



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, May 11, 2017 9:30 a.m.

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**1. Roll Call**

**2. Approval of Minutes**

A. Minutes of the Regular Meeting of Thursday, April 27, 2017

**3. Approval of Claims**

A. Claims Submitted May 11, 2017

**4. Old Business**

**5. New Business**

A. River West Development Area

1. Real Estate Purchase Agreement (VA Building/Cressy & Everett)
2. Personal Property Transfer Agreement (Guardhouse Property/RDistrict One LLC)
3. Professional Services: R.E. Pitts & Associates (HOF Tax Appeal)
4. Budget Request (Portage Avenue Bridge)
5. Budget Request (Coal Line Trail)
6. Resolution No. 3393 (Amending Resolution No. 3361)

B. River East Development Area

1. Budget Increase Request (Seitz Park Survey)

**6. Progress Reports**

A. Tax Abatement

B. Common Council

C. Other



**7. Next Commission Meeting:**

Thursday, May 25, 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

ITEM: 2A

## SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

April 27, 2017

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard  
South Bend, Indiana

The meeting was called to order at 9:30 a.m.

### 1. ROLL CALL

Members Present:

Marcia Jones, President  
Don Inks, Secretary  
Gavin Ferlic, Commissioner  
Kintae Lark, Commissioner

Members Absent:

Dave Varner, Vice-President  
John Anella, Commissioner

Legal Counsel:

Benjamin Dougherty, Esq.

Redevelopment Staff:

David Relos, Associate  
Mary Brazinsky, Recording Secretary

Others Present:

Austin Gammage	DCI
James Mueller	DCI
Chris Dressel	DCI
Rich Estes	DCI
Mark Peterson	WNDU
Eric Watson	WNDU
Erin Blasko	South Bend Tribune
Conrad Damian	718 E Broadway
Aaron Perri	Venues Parks & Arts
Dan O'Connor	Innovation Technology
Mo Miller	Hayes Towers

**2. Approval of Minutes**

**A. Approval of Minutes of the Regular Meeting of Thursday, April 13, 2017**

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, April 13, 2017.

**3. Approval of Claims**

**A. Claims Submitted April 27, 2017**

	Claims submitted	Explanation of Project	Items added after Agenda Distributed
<b>REDEVELOPMENT COMMISSION</b>			
Redevelopment Commission Claims April 27, 2017 for ratified and approval			
<b>324 RIVER WEST DEVELOPMENT AREA</b>			
Abonmarche	23,880.00	Western Ave & Olive St Intersection Improvements	
Hull Associates, Inc.	12,542.42	General Consulting Groundwater & Monitoring Oliver Ind PK/GW Assess Ign Pk	
Jones Petrie rafinski	530.00	Coveleski Utility Relocation	
DLZ Indiana LLC	3,950.00	SB Sample/Sheridan	
HRP Construction Co.	30,843.75	Berlin Place Site Development	
Abonmarche	1,000.00	Survey	
City of South Bend		Legal Services	18,875.00
<b>429 FUND RIVER EAST DEVELOPMENT TIF</b>			
Walsh & Kelly Inc.	425,397.72	East Bank Sewer Separation - Phase V	
<b>433 FUND SOUTH SIDE AREA #1</b>			
Faegre Baker Daniels	816.42	Legal Services	
	<b>Total</b>		<b>18,875.00</b>
	<b>498,960.31</b>		
<b>Total Of Both Columns</b>	<b>517,835.31</b>		

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the claims submitted on Thursday, April 27, 2017.

**4. Old Business**

None

**5. New Business**

**A. River West Development Area**

**1. Resolution No. 3391 (Disposition Offering Price: Burke Building)**

David Relos presented Resolution No. 3391 (Disposition Offering Price: Burke Building). This is the property at 1019 S. Michigan Street on the corner of Michigan and Garst, and includes three vacant lots at 913 – 1001 S. Michigan Street. The properties were transferred to the Redevelopment Commission from the UEA, which was approved approximately one month ago. Resolution No. 3391 sets the disposition offering price which is the average appraised value for these parcels.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved Resolution No. 3391 submitted on April 27, 2017.

