CERTAIN OBLIGATIONS AND EXPENSES
RELATED TO THE CERTIFIED TECHNOLOGY PARK**

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

WHEREAS, upon application made by the Commission, the Indiana Economic Development Corporation (the “IEDC”), on January 1, 2009, designated and established the Certified Technology Park comprised of Innovation Park at Notre Dame and Ignition Park to be a certified technology park within the meaning of Ind. Code 36-7-32 (the “CTP Statute”) subject to the provisions of that certain Certified Technology Park Agreement dated December 29, 2008, by and among the City of South Bend (the “City”), the Commission, and the IEDC (the “CTP Agreement”); and

WHEREAS, pursuant to Section 22 of the CTP Statute, the Indiana Treasurer of State distributed a total of Five Million Dollars (\$5,000,000.00) (the “CTP Revenues”) to the Commission for deposit into the Commission’s certified technology park fund established under Section 23 of the CTP Statute (the “CTP Fund”); and

WHEREAS, the City, the Commission, and the University of Notre Dame du Lac (the “University”) entered into that certain Memorandum of Understanding dated day of November 29, 2012, as amended by that certain Amendment to Memorandum of Understanding between the parties dated as of August 25, 2014 (collectively, the “MOU”), concerning the disposition of the CTP Revenues between Innovation Park at Notre Dame and Ignition Park in consideration of the parties’ respective development commitments in connection with the CTP Agreement; and

WHEREAS, the MOU provides that an amount not to exceed One Million Eight Hundred Thousand Dollars (\$1,800,000.00) of the CTP Revenues is to be expended for the development of Innovation Park at Notre Dame; and

WHEREAS, the University has produced the certificate of expenses attached hereto as **Exhibit 1** (the “Certificate”) evidencing its expenditures in accordance with Item 1 of Exhibit B to the CTP Agreement and Section 23 of the Act; and

WHEREAS, the Commission desires to appropriate funds from the CTP Fund and to approve the payment of One Million Eight Hundred Thousand Dollars (\$1,800,000.00) to the University as a reimbursement of the University’s expenses reflected in the Certificate; and

WHEREAS, the proposed appropriation from the CTP Fund complies with the requirements of Ind. Code 36-7-32-23 and are not for the operating expenses of the Commission; and

WHEREAS, such appropriation is subject to the provisions of Ind. Code 6-1.1-18-5; and

WHEREAS, on March 23, 2017, the Commission adopted Resolution No. 3385 setting a public hearing on said appropriation for 9:30 a.m. on April 13, 2017, and authorizing the Secretary of the Commission to duly publish notice of said hearing; and

WHEREAS, the Secretary of the Commission has caused notice of said hearing on said appropriation to be published in accordance with law; and

WHEREAS, such public hearing was held at the Commission's meeting at 9:30 a.m. on April 13, 2017, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601, at which all taxpayers and interested persons had an opportunity to appear and express their views as to such additional appropriation; and

WHEREAS, the Commission now desires to approve said appropriation in a total amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) and to approve the above-described payment to the University in the total amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00); and

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

1. Funds from the CTP Fund established under Section 23 of the CTP Statute in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) are hereby appropriated for the purpose of paying the expenditures contemplated in and permitted under the CTP Agreement and the CTP Statute, including, but not limited to, the payment to the University approved below.

2. The President and/or the Secretary of the Commission are hereby authorized and directed to certify a copy of this Resolution together with such other proceedings and actions as may be necessary to the St. Joseph County Auditor for certification to the Indiana Department of Local Government Finance for the purpose of obtaining its approval of the appropriation herein made.

3. The Commission approves payment to the University in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00) in accordance with the MOU and in consideration of the Certificate attached hereto as Exhibit 1. The Commission authorizes and directs the City Controller for the City of South Bend, in his capacity as Treasurer for the Commission, to arrange for prompt payment of said amount to the University in accordance with the City's ordinary practices and procedures.

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

ADOPTED at a meeting of the South Bend Redevelopment Commission held on April 13, 2017, at 227 West Jefferson Boulevard, Room 1308, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

4000.0000095 54917675.002

EXHIBIT 1

**Certificate Pertaining to Expenses Incurred in the Operation of a Business Incubator
Within a Certified Technology Park Pursuant to Indiana Code 36-7-32**

[See attached.]

**CERTIFICATE PERTAINING TO EXPENSES INCURRED IN
THE OPERATION OF A BUSINESS INCUBATOR WITHIN A CERTIFIED
TECHNOLOGY PARK PURSUANT TO INDIANA CODE 36-7-32**

I, Richard Bellis, do hereby certify that I am the Sr. Director of Treasury Services for the University of Notre Dame du Lac, an Indiana not-for-profit corporation (the "University"), and that as such official I am authorized to execute this Certificate on behalf of the University and do hereby further certify as follows:

1. This Certificate is being delivered pursuant to Indiana Code 36-7-32 (the "Act") and a Memorandum of Understanding among the City of South Bend, Indiana (the "City"), the South Bend Redevelopment Commission (the "Commission"), and the University dated the 29th day of November, 2012, as amended by that certain Amendment to Memorandum of Understanding between the parties dated as of August 25, 2014 (collectively, the "MOU"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the MOU.

2. Pursuant to the MOU, the City, the Commission, and the University agreed that the aggregate of all CTP Revenues collected by the State and remitted to the Redevelopment Commission as provided by the Act and the CTP Agreement (as defined below) shall be divided such that (i) Ignition Park shall receive no more than Three Million Two Hundred Thousand Dollars (\$3,200,000), and (ii) the entire remaining balance of all CTP revenues [not to exceed \$1,800,000] shall be allocated to Innovation Park, and all used for permitted purposes under the Act and the CTP Agreement.

3. The University's facilities at Innovation Park constitute a "business incubator" and a "public facility" as defined in Section 5 and Section 9(2), respectively, of the Act, and the University has constructed such improvements consistent with Item 1 of Exhibit B of that certain Certified Technology Park Agreement dated December 29, 2008, by and among the City, the Commission, and the Indiana Economic Development Corporation (the "CTP Agreement").

4. Pursuant to Section 23(b)(2) of the Act, Innovation Park at Notre Dame, Inc. and/or the University, as its successor, have incurred operating expenses in the operation of the facilities located in Innovation Park, as set forth on Exhibit A hereto, which are properly reimbursable to the University from CTP Revenues pursuant to the foregoing section of the Act.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 29th day of March, 2017.

UNIVERSITY OF NOTRE DAME DU LAC,

By: 
Printed: Richard Bellis
Title: Sr. Director of Treasury Services

Exhibit A

Innovation Park at Notre Dame, Inc.
Excerpt from Statements of Changes in Net Assets
(Unaudited)

	Years ended June 30	
	2012	2011
Operating expenses:		
Professional fees	\$ 206,816	\$ 391,850
Facilities rental	167,272	162,400
Services agreement	100,000	100,000
Utilities	94,877	78,398
Telecommunications	75,029	72,036
Repair & maintenance	43,282	31,728
Event services	39,457	32,434
Media services	38,881	76,311
Non-capitalized equipment	31,596	34,656
Supplies & administrative	18,228	23,151
Eligible Operating Expenses	\$ 815,438	\$ 1,002,964
	Grand Total	\$ 1,818,402

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “Agreement”) is made on April 13, 2017 (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 SBCC Development Corp., an Indiana corporation with its registered office address at P.O. Box 4101, South Bend, Indiana 46634 (“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. 3370 on December 15, 2016, whereby Seller established an offering price of One Million Five Hundred Twenty-Five Thousand Dollars (\$1,525,000.00) (the “Appraised Value”) for the Property.

D. Pursuant to the Act, on December 15, 2016, Seller authorized the publication, on December 23, 2016, and December 30, 2016, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before January 12, 2017.

E. As of January 12, 2017, 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"):

Mark Tarner, President
SBCC Development Corp.
P.O. Box 4101
South Bend, Indiana 46634

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 develop the Property into a multi-use commercial project (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 sixty (60) 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.

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 quit claim 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, subject to 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. BUYER'S POST-CLOSING DEVELOPMENT OBLIGATIONS

A. Property Improvements; Proof of Investment. By the date that is sixty (60) months after the Closing Date (the "Project Completion Deadline"), Buyer will expend an amount not less than Five Million Dollars (\$5,000,000.00) (Buyer's "Private Investment") to complete its development of the Property, including the construction of two museum buildings and a food product manufacturing facility, together totaling approximately Sixty Thousand (60,000) square feet (Buyer's "Property Improvements"). Promptly upon expending the Private Investment and completing the Property Improvements, Buyer will submit to Seller satisfactory records, as determined in Seller's sole discretion, proving Buyer's expenditures and will permit Seller (or its designee) to inspect the Property to ensure that Buyer's Property Improvements were completed satisfactorily. Seller and Buyer agree that Buyer's performance of the Property Improvements in accordance with this Agreement will be secured by Seller's retention of a reversionary interest in the Property, as expressed in the Deed and Section 11.C below.

B. Certificate of Completion. Promptly after Buyer completes the Property Improvements and satisfactorily proves the same in accordance with the terms of Section 11.A. above, Seller will issue to Buyer a certificate acknowledging such completion and releasing Seller's reversionary interest in the Property (the "Certificate of Completion"). The Parties agree to record the Certificate of Completion immediately upon its issuance by Seller, and Buyer will pay the costs of recordation.

C. Remedies Upon Default; Reversion; Mortgage. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to fully perform its obligations under Section 11.A by the Project Completion Deadline will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure. In the event Buyer fails to complete the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 11.A above, then, in addition to pursuing any other remedies available at law or in equity, Seller shall have the right to re-enter and take possession of the Property and to terminate and re-vest in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by Buyer. The Parties agree that Seller's conveyance of the Property to Buyer at Closing will be made on the condition subsequent set forth in the foregoing sentence. Further, the Parties agree that Seller's reversionary interest in the Property will be subordinate to the first-priority mortgage encumbering the Property, if any, arising out of Buyer's contemporaneous financing of the construction of the Property Improvements on the Property,

provided that Buyer notifies Seller in advance of the execution or recording of such first-priority mortgage.

12. RESERVED.

13. 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 condition or fitness for any particular use, and nothing in this Agreement will be construed to constitute such a representation or warranty as to condition or fitness for any particular use.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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. In the event Buyer assigns or attempts to assign any of its rights in this Agreement or the Property in violation of this Section 19 before Seller's issuance of a Certificate of Completion in accordance with Section 11 above, then Seller shall have the right to re-enter and take possession of the Property and to terminate and revert in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by Buyer. The Parties agree that Seller's conveyance of the Property to Buyer will be made on the condition subsequent set forth in the foregoing sentence.

20. 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.

21. AUTHORITY TO EXECUTE; EXISTENCE

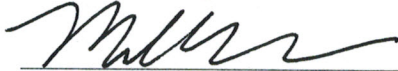
The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken 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.

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

[Signature page follows.]