**2. Approval of Bid Specifications (Burke Building)**

David Relos presented Approval of Bid Specifications (Burke Building at 1019 S. Michigan Street and three vacant lots at 913-1001 S. Michigan Street). The Bid Specifications outline the uses and development requirements that will be considered for this site.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved Approval of Bid Specifications (Burke Building) submitted on April 27, 2017.

**3. Request to Advertise (Burke Building)**

David Relos presented Request to Advertise (Burke Building at 1019 S. Michigan Street and three vacant lots at 913-1001 S. Michigan Street). This disposition property will be advertised in both the South Bend Tribune and the Tri-County News on May 5 and May 12, 2017.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved Request to Advertise (Burke Building) submitted on April 27, 2017.

**4. Resource Center Matching Funds**

Dan O'Connor presented Resource Center Matching Funds. The matching funds request will be dependent on the IDEC, who is preparing letters of support for the city's grant application which is due in June. The final amount of grant approval will come after the application is approved. The city hopes to attract many new businesses based on the new economic growth that will come from these new exciting projects, which it is expected will bring many high paying jobs to South Bend.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved Resource Center Matching Funds submitted on April 27, 2017.

**5. First Amendment to Temporary Use and Management Agreement (DTSB)**

Aaron Perri presented the First Amendment to Temporary Use and Management Agreement (DTSB). This is to service City owned surface parking lots in downtown. The maintenance portion of the responsibility has been removed from the agreement. The Ambassador program with DTSB via their agreement with Block by Block was consolidated and the maintenance will be handled separately to make it more manageable and to save on fees.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved First Amendment to Temporary Use and Management Agreement (DTSB) submitted on April 27, 2017.

**6. Sixth Amendment to Operation Maintenance and Easement Agreement (Doubletree Hotel/AEP III Corp)**

Benjamin Dougherty presented the Sixth Amendment to Operation Maintenance and Easement Agreement. This relates to the sale of the Doubletree Hotel. Mr. Dougherty has been in touch with several legal counsels regarding this Amendment. This Amendment does give the Commission any maintenance or operational responsibilities. Currently ownership of the garage structure to the owner of the office building and the hotel side of the complex occurs in 2041. The Commission will own the parking garage structure but will have no maintenance obligations. In essence this changes the name of the current owner to the new owner.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved Sixth Amendment to Operation Maintenance and Easement Agreement (Doubletree Hotel/AEP III Corp) submitted on April 27, 2017.

**7. Operation, Maintenance and Easement Agreement Estoppel**

Benjamin Dougherty presented the Operation, Maintenance and Easement Agreement Estoppel. The Estoppel Certificate enforces the agreement between the current owner and the seller of the property and all parties are continuing their obligations under it. It is requested that administrative staff be able to sign the Estoppel Agreement under Resolution No. 3373 adopted by the Commission January 12, 2017 when it is ready to be signed.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved that staff proceed with the Operation, Maintenance and Easement Agreement Estoppel under the Administration Act authorized by Resolution No. 3373 adopted on January 12, 2017, once Legal has approved the Estoppel's final form, submitted on April 27, 2017.

**8. Second Amendment to Construction, Easement, Restriction and Operating Agreement**

Benjamin Dougherty presented the Second Amendment to Construction, Easement, Restriction and Operating Agreement. This is for the walkway between Doubletree and Century Center. The Century Center and Hotel both have maintenance responsibilities. The Commission has no specific maintenance obligations but will continue to be a party to the Operating Agreement. This in essence changes the current owner of the Hotel to the new owner.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the Second Amendment to

Construction, Easement, Restriction and Operating Agreement submitted on April 27, 2017.

**9. Construction, Easement, Restriction and Operating Agreement Estoppel**

Benjamin Dougherty presented the Construction, Easement, Restriction and Operating Agreement Estoppel. The Estoppel Certificate enforces the agreement between the current owner and the seller of the property and all parties are continuing their obligations under it. It is requested that administrative staff be able to sign the Estoppel Agreement under Resolution No. 3373 adopted by the Commission January 12, 2017 when it is ready to be signed..