BUYER:

SBCC Development Corp.,
an Indiana corporation



Mark Tarner, President

Dated:

SELLER:

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

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

4000.0000035

37043408.002

EXHIBIT A

Description of Property

Parcel I

Lots Numbered Two A (2A) and Outlot A (OLA) in Cascino Second Minor Subdivision as per plat thereof recorded September 9, 1991 as Instrument Number 9125343 in the Office of the Recorder of Saint Joseph County, Indiana. [Parcel Key Nos. 04-1021-035201 and 04-1021-035202]

Parcel II

A tract of land in the Northeast Quarter of the Northwest Quarter of Section 31, and the Northwest Quarter of the Northwest Quarter of Section 31, all in Township 38 North, Range 2 East, described as follows: Beginning at the intersection of the West line of the Southeast Quarter of the Southwest Quarter of Section 30, Township 38 North, Range 2 East, with the centerline of Indiana State Highway No. U.S. 20, also known as Lincoln Trail; running thence South 279.15 feet to the Northwest Corner of said Northeast Quarter of the Northwest Quarter of said Section 31; thence West 10.00 feet; thence South parallel with the West line of the Northeast Quarter of the Northwest Quarter of said Section 31, a distance of 583.45 feet, to the point of beginning of the description of the land herein described; thence running East parallel with the South line of said Northeast Quarter of the Northwest Quarter, a distance of 697.0 feet; thence South parallel with the West line of said Northeast Quarter of the Northwest Quarter, a distance of 350.0 feet; thence West parallel with the South line of said Northeast Quarter of the Northwest Quarter, a distance of 142.0 feet; thence South parallel to the West line of said Northeast Quarter of the Northwest Quarter of said Section 31, a distance of 400.0 feet to the South line of said Northeast Quarter of the Northwest Quarter; thence West 545.0 feet to the Southwest Corner of said Northeast Quarter of the Northwest Quarter of said Section 31; thence North along the West line of said Northeast Quarter of the Northwest Quarter a distance of 579.45 feet; thence West 10.0 feet; thence North 170.55 feet to the place of beginning. [Parcel Key No. 04-1021-035301]

Parcel III

A tract of land located in the Northeast Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, German Township, St. Joseph County, Indiana, being all that portion of a tract of land, previously conveyed to the State of Indiana by a warranty deed signed by Herbert William Oesch and Evelyn E. Oesch, which lies outside of the Limited Access Right-of-Way for the U.S. 31 By-Pass of South Bend, and further described as follows: Commencing at the intersection of the West line of the Southeast Quarter of the Southwest Quarter of Section 30, Township 38 North, Range 2 East, with the centerline of USR 20, also known as Lincoln Trail, thence South 61°25' East, 981 feet along the centerline of said USR 20; thence South 1°21'15" East, 620.5 feet to an existing iron pin, said pin being the point of beginning for the following described tract; thence South 88°56'32" West 12.75 feet along the existing property line to an iron pin set; thence North 1°21'15" West, 416.10 feet along the existing property line to an iron pin set on the Limited Access Right-of-Way line along the Southwest Ramp at the U.S. 20-U.S. 31 bypass interchange, said point being 0.5 feet, measured perpendicular, from the Limited Access Right-of- Way Fence; thence South 38°25'53" East, 59.58 feet along the Limited Access

Right-of-Way line to an iron pin set; thence South 29°13'45" East, 418.30 feet along the Limited Access Right-of-Way line to an iron pin set on the South property line of the tract; thence South 88°56'32" West, 218.74 feet along the South property line of the tract to the point of beginning. Contains 1.151 acres more or less. [Parcel Key No. 04-1021-035302]

Parcel IV

A part of the Northeast Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, St. Joseph County, Indiana, described as follows: Beginning on the West line of the Northeast Quarter of the Northwest Quarter of Section 31, North 0°11'00" West 119.44 feet from the Northwest corner of said Quarter Quarter Section; thence South 61°25'00" East 138.9 feet to the point of beginning; thence South 54°47'30" East a distance of 425.98 feet to a point; thence South 56°00'00" East a distance of 268 feet to a point; thence South parallel to the West line of said Quarter Quarter Section, a distance of 600 feet; thence due West a distance of 142.00 feet; thence South parallel to the West line of said Quarter Quarter Section, a distance of 400.00 feet;

thence due East along the South line of said Quarter Quarter Section, a distance of 742.30 feet; thence North parallel to the West line of said Quarter Quarter Section, a distance of 48.00 feet; thence Northwesterly along the Southerly boundary line of U.S. 20-U.S. 31 bypass a distance of 516.95 feet to a point; thence due West a distance of 221.68 feet; thence due North a distance of 425.00 feet to a point on the Southerly boundary line of U.S. 20; thence Northwesterly along said Southerly boundary line of U.S. 20 a distance of 80.00 feet to a point; thence Northwesterly along said Southerly boundary line of U.S. 20 a distance of 794.34 feet to a point; thence South 28°35'00" West a distance of 60.00 feet to the Point of Beginning. [Parcel Key No. 04-1021-035303]

Parcel V

The West Half of the Northwest Quarter of Section 31 and the Southeast Quarter of the Northwest Quarter of said Section 31, all in Township 38 North, Range 2 East.

EXCEPTING THEREFROM THE FOLLOWING 8 TRACTS:

TRACT I: Beginning at the Southwest corner of the Northwest Quarter of said Section 31; running thence North 544 feet; thence East 761 feet; thence South 544 feet; thence West 761 feet to the place of beginning.

TRACT II: Beginning at the Northwest Corner of the Northeast Quarter of said Section 31; running thence West 10 feet; thence South 754 feet; thence East 10 feet; thence North 754 feet to the place of beginning.

TRACT III: Beginning at a point 40 feet East and 353 feet South of the Northwest corner of said Section 31; thence South 220 feet; thence East 280 feet; thence North 220 feet; thence West 280 feet to the place of beginning.

TRACT IV: Beginning at a point 10 feet West of the Northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 31; running thence South parallel with the East line of said Northwest Quarter of the Northwest Quarter of Section 31, 733 feet to the North line of a 20 foot drive; thence West on said North line 557.7 feet; thence North 734.6 feet to the North line of said Section 31; thence East 539.5 feet to the place of beginning.

TRACT V: A tract of parcel of land in the Northwest Quarter of Section 31, Township 38 North, Range 2 East, more particularly described as follows, to-wit: Beginning at a point on the South line of said Northwest Quarter of said Section 31 which point is 761 feet East of the Southwest

corner of said Northwest Quarter; thence East 200 feet; thence North 544 feet; thence West 200 feet; thence South 544 feet to the place of beginning.

TRACT VI: A part of the Northwest Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, described as beginning at a point 40 feet East and 40 feet South of the Northwest corner of the Northwest Quarter of said Section 31; thence South 313 feet; thence East 280 feet; thence North 313 feet; thence West 280 feet to the place of beginning.

TRACT VII: A tract of land in the Northwest Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, bounded by a line running as follows: Beginning at the Northwest corner of said Section 31; thence running East along the North line of said Section 582 feet to an iron stake; thence South and parallel with the West line of said Section, 1090 feet; thence West and parallel with the North line of said Section 31, 582 feet; thence North 517 feet to the Southwest corner of Joseph Milewski land; thence East along the South line of the Milewski land, 320 feet; thence North and parallel with the West line of said Section 31, a distance of 533 feet to a point which is 40 feet South of the North line of said Section; thence West on a line 40 feet South of and parallel with the North line of said Section 31, a distance of 320 feet to the West line of said Section 31; thence North 40 feet to the place of beginning.

TRACT VIII: A parcel of land located in the Northwest Quarter of Section 31, Township 38 North, Range 2 East, of the Second Principal Meridian in German Township, St. Joseph County, Indiana, more particularly described as follows: Commencing at a railroad spike at the West Quarter corner of said Section 31; thence North along the West line of said Section 31, a distance of 544.00 feet to a railroad spike, to the point of beginning, said point of beginning also being the Northwest corner of property described in Deed Record 681, page 141 in the Office of the Recorder of St. Joseph County, Indiana; thence North along the West line of Section 31, a distance of 400.00 feet to a railroad spike; thence South $89^{\circ}56'27''$ East a distance of 2504.95 feet to an iron pipe in the North-South centerline of said Section 31, said centerline also being the West line of property described in Deed Record 779, page 518 in the Office of the Recorder of St. Joseph County, Indiana; thence South $1^{\circ}46'48''$ East along the North-South centerline of Section 31 a distance of 944.49 feet to a stone at the center of Section 31; thence North $89^{\circ}56'27''$ West along the East-West centerline of Section 31, also the North line of property described in Deed Record 720, page 117 and Deed Record 731, page 173 in the Office of the Recorder of St. Joseph County, Indiana, a distance of 1573.29 feet to an iron pipe, said iron pipe being the Southeast corner of property described in Deed Record 681, page 141 in the Office of the Recorder of St. Joseph County, Indiana; thence North along the East line of said property described in Deed Record 681, page 141, a distance of 544.00 feet to an iron pipe; thence North $89^{\circ}56'27''$ West along the North line of said property described in Deed Record 681, page 141, a distance of 961.00 feet to the point of beginning. [Parcel Key No. 04-1021-035110]

Parcel VI

A part of the South 1/2 of the Northeast Quarter of Section 31, Township 38 North, Range 2 East, St. Joseph County, Indiana, and described as follows: Beginning at a stone at the Southwest corner of said half-quarter section; thence North $0^{\circ}59'55''$ West 1,345.4 feet along the West line of said half-quarter section to the Western boundary of U.S.R. 31; thence South $33^{\circ}00'50''$ East 675.32 feet along said Western boundary; thence South $8^{\circ}47'10''$ East 409.58 feet; thence South $3^{\circ}11'15''$ East 376.16 feet to the South line of said half-quarter section; thence North $89^{\circ}46'50''$ West 427.96 feet along said South line to the point of beginning. [Parcel Key No. 04-1021-036004]

EXHIBIT B

Form of Quit Claim Deed

QUIT CLAIM 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 QUIT CLAIMS to SBCC Development Corp., an Indiana corporation with its registered office address at P.O. Box 4101, South Bend, Indiana 46634 (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 real estate located in St. Joseph County, Indiana, more particularly described in attached Exhibit 1 (the “Property”):

The Grantor hereby conveys the Property to the Grantee 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; and subject to all applicable building codes and zoning ordinances.

The Grantor conveys the Property to the Grantee pursuant to the terms of that certain Real Estate Purchase Agreement dated April 13, 2017, by and between the Grantor and the Grantee (the “Agreement”). Capitalized terms not otherwise defined in this deed will have the meanings stated in the Agreement. Pursuant to Sections 11 and 19 of the Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 11 of the Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revert in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee’s rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. In addition, in the event the Grantee assigns or attempts to assign any of its rights in the Property in violation of Section 19 of the Agreement before the Grantor’s issuance of a Certificate of Completion in accordance with Section 11 of the Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revert in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee’s rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 11 of the Agreement will forever release and discharge the Grantor’s reversionary interest stated in this paragraph.

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

David Varner, Vice 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 David Varner and Donald E. Inks, known to me to be the Vice 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 _____, 2017.

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.

EXHIBIT 1
TO QUIT CLAIM DEED

Description of Property

Parcel I

Lots Numbered Two A (2A) and Outlot A (OLA) in Cascino Second Minor Subdivision as per plat thereof recorded September 9, 1991 as Instrument Number 9125343 in the Office of the Recorder of Saint Joseph County, Indiana. [Parcel Key Nos. 04-1021-035201 and 04-1021-035202]

Parcel II

A tract of land in the Northeast Quarter of the Northwest Quarter of Section 31, and the Northwest Quarter of the Northwest Quarter of Section 31, all in Township 38 North, Range 2 East, described as follows: Beginning at the intersection of the West line of the Southeast Quarter of the Southwest Quarter of Section 30, Township 38 North, Range 2 East, with the centerline of Indiana State Highway No. U.S. 20, also known as Lincoln Trail; running thence South 279.15 feet to the Northwest Corner of said Northeast Quarter of the Northwest Quarter of said Section 31; thence West 10.00 feet; thence South parallel with the West line of the Northeast Quarter of the Northwest Quarter of said Section 31, a distance of 583.45 feet, to the point of beginning of the description of the land herein described; thence running East parallel with the South line of said Northeast Quarter of the Northwest Quarter, a distance of 697.0 feet; thence South parallel with the West line of said Northeast Quarter of the Northwest Quarter, a distance of 350.0 feet; thence West parallel with the South line of said Northeast Quarter of the Northwest Quarter, a distance of 142.0 feet; thence South parallel to the West line of said Northeast Quarter of the Northwest Quarter of said Section 31, a distance of 400.0 feet to the South line of said Northeast Quarter of the Northwest Quarter; thence West 545.0 feet to the Southwest Corner of said Northeast Quarter of the Northwest Quarter of said Section 31; thence North along the West line of said Northeast Quarter of the Northwest Quarter a distance of 579.45 feet; thence West 10.0 feet; thence North 170.55 feet to the place of beginning. [Parcel Key No. 04-1021-035301]

Parcel III

A tract of land located in the Northeast Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, German Township, St. Joseph County, Indiana, being all that portion of a tract of land, previously conveyed to the State of Indiana by a warranty deed signed by Herbert William Oesch and Evelyn E. Oesch, which lies outside of the Limited Access Right-of-Way for the U.S. 31 By-Pass of South Bend, and further described as follows: Commencing at the intersection of the West line of the Southeast Quarter of the Southwest Quarter of Section 30, Township 38 North, Range 2 East, with the centerline of USR 20, also known as Lincoln Trail, thence South 61°25' East, 981 feet along the centerline of said USR 20; thence South 1°21'15" East, 620.5 feet to an existing iron pin, said pin being the point of beginning for the following described tract; thence South 88°56'32" West 12.75 feet along the existing property line to an iron pin set; thence North 1°21'15" West, 416.10 feet along the existing property line to an iron pin set on the Limited Access Right-of-Way line along the Southwest Ramp at the U.S. 20-U.S. 31 bypass interchange, said point being 0.5 feet, measured perpendicular, from the Limited Access Right-of-Way Fence; thence South 38°25'53" East, 59.58 feet along the Limited Access Right-of-Way line to an iron pin set; thence South 29°13'45" East, 418.30 feet along the Limited Access Right-of-Way line to an iron pin set on the South property line of the tract; thence South 88°56'32" West, 218.74 feet along the South property line of the tract to the point of beginning. Contains 1.151 acres more or less. [Parcel Key No. 04-1021-035302]

Parcel IV

A part of the Northeast Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, St. Joseph County, Indiana, described as follows: Beginning on the West line of the Northeast

Quarter of the Northwest Quarter of Section 31, North 0°11'00" West 119.44 feet from the Northwest corner of said Quarter Quarter Section; thence South 61°25'00" East 138.9 feet to the point of beginning; thence South 54°47'30" East a distance of 425.98 feet to a point; thence South 56°00'00" East a distance of 268 feet to a point; thence South parallel to the West line of said Quarter Quarter Section, a distance of 600 feet; thence due West a distance of 142.00 feet; thence South parallel to the West line of said Quarter Quarter Section, a distance of 400.00 feet; thence due East along the South line of said Quarter Quarter Section, a distance of 742.30 feet; thence North parallel to the West line of said Quarter Quarter Section, a distance of 48.00 feet; thence Northwesterly along the Southerly boundary line of U.S. 20-U.S. 31 bypass a distance of 516.95 feet to a point; thence due West a distance of 221.68 feet; thence due North a distance of 425.00 feet to a point on the Southerly boundary line of U.S. 20; thence Northwesterly along said Southerly boundary line of U.S. 20 a distance of 80.00 feet to a point; thence Northwesterly along said Southerly boundary line of U.S. 20 a distance of 794.34 feet to a point; thence South 28°35'00" West a distance of 60.00 feet to the Point of Beginning. [Parcel Key No. 04-1021-035303]

Parcel V

The West Half of the Northwest Quarter of Section 31 and the Southeast Quarter of the Northwest Quarter of said Section 31, all in Township 38 North, Range 2 East.

EXCEPTING THEREFROM THE FOLLOWING 8 TRACTS:

TRACT I: Beginning at the Southwest corner of the Northwest Quarter of said Section 31; running thence North 544 feet; thence East 761 feet; thence South 544 feet; thence West 761 feet to the place of beginning.

TRACT II: Beginning at the Northwest Corner of the Northeast Quarter of said Section 31; running thence West 10 feet; thence South 754 feet; thence East 10 feet; thence North 754 feet to the place of beginning.

TRACT III: Beginning at a point 40 feet East and 353 feet South of the Northwest corner of said Section 31; thence South 220 feet; thence East 280 feet; thence North 220 feet; thence West 280 feet to the place of beginning.

TRACT IV: Beginning at a point 10 feet West of the Northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 31; running thence South parallel with the East line of said Northwest Quarter of the Northwest Quarter of Section 31, 733 feet to the North line of a 20 foot drive; thence West on said North line 557.7 feet; thence North 734.6 feet to the North line of said Section 31; thence East 539.5 feet to the place of beginning.

TRACT V: A tract of parcel of land in the Northwest Quarter of Section 31, Township 38 North, Range 2 East, more particularly described as follows, to-wit: Beginning at a point on the South line of said Northwest Quarter of said Section 31 which point is 761 feet East of the Southwest corner of said Northwest Quarter; thence East 200 feet; thence North 544 feet; thence West 200 feet; thence South 544 feet to the place of beginning.

TRACT VI: A part of the Northwest Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, described as beginning at a point 40 feet East and 40 feet South of the Northwest corner of the Northwest Quarter of said Section 31; thence South 313 feet; thence East 280 feet; thence North 313 feet; thence West 280 feet to the place of beginning.

TRACT VII: A tract of land in the Northwest Quarter of the Northwest Quarter of Section 31, Township 38 North, Range 2 East, bounded by a line running as follows: Beginning at the Northwest corner of said Section 31; thence running East along the North line of said Section 582 feet to an iron stake; thence South and parallel with the West line of said Section, 1090 feet; thence West and parallel with the North line of said Section 31, 582 feet; thence North 517 feet to the Southwest corner of Joseph Milewski land; thence East along the South line of the Milewski land, 320 feet; thence North and parallel with the West line of said Section 31, a distance of 533 feet to a point which is 40 feet South of the North line of said Section; thence West on a line 40 feet South of and parallel with the North line of said Section 31, a distance of 320 feet to the West line of said Section 31; thence North 40 feet to the place of beginning.

TRACT VIII: A parcel of land located in the Northwest Quarter of Section 31, Township 38 North, Range 2 East, of the Second Principal Meridian in German Township, St. Joseph County, Indiana, more particularly described as follows: Commencing at a railroad spike at the West Quarter corner of said Section 31; thence North along the West line of said Section 31, a distance of 544.00 feet to a railroad spike, to the point of beginning, said point of beginning also being the Northwest corner of property described in Deed Record 681, page 141 in the Office of the Recorder of St. Joseph County, Indiana; thence North along the West line of Section 31, a distance of 400.00 feet to a railroad spike; thence South 89°56'27" East a distance of 2504.95 feet to an iron pipe in the North-South centerline of said Section 31, said centerline also being the West line of property described in Deed Record 779, page 518 in the Office of the Recorder of St. Joseph County, Indiana; thence South 1°46'48" East along the North-South centerline of Section 31 a distance of 944.49 feet to a stone at the center of Section 31; thence North 89°56'27" West along the East-West centerline of Section 31, also the North line of property described in Deed Record 720, page 117 and Deed Record 731, page 173 in the Office of the Recorder of St. Joseph County, Indiana, a distance of 1573.29 feet to an iron pipe, said iron pipe being the Southeast corner of property described in Deed Record 681, page 141 in the Office of the Recorder of St. Joseph County, Indiana; thence North along the East line of said property described in Deed Record 681, page 141, a distance of 544.00 feet to an iron pipe; thence North 89°56'27" West along the North line of said property described in Deed Record 681, page 141, a distance of 961.00 feet to the point of beginning. [Parcel Key No. 04-1021-035110]

Parcel VI

A part of the South 1/2 of the Northeast Quarter of Section 31, Township 38 North, Range 2 East, St. Joseph County, Indiana, and described as follows: Beginning at a stone at the Southwest corner of said half-quarter section; thence North 0°59'55" West 1,345.4 feet along the West line of said half-quarter section to the Western boundary of U.S.R. 31; thence South 33°00'50" East 675.32 feet along said Western boundary; thence South 8°47'10" East 409.58 feet; thence South 3°11'15" East 376.16 feet to the South line of said half-quarter section; thence North 89°46'50" West 427.96 feet along said South line to the point of beginning. [Parcel Key No. 04-1021-036004]

ITEM: 5B2

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of April 13, 2017 (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”), Hibberd Development, LLC, an Indiana limited liability company with its registered office at 1329 E. Washington St., South Bend, Indiana 46617 (“Hibberd Development”), and Hibberd Realty, Inc., an Indiana corporation with its registered office at 1329 E. Washington St., South Bend, Indiana 46617 (“Hibberd Realty”) (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, Hibberd Development and Hibberd Realty are affiliated entities, with common ownership, which own and are developing certain real property in the City; and

WHEREAS, Hibberd Development and Hibberd Realty are collectively referred to herein as “the Developer” and their obligations under this Agreement shall be joint and several; and

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

WHEREAS, pursuant to the Real Estate Purchase Agreement dated December 15, 2016, by and between the Commission and Hibberd Development, as amended by the First Amendment To Real Estate Purchase Agreement dated April 13, 2017 (collectively, the “Purchase Agreement”), which Purchase Agreement Hibberd Development has assigned to Hibberd Realty by that certain Assignment of Contract for Purchase of Real Estate dated April __, 2017, to which the Commission consented on April 13, 2017, the Commission has agreed to sell to the Developer certain real property adjacent to and immediately south of the Developer Property, as described in Exhibit A (the “Commission Property,” together with the Developer Property herein referred to as the “Combined Parcels”); and

WHEREAS, the Developer desires to redevelop the Combined Parcels into a mixed-use retail, office, and retail development (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as Exhibit B; and

WHEREAS, the Developer Property and the Commission Property are located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the River West 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 Three Hundred Fifty Thousand Dollars (\$350,000.00) 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 Five Million Two Hundred Thousand Dollars (\$5,200,000.00) to be expended by the Developer for the costs associated with constructing the improvements on the Developer Property 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. Hibberd Development and Hibberd Realty, as the owners of the Developer Property, and Hibberd Realty, as the prospective purchaser of the Commission Property under the Purchase Agreement, will grant to the Commission temporary, non-exclusive easements on, in, over, under and across any part(s) of the Combined Parcels (the “Easements”) in substantially the forms 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 Easements 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) As a condition precedent to the Parties’ respective rights and obligations under this Agreement, the Developer will close its purchase of the Commission Property from the Commission in accordance with the terms and conditions of the Purchase Agreement.

(b) 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 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.

(c) 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 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 substantially complete the Project and any other obligations the Developer may have under this Agreement by the date that is twenty-four (24) months after the Closing Date defined in the Purchase Agreement (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 Reserved.

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 three (3) 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, directly or indirectly, 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.

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 of South Bend Engineering Department (the "Engineering Department"). The Engineering Department may approve or disapprove said bid specifications for the Project in its 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) Following such time as the condition stated in Section 4.2(a) of this Agreement has been satisfied, the Commission will 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 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 material 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 up to 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.

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: Hibberd Development, LLC
Hibberd Realty, Inc.
1329 E. Washington St.
South Bend, Indiana 46617
Attn: Mark W. Neal

With a copy to: Tuesley Hall Konopa, LLP
212 E. LaSalle Ave, Suite 100
South Bend, Indiana 46617
Attn: James M. Lewis

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 the Commission may give or withhold in its sole discretion. 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.

[SIGNATURE PAGE FOLLOWS]

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

SOUTH BEND REDEVELOPMENT
COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

HIBBERD DEVELOPMENT, LLC,
an Indiana limited liability company

Mark W. Neal, Manager
Dated:

HIBBERD REALTY, INC.,
an Indiana corporation

Mark W. Neal, President
Dated:

4000.0000065 54704976.006

EXHIBIT A

Description of Developer Property

Real property located in St. Joseph County, Indiana, commonly known as 321 and 325 S. Main Street, South Bend, Indiana. [Parcel Key Nos. 018-3008-0263 and 018-3008-0264]

Description of Commission Property

Lot Numbered Two Hundred Seventy-six (276), together with 32 feet off of and from the entire length of the South side of Lot Numbered Two Hundred Seventy-five (275), as shown on the Original Plat of the Town, now City of South Bend. [Parcel Key Nos. 18-3008-0265, 18-3008-0266, and 18-3008-0267; commonly known as 331-335 S. Main Street, South Bend, Indiana]

EXHIBIT B

Project Plan

In accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations, the Developer will redevelop the Combined Parcels into a mixed-use retail, office, and residential development, the first phase of which will include twelve to sixteen (12-16) residential units with parking.

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 work and improvements in support of construction of the Project's elements located on or adjacent to the Developer Property.

EXHIBIT D

Forms of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ day of _____, 2017 (the "Effective Date"), by and between Hibberd Realty, Inc., an Indiana corporation with its registered office at 1329 E. Washington St., South Bend, Indiana 46617 (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 April 13, 2017 (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:

Hibberd Realty, Inc., an Indiana corporation

Mark W. Neal, President

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared Mark W. Neal, to me known to be the President 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 _____, 2017.