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved that staff proceed with the Construction, Easement, Restriction and Operating Agreement Estoppel under the Administration Act authorized by Resolution No. 3373 adopted on January 12, 2017, once Legal has approved the Estoppel's final form, submitted on April 27, 2017.

**B. River East Development Area**

**1. Resolution No. 3390 (South Bend Eddy Street Major Moves)**

Benjamin Dougherty presented Resolution No. 3390 (South Bend Eddy Street Major Moves). The function of this Resolution is to update the Major Moves loan for the Eddy Street Commons and Triangle, which is a separate funding source that went into the project separate from the bond issuance in 2008. The original Resolution stated the Major Moves loan would be treated junior to the bond repayment so the bond owners could be sure to be paid first out of the TIF revenues generated by the project. This Resolution acknowledges that a second set of bonds will be issued, and the Major Moves payments will be junior to both sets of bond payments.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved Resolution No. 3390 (South Bend Eddy Street Major Moves) submitted on April 27, 2017.

**2. Budget Request (Traffic Study)**

Rich Estes presented a budget request for a traffic study in the Eddy and Howard Street area. The budget request is \$15,000 to hire a third party consultant to perform a traffic study to better understand traffic flow and how Eddy Street Phase II could impact needs going forward.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved Budget Request (Traffic Study) submitted on April 27, 2017.

**C. South Side Development Area**

**1. Budget Request (Public Works)**

South Bend Redevelopment Commission  
Regular Meeting – April 27, 2017

Rich Estes presented a budget request for Public Works projects on the southside. This is for two projects. The first is at the Erskine Basin by Martin's off Miami and Ireland. Major improvements will be done to help water drainage in the area and along the golf course where it backs up.

The second project is for the South Well Field improvements on Chippewa and west of Main St. This will be for optimization and distribution of water infrastructure in that area. The request is for \$2M.

Mr. Inks asked didn't we just do improvements in the Erskine area?

Mr. Estes replied that they underestimated the original need for expansion of the basin, and are re-evaluating the situation with McCormick Engineering to look at the watershed in the area. This will now integrate everything together.

Mr. Lark asked what about the neighborhoods in the area that were hit by the floods last year; will this help them? Mr. Relos answered that the Bowman Creek area is being studied to see how it can flow better.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved Budget Request (Public Works) on April 27, 2017.

#### **D. Other**

##### **1. Contract Amendment for Environmental Services (Hull & Associates)**

Chris Dressel presented Contract Amendment for Environmental Services (Hull & Associates). This will be part of the ongoing work with Area A in Studebaker and Ignition Park. This will include indoor air and vapor testing. In addition to the installation of new monitoring wells on the city owned properties on the south side of the 700 block of W. Indiana Avenue, there will be additional ground water testing. This work will fulfill a requirement by IDEM.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Contract Amendment for Environmental Services (Hull & Associates) submitted on April 27, 2017.

#### **6. Progress Reports**

A. Tax Abatement

B. Common Council

C. Other



**7. Next Commission Meeting:**

Thursday, May 11, 2017, 9:30 a.m.

**8. Adjournment**

Thursday, April 27, 2017, 9:58 a.m.



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David Relos, Economic Resources

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Marcia I. Jones, President

# ITEM: 3A

	Claims submitted	Explanation of Project	Items added after Agenda Distributed
REDEVELOPMENT COMMISSION Redevelopment Commission Claims May 11, 2017 for approval			
<u>324 RIVER WEST DEVELOPMENT AREA</u>			
Tri County News	169.89	Berlin Place BP#2 Mechanical, Electrical and Plumbing	
Jones Petrie Rafinski	10,442.50	Leighton Plaza, Field Survey	
IDEM	131.25	Comm-Oliver Plow	
Abonmarche	22,500.00	Western Ave & Olive St. Intersection Improvements	
Great Latkes Capital	97,845.30	Rent	
Y & S Technologies		Equipment Purchase for Nello	158,217.84
South Bend Tribune		Notice to Bidders	243.76
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>			
C & S Masonry Restoration, LLC	15,124.00	Newman Center Masonry Repairs	
<u>430 FUND SOUTH SIDE TIF AREA #1</u>			
McCormick Engineering, LLC	1,620.00	Bowen St Drainage	1,080.00
Lawson-Fisher Associates P.C.	32,826.71	Roundabout Intersection Improvements	
<u>439 FUND CERTIFIED TECHNOLOGY PARK</u>			
ND	1,800,000.00	Certified Technology Park	
Total	1,980,659.65		159,541.60
Total Both Columns	2,140,201.25		