_____, 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

Real property located in St. Joseph County, Indiana, commonly known as 325 S. Main Street, South Bend, Indiana. [Parcel Key No. 018-3008-0264]

and

Lot Numbered Two Hundred Seventy-six (276), together with 32 feet off of and from the entire length of the South side of Lot Numbered Two Hundred Seventy-five (275), as shown on the Original Plat of the Town, now City of South Bend. [Parcel Key Nos. 18-3008-0265, 18-3008-0266, and 18-3008-0267; commonly known as 331-335 S. Main Street, South Bend, Indiana]

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ day of _____, 2017 (the “Effective Date”), by and between Hibberd Development, LLC, an Indiana limited liability company with its registered office at 1329 E. Washington St., South Bend, Indiana 46617 (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 April 13, 2017 (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:

Hibberd Development, LLC, an Indiana limited liability company

Mark W. Neal, Manager

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared Mark W. Neal, to me known to be the Manager 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 _____, 2017.

_____, 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

Real property located in St. Joseph County, Indiana, commonly known as 321 S. Main Street, South Bend, Indiana. [Parcel Key No. 018-3008-0263]

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 | Each Occurrence (including umbrella policy) |
| | b. \$5,000,000.00 | Annual Aggregate Products
and Completed Operation (including
umbrella policy) |
| | 2. Property Damage | |
| | a. \$5,000,000.00 | Each Occurrence (including umbrella policy) |
| | b. \$5,000,000.00 | Annual Aggregate (including umbrella
policy) |
| | | |
| 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 |

FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This First Amendment To Real Estate Purchase Agreement (this “First Amendment”) is made on April 13, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (“Seller”), and Hibberd Realty, Inc., an Indiana corporation with its registered office at 1329 E. Washington St., South Bend, Indiana 46617, as assignee of Hibberd Development, LLC (“Buyer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. Seller and Hibberd Development, LLC, entered into that certain Real Estate Purchase Agreement dated December 15, 2016 (the “Purchase Agreement”), for the purchase and sale of the Property located in the City of South Bend.

B. Hibberd Development, LLC, assigned its interests under the Purchase Agreement to Buyer by that certain Assignment of Contract for Purchase of Real Estate dated April __, 2017, attached hereto as Exhibit A (the “Assignment”).

C. In preparation for the Closing, Seller desires to express its consent to the Assignment, and the Parties desire to amend the Purchase Agreement and address certain other matters in accordance with the terms of this First Amendment.

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

1. In accordance with Section 18 of the Purchase Agreement, Seller hereby consents to the Assignment attached hereto as Exhibit A and will execute and deliver the same to Buyer.

2. In light of the Assignment, Exhibit B attached to the Purchase Agreement is deleted in its entirety and replaced by Exhibit B attached hereto.

3. In accordance with Section 12 of the Purchase Agreement, the Parties will execute and deliver at Closing the Assignment And Assumption Of Commercial Lease attached hereto as Exhibit C.

4. In accordance with Section 12 of the Purchase Agreement, Seller will deliver to Buyer at Closing a Tenant Estoppel Certificate executed by Gates Automotive Corp., as lessee under the Commercial Lease dated August 1, 2008, in substantially the form attached hereto as Exhibit D.

5. The undersigned president of Buyer, as a former employee of the City and a current appointee to the City of South Bend Board of Park Commissioners, hereby affirms that he is subject to certain terms and limitations of the City of South Bend Ethics Code of January 1, 2012, as amended on April 19, 2013, and February 24, 2014 (the “Ethics Code”), including

Section 8 of the Ethics Code, which prohibits a current or former appointee, employee, or official from disclosing or materially benefitting from confidential information he or she learned by reason of his or her employment by the City that is not generally known to or readily ascertainable by others or otherwise subject to public access or disclosure by law. The undersigned president of Buyer hereby represents and warrants that he has neither learned nor benefitted from any confidential information concerning the Property or otherwise affecting the transaction contemplated in the Purchase Agreement, as amended by this First Amendment, during the course of or arising out of his employment by the City or his appointment to any of its boards or commissions. Further, at the time of delivering a signed copy of this First Amendment to Seller's Representative, Buyer will deliver to Seller's Representative a copy of the Uniform Conflict of Interest Disclosure Statement, the form of which is attached to the Purchase Agreement as Exhibit C, completed and signed by the undersigned president of Buyer.

6. Unless expressly modified by this First Amendment, the terms and provisions of the Purchase Agreement remain in full force and effect.

7. Capitalized terms used in this First Amendment will have the meanings set forth in the Purchase Agreement unless otherwise stated herein.

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment To Real Estate Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Hibberd Realty, Inc.,
an Indiana corporation

Mark W. Neal, President
Dated:

SELLER:

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

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

4000.0000065 54999679.001

EXHIBIT A

Assignment of Contract for Purchase of Real Estate

Assignment of Contract for Purchase of Real Estate

For value received, Hibberd Development, LLC, an Indiana limited liability company, as assignor, hereby transfers and assigns to Hibberd Realty, Inc., an Indiana corporation, as assignee, and assigns, all right, title and interest in that Real Estate Purchase Agreement, dated December 15, 2016 between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission, as seller, and Hibberd Development, LLC, as purchaser, for the purchase of a certain parcel of real estate located in South Bend, Indiana commonly known as 331-335 South Main Street, more particularly described in said contract. Hibberd Development, LLC authorizes and empowers assignee, on its performance of all of the covenants, conditions, and payments described in said contract to demand and receive of seller the deed covenanted to be given in the contract hereby assigned in the same manner and with the same effect as Hibberd Development, LLC could have done had this assignment not been made.

Dated: April __, 2017

HIBBERD DEVELOPMENT, LLC,
an Indiana limited liability company

Mark W. Neal, Manager

Acceptance by Assignee

Hibberd Realty, Inc. hereby accepts the above assignment of that contract made the 15th day of December, 2016. Further Hibberd Realty, Inc. hereby agrees to perform all obligations to be performed by assignor under the contract, and to indemnify assignor against any liability arising from the performance or nonperformance of such obligations.

Dated: April __, 2017

HIBBERD REALTY, INC.
an Indiana corporation

Mark W. Neal, President

Consent by Seller

The City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, as the seller named in the contract herein assigned, consents to this assignment to Hibberd Realty, Inc., assignee.

Dated: April __, 2017

David Varner, Vice President

Attest: Donald E. Inks, Secretary

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 Hibberd Realty, Inc., an Indiana corporation with its registered office at 1329 E. Washington St., South Bend, Indiana 46617 (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 Numbered Two Hundred Seventy-six (276), together with 32 feet off of and from the entire length of the South side of Lot Numbered Two Hundred Seventy-five (275), as shown on the Original Plat of the Town, now City of South Bend.

Parcel Key Nos. 18-3008-0265, 18-3008-0266, and 18-3008-0267

Commonly known as 331-335 S. Main Street, South Bend, Indiana

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, licenses, and interests except as agreed in the Real Estate Purchase Agreement dated December 15, 2016, as amended by the First Amendment To Real Estate Purchase Agreement dated April 13, 2017, by and between Grantor and Grantee, as assignee of Hibberd Development, LLC (collectively, the "Purchase Agreement"); 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 affecting the area in which the Property is situated and any design review guidelines associated therewith.

Pursuant to Section 11 of the Purchase Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform the Site Improvements, or satisfactorily to prove such performance, in accordance with Section 11 of the Purchase Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed to the Grantee by this deed and all of the

Grantee's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 11 of the Purchase Agreement will forever release and discharge the Grantor's reversionary interest stated in this paragraph.

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.

Capitalized terms not otherwise defined in this deed will have the meanings stated in the Purchase Agreement.

[Signature page follows.]

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

David Varner, Vice 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 David Varner and Donald E. Inks, known to me to be the Vice 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 _____, 2017.

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.

EXHIBIT C

Assignment And Assumption Of Commercial Lease

ASSIGNMENT AND ASSUMPTION OF COMMERCIAL LEASE

This Assignment And Assumption Of Commercial Lease (this "Assignment") is made as of April 13, 2017 (the "Effective Date"), by and between the South Bend Redevelopment Commission ("Assignor"), and Hibberd Realty, Inc. ("Assignee").

RECITALS

A. Assignor, as assignee of the South Bend Board of Public Works, assignee of G.M.S. Realty Inc., is the lessor under that certain Commercial Lease dated August 1, 2008, with and Gates Automotive Corp., the lessee (the "Gates Lease").

B. In accordance with Section 12 of the Real Estate Purchase Agreement by and between Assignor and Assignee, dated December 15, 2016, as amended by the First Amendment To Real Estate Purchase Agreement dated April 13, 2017 (the "Purchase Agreement"), Assignor desires to assign, and Assignee desires to assume, all of Assignor's rights, powers, privileges, reservations, obligations, liabilities, and duties under the Gates Lease.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, agree as follows:

1. Assignment. Assignor hereby assigns, sets over, transfers, grants, and conveys unto Assignee, its successors and assigns, all of Assignor's rights, powers, privileges, reservations, obligations, liabilities, and duties, of any kind or character, as the lessor under the Gates Lease.

2. Assumption. Assignee hereby accepts the foregoing assignment and assumes and agrees to perform all of the obligations, liabilities, and duties of the lessor under the Gates Lease from and after the date upon which this Assignment is delivered to Assignee in accordance with Section 12 of the Purchase Agreement.

3. Successors and Assigns. This Assignment will be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

4. Governing Law. This Assignment will be governed by and construed in accordance with the laws of the State of Indiana.

ASSIGNOR:

South Bend Redevelopment Commission

David Varner, Vice 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 David Varner and Donald E. Inks, known to me to be the Vice President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2017.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

ASSIGNEE:

Hibberd Realty, Inc., an Indiana corporation

Mark W. Neal, President

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Mark W. Neal known to me to be the President of Hibberd Realty, Inc., an Indiana corporation, and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the _____ day of _____, 2017.

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.

EXHIBIT D

Tenant Estoppel Certificate

TENANT ESTOPPEL CERTIFICATE

This Tenant Estoppel Certificate (this "Certificate") is made as of April __, 2017 (the "Effective Date"), by Gates Automotive Corporation (the "Tenant"), the tenant under the Lease (as hereinafter defined) for certain real property located in the City of South Bend, Indiana (the "Property").

Tenant hereby certifies to Hibberd Realty, Inc. (the "Purchaser"), who, in material reliance on the certifications included in this Certificate, is purchasing the Property pursuant to that certain Real Estate Purchase Agreement by and between Purchaser and the South Bend Redevelopment Commission, dated December 15, 2016, as amended by the First Amendment To Real Estate Purchase Agreement dated April 13, 2017, that as of the Effective Date:

1. Tenant currently leases the Property pursuant to that certain Commercial Lease dated August 1, 2008, a true and correct copy of which is attached hereto as Exhibit 1 (the "Lease"). The Lease is valid and binding and in full force and effect and there has been no amendment, modification, or supplement of any kind or nature varying the stated terms and conditions of the Lease. The Lease represents the entire agreement between the parties thereto regarding the Property.

2. Landlord has delivered, and Tenant has accepted, possession of the Property and is currently in occupancy of the entire Property. Tenant has not subleased any portion of the Property or assigned or otherwise transferred any of its rights under the Lease.

3. The term of the Lease commenced on August 1, 2008, and has been extended by Tenant until July 31, 2017, in accordance with Tenant's right under Section 18 of the Lease. At the conclusion of the current term, Tenant will have one (1) additional option to renew the Lease for a final term of two (2) additional years expiring on July 31, 2019.

4. To Tenant's knowledge, Tenant is not in material default under the Lease and Tenant has not received any notices of material default under the Lease which have not been cured and, to Tenant's knowledge, there are no events which have occurred that with the giving of notice or the passage of time, or both, would result in a material default by Tenant under the Lease.

5. Tenant has not sent Landlord any notices of default under the Lease which have not been cured, and to Tenant's knowledge, there are no defaults by Landlord under the lease as of the date hereof and there are no events that have occurred that, with the giving of notice or the passage of time, or both, would result in a default by Landlord thereunder.

6. Tenant has no right of first refusal, right of first offer, or option to purchase or lease the Property, or any part thereof.

7. To Tenant's knowledge, Tenant is not using the Property in violation of any applicable laws, rules, ordinances, or regulations, including but not limited to, any applicable environmental laws, rules, or regulations (collectively, "Laws") and to Tenant's knowledge,

there are no actions or other claims pending or threatened against Tenant in connection with any such Laws, nor has Tenant received any notices alleging Tenant's violation of any such Laws.

8. Tenant has read this Certificate and acknowledges and understands the certifications and representations made herein. Tenant hereby executes this Certificate intending reliance hereon by Purchaser. Tenant has full authority to execute this Certificate, which has been duly authorized by all necessary action.

The undersigned, intending to be legally bound hereby, has duly executed and delivered this Certificate as of the Effective Date.

Gates Automotive Corporation,
An Indiana corporation

By: _____
Printed:
Its:

EXHIBIT 1 TO TENANT ESTOPPEL CERTIFICATE

Commercial Lease dated August 1, 2008

[See attached.]

COMMERCIAL LEASE

THIS INDENTURE WITNESSETH, that G.M.S. Realty, Inc hereafter.. referred to as "Lessor", leases to Gates Automotive Corp. hereafter referred to as "Lessee", for and in consideration of the covenants and agreements hereinafter mentioned, the premises in St. Joseph County, State of Indiana, known and described as follows; 205 W Western Ave , South Bend, In 45534 (see Diagram)

To have and to hold the same unto the Lessee from August 1, 2008 to and including July 31, 2013 and the Lessee, in consideration of said demise, does covenant and agree with the Lessor as follows:

1. The Lessee hereby represents that he will use said premises for the following described purpose, All activities connected with the business of Automotive Sales and Service.
2. To pay as rent for said leased premises the sum of \$30,321.60 Year (Gross) payable as follows: \$ 2526.80 monthly installment in advance on the first of each month beginning with first month's rent of \$2526.80 upon execution of this lease on August 1, 2008 and continuing on the first of each successive month thereafter, without notice of demand, each installment to be paid in advance upon the first day of each installment period to the Lessor or at such other place as the Lessor may from time to time designate in writing.
3. That the Lessee has examined and knows the conditions of said premises and has received the same in good order and repair, except as herein otherwise specified, and that no representations as to the condition of repair thereof have been made by the Lessor or his representative, prior to or at the execution of this lease that are not herein expressed or endorsed hereon; and that Lessee will keep the interior of said premises in good repair, including the interior walls, replacing all broken glass with glass of the same size and quality as that broken, and will keep said premises, as well as all drains, stools, lavators, and all other facilities and equipment in connection with said premises, in a clean and healthy condition according to the city ordinances, and the direction of the proper public offices, during the terms of the lease, at his own expense; and upon the termination of this lease in any way, will yield up said premises to Lessor in good condition and repair (loss by fire and ordinary wear excepted) and will deliver the key to Lessor.

provisions of the lease with reference to such restoration contracts, liens, demands and expenses shall apply to said restoration as well as the original alterations.

7. To allow Lessor free access to the premises for the purpose of examining or exhibiting the same and also to allow the Lessor to upon said premises, at any and times, "For Sale" signs, and within thirty (30) days of termination of this lease, "For rent" or "For Lease" signs.

8. Lessee shall promptly pay and discharge all store license taxes and all general property taxes or special license fee that may be assessed or levied by any lawful authority against the property of Lessee or any sub-tenants on, against, or by virtue of the business conduct in or on the demised premises against, or by virtue of the business conduct in or on the demised premises during the term of this lease.

9. Lessee covenants that should he default in his agreement to pay the rent above provided to be paid, or any part thereof, or in any of the other covenants and agreements herein contained, he will at once deliver peaceable possession of said premises to the Lessor and, failing to do so, it shall be lawful for the Lessor, his heirs or assigns, without notice, to declare said term ended, and to reenter said demise premises, or any part thereof either with or without process of law, and to expel, remove and put out the Lessee, or any person or persons occupying the same, using such force as may be necessary so to do, and to repossess and use said premises as before this demise, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenants and Lessee further covenants and agrees, that Lessor shall have, at all times, the right to distrain for rent due, and shall have a valid and first lien upon all property of Lessee whether exempt by law or not, as security for the payment of the rent herein covenanted to be paid.

10. That after the service of notice, or the commencement of a suite, or after final judgement for possession of said premises, Lessor may receive and collect any rent due and the payment of said rent not waive or affect said notice, said suite or said judgement.

11. It is agreed by the parties hereto that in the event Lessee is declared bankrupt or voluntarily offers to creditors terms of composition or in case a receiver is appointed to take charge of and conduct the affairs of the Lessee, then Lessor shall have the right of immediate possession of said premises.

12. That in case said premises shall be so injured by fire, windstorm or other catastrophe as to be rendered untenable, and shall not be repaired by the Lessor and rendered tenantable within ninety (90) days thereafter, it shall be optional with either party hereto to terminate the lease by written notice at the end of such ninety (90) days, in which case rent shall be paid at the agreed rate above provided up to the time of such fire; but in case such injuries are repaired and the premises rendered tenantable within ninety (90) days, the right to terminate the lease for such cause shall not exist; provided, that nothing herein contained shall relieve the Lessee from liability for rent or damage where such damage or destruction shall be caused by the carelessness, negligence, or improper conduct of the Lessee, his agent or servants.

13. It is expressly agreed that no waiver nor apparent waiver, nor the failure of Lessor to require strict performance of any condition, covenant or agreement shall at any time be implied.

14. At the termination of this lease, by lease, by lapse of time or otherwise, Lessee will yield up immediate possession to Lessor, and failing to do so, will pay as liquidated damages for each day such possession is withheld, a sum equal to five times the per diem rental; but the provisions for this clause shall not be held as a waiver by Lessor of any rights of re-entry as herein set forth; nor shall the receipt of said rent or any part thereof, or any other act in apparent affirmance of tenancy, operate as a waiver of the right to forfeit this lease and the term hereby granted for the period still unexpired, for any breach of any of the covenants herein.

15. It is also agreed that the Lessee shall pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the Lessor in enforcing the covenants and agreements of this lease, including the agreement to deliver possession for any reason herein provided, and all the parties to this lease agree that the covenants and agreements herein contained shall be binding upon, apply and insure to their respective heirs, executors, administrators, successors and assigns, and the terms "Lessor" and "Lessee" shall embrace all of the parties hereto irrespective of number of gender.

16. It is agreed that all payments herein provided to be made shall be made without relief from valuation or appraisal laws, and all payments required to be made which are not be made at the time due shall bear interest at the rate of ten (10%) percent per annum from date of delinquency.

17. In addition to the first monthly installment payable in advance described in paragraph (2) above, Lessee agrees to pay a Security Deposit of \$00.0, payable upon execution of this lease. Lessor may, but shall not be obligated to apply all or portions of said Security Deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination shall be returned to Lessee. Lessee shall not have the right to apply thier Security Deposit in payment of the month's rent.

18. The Lessor grants the Lessee an option to renew the lease for an additional Three(3) Two(2)Year Terms at a rent of \$2526.80. All other terms of the lease would remain the same.

19. The Lessor grants Early Termination by the Lessee with 90 Days written notice to Lessor.

20. Lessor will pay Real Estate Taxes, Property Insurance on the building, exterior maintenance and repairs, sewer and water, heating, snow removal, interior maintenance, trash and janitorial services and electricity

21. Assignment and Sublease or Sale. Tennant shall be entitled to assign this Lease or sublet the Leased Premises in whole or in part with the prior consent of Landlord, which consent shall not be unreasonably withheld.

Tenant shall notify Landlord of any such assignment or subletting and, upon any assignment of the Lease by Tenant; Tenant shall be released from all further liability or obligation hereunder arising on and after any such assignment.

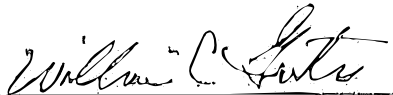
Landlord shall be entitled to Sell or assign this Leased Premises in whole or in part without the prior consent of Tenant. Landlord shall notify Tenant of any such assignment or subletting and, upon any assignment of the Lease by Landlord.

22. Lessee shall have access to the leased premises twenty-four hours daily and at all times.

23. Lessor agrees to provide to the Lessee a clean space, the right to use the freight elevator under the supervision of the supervision of the Lessor, and reasonable security to prevent vandalism or theft to the possessions of the Lessee.

Dated this 1 day of August, 2008

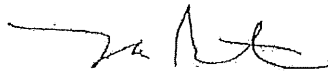
LESSOR:



G.M.S. Realty, Inc

August 1, 2008
Date

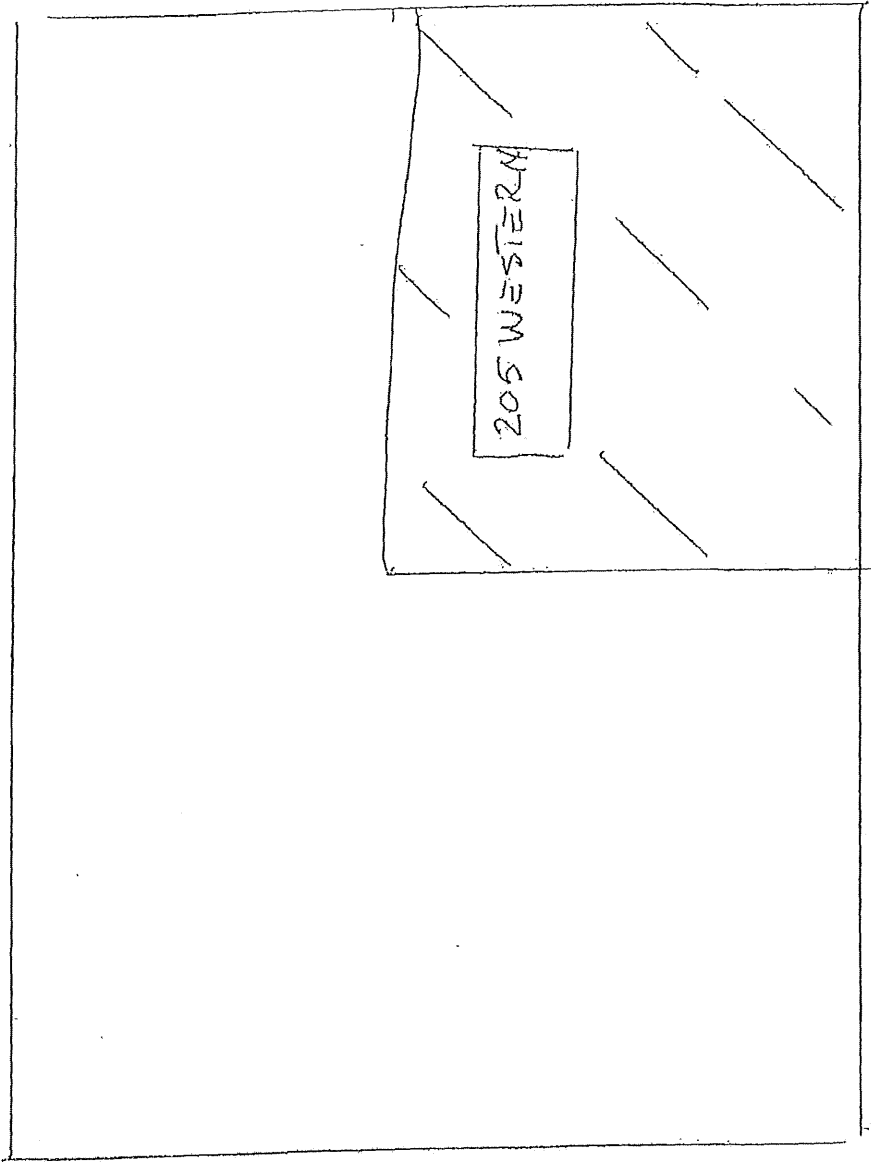
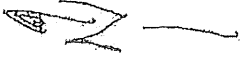
LESSEE:



Gates Chevrolet Corp.

August 1, 2008

MAIN ST.