**REAL ESTATE PURCHASE AGREEMENT**

This Real Estate Purchase Agreement (this “Agreement”) is made on May 11, 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 Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (“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 parcels of real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”) and attached **Exhibit B** (the “Parking Lot”) (collectively referred to in this Agreement as the “Site”).

C. Pursuant to the Act, Seller adopted its Resolution No. 3367 on November 21, 2016, whereby Seller established an offering price of Eight Hundred Forty-Seven Thousand Five Hundred Dollars (\$847,500.00) (the “Appraised Value”) for the Site.

D. Pursuant to the Act, on November 21, 2016, Seller authorized the publication, on November 25, 2016, and December 2, 2016, respectively, of a notice of its intent to sell the Property and its desire to receive bids for the Site on or before December 15, 2016.

E. As of December 15, 2016, Seller received no bids for the Site (or any part of it), 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 and, in connection with said sale, to permit Buyer to access and use the Parking Lot, on a temporary basis, as provided for 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”):

James Mueller, 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"):

Edward Bradley, Senior VP and Principal  
Cressy & Everett Commercial Corporation  
4100 Edison Lakes Parkway, Suite 350  
Mishawaka, Indiana 46545

## **2. PURCHASE PRICE**

The purchase price for the Property shall be One Hundred Twenty-Five Thousand Dollars (\$125,000.00) (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 redevelop and use the Property for office space and a storage facility (the "Buyer's Use"). Seller acknowledges that Buyer's determination whether Buyer's Use is feasible requires investigation into various matters (Buyer's "Due Diligence"). Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

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

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

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

or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives; and

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

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

#### **4. SELLER'S DOCUMENTS; ENVIRONMENTAL SITE ASSESSMENT**

Within seven (7) days of the Contract Date, Seller will provide Buyer a copy of all known environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative with or without a written request by Seller. In addition to reviewing any environmental reports provided by Seller, Buyer may, at Buyer's sole expense, obtain a Phase I environmental site assessment of the Property pursuant to and limited by the authorizations stated in Section 3 above.

#### **5. PRESERVATION OF TITLE**

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

#### **6. TITLE COMMITMENT AND POLICY REQUIREMENTS**

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

special warranty deed (the “Deed”) from the Seller to the Buyer, and (ii) provide for issuance of a final ALTA owner’s title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company’s title search charges and all costs of the Title Commitment and owner’s policy.

**7. REVIEW OF TITLE COMMITMENT AND SURVEY**

Buyer shall give Seller written notice, within twenty (20) days after Buyer’s receipt of the Title Commitment, 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 will deliver the Purchase Price to Seller, conditioned on Seller's delivery of the Deed, in the form attached hereto as **Exhibit C**, conveying the Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than Permitted Encumbrances, and the Title Company's delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer in accordance with Section 6 above.

(ii) Possession of the Property will 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.

(iii) At Closing, Buyer and Seller will execute and deliver the Assignment And Assumption Of Lease attached hereto as **Exhibit D** (the "Assignment"), in accordance with Section 12 below.

(iv) At Closing, Buyer and Seller will execute and deliver the Temporary Parking Lot Access Agreement attached as **Exhibit E**.

(v) At Closing, Seller will execute and deliver to Buyer an access easement agreement, in a form to be agreed upon by the Parties' and their respective counsel, under which Seller will grant to Buyer a non-exclusive easement for pedestrian and vehicular access over and across the eastern half of Outlot A and a portion of the eastern half of Outlot B as said outlots are shown on the recorded plat of Vail's Subdivision (First Replat) recorded on October 4, 2013, as Document No. 1330638 in the Office of the Recorder of St. Joseph County (the "Access Easement Agreement"). The purpose of the Access Easement Agreement will be to permit Buyer various access points to the Building in service of its anticipated storage-related use of portions of the Building. Buyer will be responsible for all maintenance of the easement area subject to the Access Easement Agreement.