WESTERN AVE

Lafayette

ITEM: 5B4

RESOLUTION NO. 3375

A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION APPROVING AMENDMENTS TO ECONOMIC DEVELOPMENT MEMORANDUM OF UNDERSTANDING WITH NELLO INC. AND PROVIDING FOR CONVEYANCE OF CERTAIN EQUIPMENT TO NELLO INC.

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) exists and operates pursuant to I.C. 36-7-14; and

WHEREAS, on June 20, 2014, the Commission and Nello Inc. (“Nello”) entered into that certain Economic Development Memorandum of Understanding (as amended, the “Development Agreement”), and on July 21, 2014, the Commission and Nello entered into that certain Equipment Lease Agreement (as amended, the “Lease”) (collectively, the “Project Agreements”) concerning Nello’s relocation to and expansion of operations in the City of South Bend (the “Project”); and

WHEREAS, pursuant to the provisions of the Project Agreements and in accordance with Resolution No. 3336 dated April 14, 2016, the Commission and Nello approved certain amendments to the Project Agreements, namely the First Amendment to Economic Development Memorandum of Understanding dated April 14, 2016, and the First Amendment to Equipment Lease Agreement dated April 14, 2016, which specified the Year 1 Equipment and the Year 2 Equipment (as respectively defined in the Project Agreements) purchased by the Commission under the terms of the Project Agreements, and the Commission conveyed to Nello ownership of the Year 1 Equipment by the bill of sale dated April 14, 2016 (the “First Bill of Sale”); and

WHEREAS, the Commission, through the South Bend Board of Public Works, has purchased certain portions of the Year 3 Equipment (as defined in the Development Agreement) for Nello in coordination with Nello as agreed under the Development Agreement and anticipates purchasing the remainder of the Year 3 Equipment in like manner; and

WHEREAS, due to delays in the Project, Nello is seeking additional financing from its lender(s) and has requested certain amendments to the Development Agreement to accomplish the early termination of the Lease and the early conveyance of the Year 2 Equipment and the Year 3 Equipment to Nello, which actions are expected to substantially enhance Nello’s ability to obtain additional financing and in turn ensure Nello’s ability to satisfy the Employment Obligation (as defined in the Development Agreement) within the time originally agreed by Nello under the Development Agreement; and

WHEREAS, the Commission has determined that such amendments and actions are reasonable and desirable for the successful completion of the Project, which the Commission has determined will serve the health, welfare, and economic well-being of the City of South Bend and its residents; and

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

1. The Commission hereby approves, and will execute simultaneously with this Resolution, the Second Amendment to Economic Development Memorandum of Understanding attached hereto as Exhibit 1 (the “Second Amendment”). The Commission hereby authorizes and instructs David Relos of the City of South Bend Department of Community Investment to deliver to Nello the Second Amendment.

2. The Commission hereby approves, and will execute simultaneously with this Resolution, the bill of sale attached hereto as Exhibit 2 (the “Second Bill of Sale”) conveying to Nello ownership of the Year 2 Equipment and the portions of the Year 3 Equipment that have been identified and purchased as of April 13, 2017. The Commission hereby authorizes and instructs David Relos to deliver to Nello the Second Bill of Sale, but only after Nello has delivered to the Commission Daniel J. Ianello’s Certification (as defined in the Second Amendment).

3. As soon as reasonably practicable following the later of (i) the Commission’s receipt of the Certification and (ii) the Commission’s identification and purchase of the Year 3 Equipment not described in the Second Bill of Sale, the Commission will execute an additional bill of sale substantially similar to the Second Bill of Sale (the “Third Bill of Sale”), which Third Bill of Sale will identify and convey to Nello only the Year 3 Equipment not conveyed by the Second Bill of Sale. Effective upon the Commission’s execution of the Third Bill of Sale, the Commission hereby authorizes and instructs David Relos to deliver to Nello the Third Bill of Sale.

4. The Commission further authorizes and instructs David Relos to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution, including without limitation the termination of any Uniform Commercial Code financing statement or fixture filing with respect to the Year 2 Equipment or the Year 3 Equipment conveyed to Nello by the Second Bill of Sale.

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

[Signature page follows.]

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on April 13, 2017, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

4000.000005053448426.005

EXHIBIT 1

Second Amendment to Economic Development Memorandum of Understanding

[See attached.]

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT
MEMORANDUM OF UNDERSTANDING**

This Second Amendment to Economic Development Memorandum of Understanding (this "Second Amendment") is entered into as of April 13, 2017, 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 Nello Inc., an Indiana corporation with its registered office at 105 E. Jefferson Blvd., Suite 400, South Bend, Indiana 46601 ("Nello") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Parties entered into that certain Economic Development Memorandum of Understanding dated June 20, 2014, as amended by the First Amendment to the Economic Development Memorandum of Understanding dated April 14, 2016 (collectively, the "Development Agreement"); and

WHEREAS, on April 13, 2017, the Commission adopted its Resolution No. 3375 concerning the Parties' mutual desire to amend the terms of the Development Agreement as set forth in this Second Amendment.

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

1. Section 3.02 of the Development Agreement is deleted in its entirety and replaced by the following:

3.02 Equipment Lease Agreement; Termination; Conveyance of Equipment. Pursuant to this MOU, the Commission and the Company entered into that certain Equipment Lease Agreement dated July 21, 2014, as amended by the First Amendment to Equipment Lease Agreement dated April 14, 2016 (collectively, the "Equipment Lease"). The Equipment Lease is hereby terminated. At the times and in the manner provided in the Commission's Resolution No. 3375, the Commission will convey to the Company ownership of the Year 2 Equipment and the Year 3 Equipment, which conveyances will be accomplished by the Second Bill of Sale and the Third Bill of Sale as such bills of sale are defined in Resolution No. 3375. Within a reasonable time following the Commission's delivery of the Second Bill of Sale to Nello in accordance with Resolution No. 3375, the Commission will terminate any Uniform Commercial Code financing statement or fixture filing with respect to the property conveyed to Nello under the Second Bill of Sale. Resolution No. 3375 is hereby incorporated into this MOU.

2. Section 3.06 of the Development Agreement is deleted in its entirety and replaced by the following: 3.06 Reserved.

3. Section 3.07 of the Development Agreement is deleted in its entirety and replaced by the following: 3.07 Reserved.

4. Section 3.08 of the Development Agreement is deleted in its entirety and replaced by the following:

3.08 The Company will retain the Existing Jobs and create at least five hundred twenty-four (524) additional jobs by the Project Completion Date (the "Employment Obligation"). If the Company fails to complete the Employment Obligation, the Company will pay to the Commission, immediately upon the Commission's demand, a penalty equal to One Thousand Nine Hundred Eight Dollars (\$1,908.00) multiplied by the number of jobs by which the Developer fell short of the Employment Obligation as of the date of the Commission's demand (the "Penalty Amount").

5. Section 3.09 of the Development Agreement is deleted in its entirety and replaced by the following: 3.09 Reserved.

6. In Exhibit B to the Development Agreement, the sentence immediately following the subtitle "YEAR 3 EQUIPMENT" is deleted in its entirety and replaced by the following:

"As of April 13, 2017, the following Year 3 Equipment has been purchased by the Commission:

- (a) Handling System, load beam (Permadur) Series 816 serial# 3550
- (b) Anglemaster, HSFDB/Drill/Plasma Plate (Peddinghaus) (Anglemaster model AFPS 643 Q serial # A002165), (Plate processor model HSFDB-2500C serial# B1472)
- (c) Flextec, Cruiser, Gun & Gable (Lincoln Electric) Lincoln Electric 500P Flextec Ready Pak
- (d) Great Dane 2017 Flatbed Freedom XP Semi Trailers
- (e) Freightliner 2017 CA113DC Semi Tractor, CombiLift SC988 Three Wheel Straddle Carrier
- (f) Two submerged arc semi-automated steel pole welding systems (BSCO) 92" diameter 60' Long Seamers with 60' Transfer (no Serial #s)
- (g) Trailer mounted vapor media blaster (Sherwin Williams) Graco EQ400 T4 serial# 468217UKYF15
- (h) Plural Component Proportioner (Sherwin Williams) EcoQuip XP3 serial# A10900
- (i) Self-supporting tower leg welding automation system (Lincoln Electric)
- (j) Computer equipment defined in Board of Public Works Project No. 116-144, Phase XVII (Y&S Technologies)

Additional Year 3 Equipment having an estimated cost of \$88,871 remains to be purchased and will be purchased by the Commission in a manner consistent with the Commission's past practices with regard to the Project and subject to the terms of this MOU, upon submission of specifications for the same by Nello."

7. In consideration of the amendments to the Development Agreement made hereby and the other obligations of the Commission hereunder, Nello represents and warrants that it is engaged in seeking additional financing from one or more new lenders and/or investors in furtherance of the Project in an amount sufficient to recapitalize its operations associated with the Project and to satisfy or settle all of its existing debt obligations owing to its principal lender as of April 13, 2017 (the "Additional Financing").

8. The Commission agrees that the amendments to the Development Agreement stated in this Second Amendment shall be in full force and effect upon receipt of a document signed by Daniel J. Ianello of Nello certifying that Nello has obtained the Additional Financing (the "Certification"). The amendments to the Development Agreement stated in this Second Amendment and the Commission's obligations thereunder shall be of no force or effect until Nello delivers the Certification.

9. Unless expressly modified by this Second Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

10. Capitalized terms used in this Second Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.

IN WITNESS WHEREOF, the Parties hereby execute this Second Amendment to Economic Development Memorandum of Understanding to be effective as provided in Section 8 above.

SOUTH BEND REDEVELOPMENT
COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

NELLO INC., an Indiana corporation

Daniel Ianello, President

4000.0000050 52955904.005

EXHIBIT 2

Form of Second Bill of Sale

[See attached.]

BILL OF SALE

This Bill of Sale is made by the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the "Seller"), in favor of Nello Inc., an Indiana corporation (the "Buyer").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby conveys to the Buyer all of the Seller's right, title, and interest in and to the following personal property (collectively, the "Equipment"):

- (a) BSCO, Inc. Steel Pole Welding Operation, Serial Nos. BS15.92.001, BS15.92.002, BS15.60fttrans, BS15.SQP.1236.10, BS15.10.001, BS15.SP.100H, BS15.0109, BS.BH48.001, BS.BH48.002
- (b) ALLTRA HG30-11S Precision Gantry Shape Cutting Machine, Serial No. 6624
- (c) CC-10-120-PWR Power Medium Turning Roll and CC-10-120-IDL Idler Unit with Hand Wheel, Serial Nos. 2015-171 through 2015-203
- (d) Advance Floor Scrubber, Serial No. 1000061087
- (e) Handling System, load beam (Permadur) Series 816 serial# 3550
- (f) Anglemaster, HSFDB/Drill/Plasma Plate (Peddinghaus) (Anglemaster model AFPS 643 Q serial # A002165), (Plate processor model HSFDB-2500C serial# B1472)
- (g) Flextec, Cruiser, Gun & Gable (Lincoln Electric) Lincoln Electric 500P Flextec Ready Pak
- (h) Great Dane 2017 Flatbed Freedom XP Semi Trailers
- (i) Freightliner 2017 CA113DC Semi Tractor, CombiLift SC988 Three Wheel Straddle Carrier
- (j) Two submerged arc semi-automated steel pole welding systems (BSCO) 92" diameter 60' Long Seamers with 60' Transfer (no Serial #s)
- (k) Trailer mounted vapor media blaster (Sherwin Williams) Graco EQ400 T4 serial# 468217UKYF15
- (l) Plural Component Proportioner (Sherwin Williams) EcoQuip XP3 serial# A10900
- (m) Self-supporting tower leg welding automation system (Lincoln Electric)
- (n) Computer equipment defined in Board of Public Works Project No. 116-144, Phase XVII (Y&S Technologies)

The Seller hereby conveys the Equipment to the Buyer in accordance with Seller's Resolution No. 3375 dated April 13, 2017, and subject to the terms and provisions of the Economic Development Memorandum of Understanding by and between the Seller and the Buyer dated June 20, 2014, as amended by the First Amendment to Economic Development Memorandum of Understanding dated April 14, 2016, and the Second Amendment to Economic Development Memorandum of Understanding dated April 13, 2017. Further, the Seller hereby conveys the Equipment to the Buyer as-is, where-is, and without representation or warranty of any kind. Without limiting the generality of the foregoing sentence, the Seller specifically disclaims any representation or warranty of merchantability or fitness for any particular use or purpose.

[Signature page follows.]

SOUTH BEND REDEVELOPMENT COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

Date:

4000.0000050 54301443.005



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: April 13, 2017
 FROM: Michael Divita, Planner
 SUBJECT: Project Budget for Western Avenue Streetscape Improvements

Staff requests approval of an additional project budget of \$2,875,000 from the River West Development Area for construction and related costs for Western Avenue streetscape improvements. The Commission approved an initial project budget of \$375,000 in June 2016 to cover engineering and preliminary construction costs.

As part of its implementation of the *West Side Main Streets Revitalization Plan*, the City of South Bend proposes to make continued streetscape improvements to Western Avenue to create an environment more inviting to commercial and residential investment. This project includes the four-block section of Western Avenue between Olive Street and Bendix Drive; this work would be consistent with the streetscape improvements completed between Bendix Drive and Dundee Street in 2015. The curbs, sidewalks, driveway approaches, and street pavement will be replaced. Street trees, other landscaping, and decorative lighting will be added, and new sections of water main and storm sewer will be installed. Lane striping adjustments and an expansion of the curb radii at the northwest corner of the Western and Olive intersection will better accommodate traffic, particularly turning trucks.

The Board of Public Works is scheduled to open bids on the project on April 25. Construction will begin this spring for completion in fall 2017.

INTERNAL USE ONLY: Project Code: 16JW01
 Total Amount new/change (inc/dec) in budget: \$2,875,000 ; broken down by:
 Acct # 324.1050.460.42.03 Amt: \$2,875,000 ; Acct # _____ Amt: _____ ;
 Acct # _____ Amt: _____ ; Acct # _____ Amt: _____ ;
 Going to BPW for Contracting? Y/N
 Is this item ready to encumber now? Will be encumbered upon BPW approval
 Existing PO# _____ Inc/Dec \$ _____



RESOLUTION NO. 3390

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT
COMMISSION AMENDING RESOLUTION NO. 2435
REGARDING REIMBURSEMENT OF CERTAIN CITY OF SOUTH BEND
FUNDS ADVANCED FOR THE EDDY STREET COMMONS PROJECT**

WHEREAS, the South Bend Redevelopment Commission (the "Commission"), governing body of the South Bend Department of Redevelopment and the South Bend Redevelopment District (the "Redevelopment. District"), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time; and

WHEREAS, on February 6, 2008, the Commission adopted Resolution No. 2435 (the "Prior Resolution") that detailed the Commission's agreement to reimburse the City of South Bend, Indiana (the "City") for certain funds advanced by the City from the Major Moves Fund to make certain local public improvements in the Northeast Neighborhood Development Area (the "Area"); and

WHEREAS, a portion of the Area was deemed a housing program named the "Northeast Neighborhood Development Area Housing Program" and a housing allocation area named the "Northeast Neighborhood Development Area Allocation Area No. 2" ("Allocation Area 2") was created; and

WHEREAS, since such time Kite Realty Group, L.P. ("Kite") developed the area known as Eddy Street Commons encompassing approximately twenty-three (23) acres located in the City adjacent to the University of Notre Dame campus (collectively, the "Development") and the Commission desired to undertake certain local public improvements in support of the Development in or serving the Area (collectively, the "Project").

WHEREAS, to pay for the Project, the Authority issued bonds known as the "South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2008 (Eddy Street Commons Project)" (the "2008 Bonds"), the proceeds of which were used to pay the expenses relating to the Project and to pay the costs of issuance of the Bonds, and thereafter, the Authority and the Commission entered into a lease dated as of October 15, 2007, (the "2008 Lease"), pursuant to which the Commission leased the Project from the Authority; and

WHEREAS, the Commission agreed to pay lease rentals under the 2008 Lease from tax increment revenues collected in Allocation Area 2, which lease rentals are deposited into the Eddy Street Commons Principal and Interest Account (the "Principal and Interest Account") in the Redevelopment District Bond Fund and, to the extent the tax increment revenues are insufficient, from a special tax levy upon all of the taxable property in the Redevelopment District of the City of South Bend, Indiana, which special tax shall be deposited into the Principal and Interest Account; and

WHEREAS, the City also agreed to make two loans for a portion of the Project from the City's Major Moves Fund (the "Major Moves Fund") in an amount equal to Three Million Nine Hundred Forty-Two Thousand Five Hundred Twenty-Nine and 00/100 Dollars (\$3,942,529.00) and One Million Five Hundred Fifty-Nine Thousand Nine Hundred Seventy-Five and 00/100 Dollars (\$1,559,975.00); and

WHEREAS, in the Prior Resolution the Commission committed to reimburse the City for expenditures made by the City for local public improvements in or serving the Area, specifically, the reimbursement of the funds advanced by the City from the Major Moves Fund from tax increment finance ("TIF") revenues received from Allocation Area 2 after making the necessary deposits into the Principal and Interest Account created for the payment of lease rentals by the Commission to the Authority pursuant to the 2008 Lease;

WHEREAS, Kite now wishes to further develop Eddy Street Commons and has negotiated with the City and the Commission and the City now intends to issue additional bonds in an aggregate principal amount not to exceed Twenty-Five Million and 00/100 Dollars (\$25,000,000) (the "2017 Bonds") pursuant to IC 36-7-12 for additional improvements related to the Development; and

WHEREAS, the City and the Commission intend for the repayment of the 2008 Lease to be paid on parity with the payment of the 2017 Bonds, and the reimbursement to the City described in the Prior Resolution, shall be paid from TIF revenues available after making payments under the 2008 Lease and payments on the 2017 Bonds (the "Available TIF Revenues").

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

Section 1. The Commission hereby covenants to reimburse the City out of Available TIF Revenues, for expenditures made by the City for local public improvements in or serving the Area, specifically for the funds that the City has advanced from the two loans from the Major Moves Fund as shown on Exhibit A hereto. The Commission hereby covenants to make such reimbursements from Available TIF Revenues in accordance with the amounts shown on Exhibit A.

Section 2. For purposes of this Resolution, Available TIF Revenues shall mean those tax increment finance revenues from Allocation Area 2 which remain after the required deposits have been made to pay lease rental payments under the 2008 Lease and the payment of annual principal and interest on the 2017 Bonds. Based upon the tax increment revenues projected by the financial advisor, it is expected that the tax increment revenues will be sufficient to: (i) pay the lease rental payments due under the 2008 Lease and pay the debt service due on the 2017 Bonds; and (ii) to reimburse the City in accordance with the schedule attached as Exhibit A.

Section 3. This Resolution shall be in full force and effect after its adoption by the Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on April 13, 2017.

SOUTH BEND
REDEVELOPMENT COMMISSION

David Vamer, Vice President

ATTEST:

Donald E. Inks, Secretary

EXHIBIT A

(See Attached)

City of South Bend, Indiana
Major Moves Fund 412 Interfund Loan to NE Residential TIF Fund 436
Eddy Street Commons

Interfund Loan Amortization Schedule

Updated November 11, 2013, Original March 28, 2011

Maximun Principal - \$4,100,000.00

Actual Principal-\$3,942,529.00

Payments - Semi-annual, beginning August 15, 2011 through February 15, 2026.

Thirty (30) payments. Interest rate - 5%

NE Residential TIF Expenditures - #436-1050-460-38-01 (Principal), #436-1050-460-38-02 (Interest)

Major Moves Revenue - #412-0000-399-02-06 (Principal), #412-0000-399-02-07 (Interest)

Payment - \$186,218.00

Payment Number	Payment Date	Beginning Principal Balance	Total Paid	5% Interest Paid	Principal Paid	Ending Principal Balance
1	8/15/2011	3,942,529.00	195,888.00	98,563.23	97,324.78	3,845,204.23
2	2/15/2012	3,845,204.23	195,888.00	96,130.11	99,757.89	3,745,446.33
3	8/15/2012	3,745,446.33	195,888.00	93,636.16	102,251.84	3,643,194.49
4	2/15/2013	3,643,194.49	195,888.00	91,079.86	104,808.14	3,538,386.35
5	8/15/2013	3,538,386.35	195,888.00	88,459.66	107,428.34	3,430,958.01
6	2/15/2014	3,430,958.01	186,218.00	85,773.95	100,444.05	3,330,513.96
7	8/15/2014	3,330,513.96	186,218.00	83,262.85	102,955.15	3,227,558.81
8	2/15/2015	3,227,558.81	186,218.00	80,688.97	105,529.03	3,122,029.78
9	8/15/2015	3,122,029.78	186,218.00	78,050.74	108,167.26	3,013,862.52
10	2/15/2016	3,013,862.52	186,218.00	75,346.56	110,871.44	2,902,991.09
11	8/15/2016	2,902,991.09	186,218.00	72,574.78	113,643.22	2,789,347.86
12	2/15/2017	2,789,347.86	186,218.00	69,733.70	116,484.30	2,672,863.56
13	8/15/2017	2,672,863.56	186,218.00	66,821.59	119,396.41	2,553,467.15
14	2/15/2018	2,553,467.15	186,218.00	63,836.68	122,381.32	2,431,085.83
15	8/15/2018	2,431,085.83	186,218.00	60,777.15	125,440.85	2,305,644.97
16	2/15/2019	2,305,644.97	186,218.00	57,641.12	128,576.88	2,177,068.10
17	8/15/2019	2,177,068.10	186,218.00	54,426.70	131,791.30	2,045,276.80
18	2/15/2020	2,045,276.80	186,218.00	51,131.92	135,086.08	1,910,190.72
19	8/15/2020	1,910,190.72	186,218.00	47,754.77	138,463.23	1,771,727.49
20	2/15/2021	1,771,727.49	186,218.00	44,293.19	141,924.81	1,629,802.68
21	8/15/2021	1,629,802.68	186,218.00	40,745.07	145,472.93	1,484,329.74
22	2/15/2022	1,484,329.74	186,218.00	37,108.24	149,109.76	1,335,219.99
23	8/15/2022	1,335,219.99	186,218.00	33,380.50	152,837.50	1,182,382.49
24	2/15/2023	1,182,382.49	186,218.00	29,559.56	156,658.44	1,025,724.05
25	8/15/2023	1,025,724.05	186,218.00	25,643.10	160,574.90	865,149.15
26	2/15/2024	865,149.15	186,218.00	21,628.73	164,589.27	700,559.88
27	8/15/2024	700,559.88	186,218.00	17,514.00	168,704.00	531,855.88
28	2/15/2025	531,855.88	186,218.00	13,296.40	172,921.60	358,934.27
29	8/15/2025	358,934.27	186,218.00	8,973.36	177,244.64	181,689.63
30	2/15/2026	181,689.63	186,231.87	4,542.24	181,689.63	(0.00)
Total			5,634,903.87	1,692,374.87	3,942,529.00	

City of South Bend, Indiana
Major Moves Fund 412 Interfund Loan to NE Residential TIF Fund 436
Triangle Development
Interfund Loan Amortization Schedule
Updated May 14, 2013, Ooriginal March 28, 2011

Maximum Principal - \$2,000,000.00
 Actual Principal-\$1,513,919.83 Capitalized Interest \$46,055.17 Total Loan \$1,559,975.00
 Payments - Semi-annual, beginning August 15, 2014 through February 15, 2029.
 Thirty (30) payments. Interest rate - 2%.