C. Condition Subsequent; Easement for Abutting Property Owner. As a condition subsequent to the transaction contemplated in this Agreement, Buyer agrees to grant to the owner of the real property commonly known as 410 W. Wayne Street an easement for ingress to and egress from said property over and across the necessary portion of the Property, which portion is expected to include at least the strip of land situated in the northwest corner of the Property that is approximately nineteen (19) feet wide running east to west along the northern boundary of the Property by approximately sixty (60) feet long running north to south along the western boundary of the Property.

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. Within twenty-four (24) months after the Closing Date, Buyer will expend an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to redevelop the Property for office space uses (in the south end of the Property fronting Western Avenue) and storage uses (in the north end of the Property) (collectively, Buyer's "Property Improvements"). Promptly upon completing the Property

Improvements, Buyer will submit to Seller satisfactory records, as determined in Seller's sole discretion, proving the above required expenditures and will permit Seller (or its designee) to inspect the Property to ensure that Buyer's Property Improvements were completed satisfactorily.

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 issuance, and Buyer will pay the costs of recordation.

C. Remedies Upon Default. 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:

- (i) 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 made by Buyer; or, alternatively,
- (ii) recover from Buyer a cash payment in an amount equal to the Appraised Value of the Property, due to Seller immediately upon demand 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 redevelopment of the Property, provided that Buyer notifies Seller in advance of the execution or recording of such first-priority mortgage.

## **12. ACCEPTANCE OF PROPERTY AS-IS AND SUBJECT TO VA LEASE**

Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Seller as to the condition of the Property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to the Property's condition or fitness, and nothing in this Agreement will be construed to constitute such a representation or warranty as to the Property's condition or fitness. In addition, Buyer agrees to purchase the Property subject to that certain Lease Agreement dated January 31, 2012, by and between Seller, lessor, as assignee of GMS Realty, Inc., and Ambulatory Care Solutions, LLC, lessee, as amended by the Amendment to Lease dated November 29, 2012 (collectively, the "VA Lease"). Buyer agrees to become bound by the terms of the VA Lease and to assume the rights and obligations of the lessor in accordance with the same. At Closing, the Parties will execute and deliver the Assignment evidencing Seller's assignment of and Buyer's assumption of the VA Lease effective immediately upon Closing.

## **13. 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.

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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, provided, however, that Seller's consent will not be required in the event Buyer wishes to assign this Agreement to an entity that (a) was created by Buyer for the purpose of completing the Property Improvements and/or leasing the Property to prospective tenants and (b) is controlled by Buyer. 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.

**19. 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 document. Electronically transmitted signatures will be regarded as original signatures.

**20. AUTHORITY TO EXECUTE; EXISTENCE**

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

[Signature page follows.]

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

BUYER:

Cressy & Everett Commercial Corporation,  
doing business as Newmark Grubb Cressy & Everett,  
an Indiana corporation



Edward Bradley, Senior VP and Principal  
Dated:

SELLER:

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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

4000.0000091 35513214.007

## **EXHIBIT A**

### **Description of Property**

Lots Numbered Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22) and Twenty-three (23) as shown on the recorded Plat of William S. Vail's Addition to the Town, now City of South Bend; including that part of Railroad Avenue heretofore vacated lying South of and adjoining said Lots 22 and 23. Also, the entire vacated alley running East and West lying between Lots 20 and 21 as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend; also, the East One-half (1/2) of Vacated Franklin Street lying West of and adjacent to said Lots 17 through 23.

Parcel Key Nos. 018-3012-0447 and 018-3012-0452

**EXHIBIT B**

**Description of Parking Lot**

Lot B as shown on the recorded plat of Vail's Subdivision (First Replat) recorded on October 4, 2013, as Document No. 1330638 in the Office of the Recorder of St. Joseph County.