NE Residential TIF Expenditures - #436-1050-460-38-01 (Principal), #436-1050-460-38-02 (Interest)

Major Moves Revenue - #412-0000-399-02-06 (Principal), #412-0000-399-02-07 (Interest)

Payment - \$60,446.00

Payment Number	Payment Date	Beginning Principal Balance	Total Paid	2% Interest Paid	Principal Paid	2% Unpaid Capitalized Interest	Ending Principal Balance
1	8/15/2014	1,559,975.00	60,446.00	15,599.75	44,846.25	0.00	1,515,128.75
2	2/15/2015	1,515,128.75	60,446.00	15,151.29	45,294.71	0.00	1,469,834.04
3	8/15/2015	1,469,834.04	60,446.00	14,698.34	45,747.66	0.00	1,424,086.38
4	2/15/2016	1,424,086.38	60,446.00	14,240.86	46,205.14	0.00	1,377,881.24
5	8/15/2016	1,377,881.24	60,446.00	13,778.81	46,667.19	0.00	1,331,214.05
6	2/15/2017	1,331,214.05	60,446.00	13,312.14	47,133.86	0.00	1,284,080.19
7	8/15/2017	1,284,080.19	60,446.00	12,840.80	47,605.20	0.00	1,236,475.00
8	2/15/2018	1,236,475.00	60,446.00	12,364.75	48,081.25	0.00	1,188,393.75
9	8/15/2018	1,188,393.75	60,446.00	11,883.94	48,562.06	0.00	1,139,831.68
10	2/15/2019	1,139,831.68	60,446.00	11,398.32	49,047.68	0.00	1,090,784.00
11	8/15/2019	1,090,784.00	60,446.00	10,907.84	49,538.16	0.00	1,041,245.84
12	2/15/2020	1,041,245.84	60,446.00	10,412.46	50,033.54	0.00	991,212.30
13	8/15/2020	991,212.30	60,446.00	9,912.12	50,533.88	0.00	940,678.42
14	2/15/2021	940,678.42	60,446.00	9,406.78	51,039.22	0.00	889,639.21
15	8/15/2021	889,639.21	60,446.00	8,896.39	51,549.61	0.00	838,089.60
16	2/15/2022	838,089.60	60,446.00	8,380.90	52,065.10	0.00	786,024.49
17	8/15/2022	786,024.49	60,446.00	7,860.24	52,585.76	0.00	733,438.74
18	2/15/2023	733,438.74	60,446.00	7,334.39	53,111.61	0.00	680,327.13
19	8/15/2023	680,327.13	60,446.00	6,803.27	53,642.73	0.00	626,684.40
20	2/15/2024	626,684.40	60,446.00	6,266.84	54,179.16	0.00	572,505.24
21	8/15/2024	572,505.24	60,446.00	5,725.05	54,720.95	0.00	517,784.29
22	2/15/2025	517,784.29	60,446.00	5,177.84	55,268.16	0.00	462,516.14
23	8/15/2025	462,516.14	60,446.00	4,625.16	55,820.84	0.00	406,695.30
24	2/15/2026	406,695.30	60,446.00	4,066.95	56,379.05	0.00	350,316.25
25	8/15/2026	350,316.25	60,446.00	3,503.16	56,942.84	0.00	293,373.41
26	2/15/2027	293,373.41	60,446.00	2,933.73	57,512.27	0.00	235,861.15
27	8/15/2027	235,861.15	60,446.00	2,358.61	58,087.39	0.00	177,773.76
28	2/15/2028	177,773.76	60,446.00	1,777.74	58,668.26	0.00	119,105.50
29	8/15/2028	119,105.50	60,446.00	1,191.05	59,254.95	0.00	59,850.55
30	2/15/2029	59,850.55	60,449.06	598.51	59,850.55	0.00	(0.00)
Total			1,813,383.06	253,408.06	1,559,975.00	0.00	



Department of
Community Investment

Memorandum

April 13, 2017

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources *DR*
SUBJECT: Budget Request (State Road 23 INDOT Remnants)

PURPOSE OF REQUEST:

As part of the realignment of State Road 23 at the old 5 points area, INDOT acquired properties to facilitate the project. Now that the project is complete, INDOT has determined remnants which remain, and have taken their necessary steps to dispose of them.

There are eighteen remnants we have reached agreement on, seven of which abut Fredrickson Park, six being right of way we already maintain, and five which can be incorporated with future development in the area and will be offered at a price to recoup the price paid INDOT for all eighteen remnants.

Commission approval for a \$15,000 budget allocation from the REDA is requested.

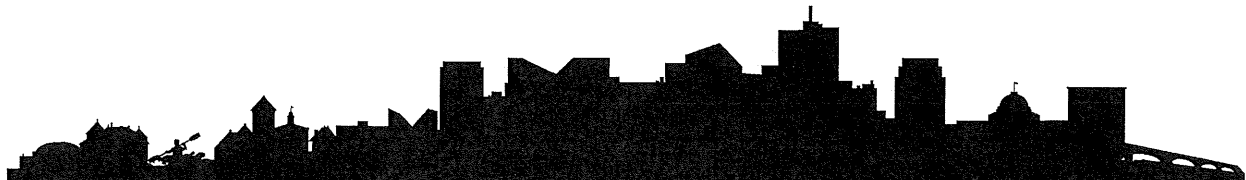
INTERNAL USE ONLY: Project Code: __ (needed) _____

Total Amount new in budget: __ \$15,000 _____; broken down by:

Acct # _REDA _____

Going to BPW for Contracting? __ Yes __ Is this item ready to encumber now? Yes

Existing PO# _____ (no) _____ Inc/Dec \$ __ n/a _____



**LICENSE AGREEMENT
FOR TEMPORARY USE OF REDEVELOPMENT COMMISSION PROPERTY**

This License Agreement (this “Agreement”) is made on April 13, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Downtown South Bend, Inc., an Indiana non-profit corporation with a registered office address of 217 S. Michigan St., South Bend, Indiana 46601 (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

WHEREAS, the Commission owns certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana (the “City”), as more particularly described in **Exhibit A** attached hereto (the “Property”); and

WHEREAS, Southhold, LLC (“Southhold”) retains or will acquire certain rights of access to the Property, including rights pursuant to the Temporary Access Agreement between Southhold and the Commission dated July 16, 2015, and any subsequent agreement between Southhold and the Commission; and

WHEREAS, the Company desires temporary access to the Property for the purpose of conducting various events throughout the year (each an “Activity” and collectively the “Activities”), as described in the proposal attached hereto as **Exhibit B** (the “Activity Proposal”); and

WHEREAS, the Commission is willing to permit the Company to gain access to and temporarily use the Property for the Activities, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Commission grants to the Company, its agents, employees, and invitees, a temporary, non-exclusive license to enter and use the Property for the purpose of conducting the Activities, provided that the Company’s use of the Property is reasonable at all times and comports with the terms of the Activity Proposal, the terms of this Agreement, and all applicable laws. The Company understands that the Property is comprised of the area commonly known as the Gridiron alone, and this Agreement does not permit the Company to use the alleys, parking lots, or sidewalks adjacent to the Property.

2. The Company’s license to use the Property for the Activities shall be effective for the times stated in the Activity Proposal, provided , however, that the Commission or the Commission’s authorized representative may revoke and terminate the license at any time for any reason, as determined in its, his, or her sole discretion. The Company agrees that it will not store any supplies, materials, goods, or personal property of any kind on the Property or otherwise use the Property for any purposes except during the time of the license stated in the foregoing sentence.

Immediately upon the completion of each Activity, the Company will remove from the Property all supplies, materials, goods, and personal property (including trash) used in connection with the Activity. At all times during the period of the Activities, the Company will keep the Property in good order and condition.

3. The Company understands and agrees that the Commission shall not be liable for any loss, damage, destruction, or theft of the Company's property or any bodily harm or injury that may result from the Company's use of the Property. The Company understands and agrees that it will at all times be solely responsible for the safety and security of all persons on the Property and any property the Company uses or stores on the Property in connection with the Activities.

4. The Company shall not, without the prior written consent of the Commission, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

5. The Company understands and agrees that it will secure in its own name and at its own expense all necessary permits and authorizations needed in order to conduct the Activities.

6. The Company understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Activities conducted on the Property.

7. The Commission reserves the right to use the Property during the term of this Agreement for any purpose that does not substantially interfere with or obstruct the Company's permitted use of the Property in accordance with the Activity Proposal and the other terms of this Agreement.

8. To the extent that any portion of the Property is disturbed or damaged in connection with the Company's use of the Property, the Company, at the Company's sole expense, shall restore the Property to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Commission.

9. The Company agrees and undertakes to indemnify and hold the City and the Commission, and their respective agents, employees, successors, assigns, and licensees harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the City or the Commission may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the approval granted herein by the Commission or the Company's use of the Property. If any action is brought against the City or the Commission, or their respective agents, employees, successors, or assigns, in connection with the Activities, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

10. The Company, at the Company's sole expense, shall maintain during the term of this Agreement commercial general liability insurance covering the Company and the Activities in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. The Company agrees to include the Commission and the City as additional insured's on any such policy and

produce to the Commission a certificate of insurance evidencing the same. To the extent that the Commission or the City is harmed as a result of the Company's use of the Property, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

11. Each undersigned person signing on behalf of his/her respective Party certifies that he/she is duly authorized to bind his/her respective Party to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have each executed this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT COMMISSION

Dave Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

**DOWNTOWN SOUTH BEND, INC.,
an Indiana non-profit corporation**

By: _____
Printed: _____
Its: _____

CONSENT OF SOUTHHOLD, LLC

Southhold, LLC hereby consents to the foregoing License Agreement between the South Bend Redevelopment Commission and Downtown South Bend, Inc.

**SOUTHHOLD, LLC,
an Indiana limited liability company**

By: _____
Printed: _____
Its: _____
Date: _____

EXHIBIT A

Description of Property

The portion of the following property commonly known as the Gridiron:

Lot 1 of the recorded plat of Hall of Fame Second Minor Subdivision, recorded on July 22, 2015, as Document No. 1518735, in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 018-3091-347405]

EXHIBIT B

Activity Proposal – April through June 24th

First Fridays

First Friday of the summer months, April through June, 5:00 p.m. to 9:00 p.m.

First Fridays is a time that businesses open their doors to host live musical performances, demonstrations, classes, kids' activities, art receptions, food and drinks specials, and much more.

Egg Stravaganza

April 8, 2017 10:00 a.m. to 4:00 p.m.

Egg Stravaganza is the celebration of Easter and the arrival of spring in downtown South Bend, with family-friendly games and activities taking place on the Gridiron and throughout downtown.

Summer Fitness Series

Saturdays, 7:30 a.m. to 11:30 a.m., June 10 through June 24th

Free outdoor fitness classes are offered in the summer each Saturday morning, with yoga at 8 a.m., Zumba at 9 a.m., and a rotating third hour of various fitness classes like piloxing and kickboxing.

Summer Film Series

June 10th - 5:00 p.m. to 11:30 p.m.

The public is invited to watch a free screening of a film outdoors on the Gridiron at dusk, with a pre-movie celebration featuring activities themed to the selected film.

FIRST AMENDMENT TO ENGINEERING SERVICES AGREEMENT

This First Amendment To Engineering Services Agreement (this “First Amendment”) is made on April 13, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and the Civil City of South Bend, an Indiana municipal corporation, acting by and through the South Bend Board of Public Works (the “Provider”).

RECITALS

A. The Commission and the Provider entered into that certain Engineering Services Agreement dated November 22, 2016 (the “Services Agreement”), for the provision of engineering services to the Commission in relation to the Commission’s Projects (as defined in the Services Agreement).

B. The Commission and the Provider wish to amend the Services Agreement as set forth in this First Amendment.

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

1. The following is inserted after the table set forth in Section 4.A of the Services Agreement: “For any calendar year during the Term of this Agreement not specifically stated in the foregoing table, the Commission agrees to pay the Provider an Annual Fee in an amount not to exceed \$220,191.78.”

2. In Section 5 of the Services Agreement, the term “December 31, 2019” is deleted and replaced by the term “December 31, 2024.”

3. Unless expressly modified by this First Amendment, the terms and provisions of the Services Agreement remain in full force and effect.

4. Capitalized terms used in this First Amendment will have the meanings set forth in the Services Agreement unless otherwise stated herein.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment To Engineering Services Agreement to be effective as of the Effective Date stated above.

SOUTH BEND BOARD OF PUBLIC WORKS

Gary Gilot, President

Therese Dorau, Member

Suzanna Fritzberg, Member

Elizabeth Maradik, Member

James Mueller, Member

ATTEST:

Linda Martin, Clerk

SOUTH BEND REDEVELOPMENT COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

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