Parcel Key No. 018-3012-044002

**EXHIBIT C**

**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 Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (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"):

Lots Numbered Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22) and Twenty-three (23) as shown on the recorded Plat of William S. Vail's Addition to the Town, now City of South Bend; including that part of Railroad Avenue heretofore vacated lying South of and adjoining said Lots 22 and 23. Also, the entire vacated alley running East and West lying between Lots 20 and 21 as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend; also, the East One-half (1/2) of Vacated Franklin Street lying West of and adjacent to said Lots 17 through 23.

Parcel Key Nos. 018-3012-0447 and 018-3012-0452

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 May 11, 2017, by and between Grantor and Grantee (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 Property 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 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 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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_ day of \_\_\_\_\_, 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**

**Assignment And Assumption Of Lease Agreement**

## ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

This Assignment And Assumption Of Lease Agreement (this "Assignment") is made as of \_\_\_\_\_, 2017 (the "Effective Date"), by and between the South Bend Redevelopment Commission ("Assignor"), and Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 ("Assignee").

### RECITALS

A. Assignor, as assignee of GMS Realty, Inc., is the lessor under that certain Lease Agreement dated January 31, 2012, with Ambulatory Care Solutions, LLC, as lessee, as amended by the Amendment to Lease dated November 29, 2012 (collectively, the "VA Lease").

B. In accordance with Section 12 of the Real Estate Purchase Agreement by and between Assignor and Assignee, dated May 11, 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 VA 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 VA 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 VA 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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

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

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

Cressy & Everett Commercial Corporation, doing  
business as Newmark Grubb Cressy & Everett, an  
Indiana corporation

\_\_\_\_\_  
Edward Bradley, Senior VP and Principal

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Edward Bradley, Senior VP and Principal of Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, 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 E**

**Temporary Parking Lot Access Agreement**

## TEMPORARY PARKING LOT ACCESS AGREEMENT

This Temporary Parking Lot Access Agreement (this “Parking Agreement”) is made on \_\_\_\_\_, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, of 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 (the “Commission”), and Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (the “Company”) (each a “Party,” and collectively, the “Parties”).

### RECITALS

A. 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 attached **Exhibit 1** (the “Parking Lot”).

B. In connection with its purchase of abutting real property from the Commission (the “Building” or the “Building Parcel”), and its redevelopment of the same, under the Parties’ Real Estate Purchase Agreement dated May 11, 2017 (as the same may be amended from time to time, the “Purchase Agreement”), the Company desires to have access to and use of the Parking Lot, and the Commission agrees to permit the same, subject to the terms and conditions stated in this Parking 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. License; Vehicular and Pedestrian Access. The Commission hereby grants to the Company a temporary license (the “License”) to enter and use the Parking Lot exclusively for the parking of properly licensed passenger vehicles, including motorcycles, by the Company and the tenants and invitees of the Building, subject to the terms of this Parking Agreement. Effective at all times during the term of the License, the Commission hereby grants to the Company a non-exclusive, temporary license for vehicular and pedestrian access to and from the Building and its abutting sidewalk over and across Outlot B shown on the recorded plat of Vail’s Subdivision (First Replat) recorded on October 4, 2013, as Document No. 1330638 in the Office of the Recorder of St. Joseph County (the “Pedestrian Access Area”). At all times during the term of the License, the Company will be responsible for all maintenance of the Pedestrian Access Area, including without limitation landscaping, mowing, clearance of snow and ice, and all other necessary work to keep the Pedestrian Access Area in a neat, clean, and safe condition. The Company will indemnify and hold harmless the Commission and the City from and against all claims, liabilities, damages, or losses arising out of the Company’s or the Company’s tenants’ use of the Pedestrian Access Area.

2. Term; Termination. The term of the License will commence upon the expiration of the VA Lease (as defined in the Purchase Agreement) (the “Commencement Date”). The Commission may revoke and terminate the License (a) immediately, in the event the company fails to satisfy any of its obligations under the Purchase Agreement, (b) immediately, in the event the

Company or the Company's permitted assignee (under Section 16 of this Parking Agreement) ceases to own a controlling interest in the Building, or (c) after the time stated in Section 9 below, in the event the Company fails to cure a default under this Parking Agreement.

3. Parking Spaces; Modification. (a) The Parties mutually acknowledge that, as of the Effective Date of this Parking Agreement, the Parking Lot contains one hundred forty-seven (147) parking spaces. On the Effective Date of this Parking Agreement, the Company's License includes a right to use one hundred forty-seven (147) parking spaces in the Parking Lot, subject to reduction from time to time under the terms of this Section 3 (the "Company's Allotment"). Upon advance written notice, in the event the Commission determines in its sole and absolute discretion that the Parking Lot (or any portion thereof) is required for any development project or purpose involving the Commission or the City (the "Development Event"), the Commission may reduce the Company's Allotment of parking spaces to any number not less than sixty (60) parking spaces. Within thirty (30) days after receiving the Commission's notice of a Development Event reducing the Company's Allotment, the Company will provide written notice to the Commission stating whether the Company's Allotment, after reduction, is sufficient to accommodate its and its tenants' occupancy of the Building (the "Company's Notice"). If, after reduction, the Company's Allotment is insufficient to accommodate its and its tenants' occupancy of the Building, the Company's Notice will provide reasonable evidence, including without limitation evidence of leases or commitments for space in the Building, of the Company's need to obtain alternative parking accommodations and will state the number of spaces reasonably required (the "Alternative Spaces"). In defining the Company's reasonable need for the Alternative Spaces, the Company's Notice will acknowledge and account for all parking spaces located on the Building Parcel, which number at least nine (9) as of the Effective Date of this Parking Agreement. Upon receipt of the Company's Notice and satisfactory supporting evidence proving the need for the requested number of Alternative Spaces, the Commission will negotiate in good faith with the Company to provide to the Company access to the requested number of Alternative Spaces on one or more locations within a one-block radius of the Building (each an "Alternative Location"). The Parties' agreement for the Alternative Spaces will be reduced to a written amendment to this Parking Agreement or a separate, written agreement on terms mutually acceptable to the parties and substantially similar to the terms of this Parking Agreement. Following the Commission's notice of a Development Event and at all times thereafter, the maximum number of parking spaces the Company will be permitted to use under this Parking Agreement (the "Space Maximum"), whether such parking spaces are located at the Parking Lot or at an Alternative Location, will be the sum of (i) the number of spaces in the Company's Allotment, after reduction due to the Development Event, and (ii) the number of Alternative Spaces, if any, determined by the Commission following receipt of the Company's Notice and satisfactory supporting evidence, provided, however, that such Space Maximum will not exceed one hundred twenty (120) at any time following the Development Event.

(b) In the event the Commission offers the Company access to an Alternative Location lacking an existing parking surface, the Commission, at its sole cost, will improve the Alternative Location adequately to supply the number of Alternative Spaces determined by the Commission following receipt of the Company's Notice and satisfactory supporting evidence.



(c) In the event the Commission is required to provide the Company Alternative Spaces upon a Development Event under this Section 3, the Commission will give the Company access to the Alternative Spaces before the reduction of the Company's Allotment is effective.

(d) Notwithstanding anything in this Parking Agreement to the contrary, in the event the Company proposes to purchase the Parking Lot (or a portion of it) for purposes of constructing a new development thereon, such proposal will not be considered a Development Event (as defined above), and in the event such purchase is consummated, the Company will not be entitled to any Alternative Spaces under this Parking Agreement.

4. Acceptance of Parking Lot As-Is. The Company agrees to accept the Parking Lot "as-is, where-is" and without any representations or warranties by the Commission concerning its condition or fitness for any particular use or purpose. The Commission makes no such representation or warranty as to the Parking Lot's condition or fitness, and nothing in this Parking Agreement will be construed to constitute such a representation or warranty.

5. Maintenance. At all times during the term of the License, the Company will be solely responsible for maintaining the Parking Lot, all improvements on the Parking Lot, and all tree lawns and sidewalks on or abutting the Parking Lot in good condition and repair suitable for its use as a surface parking lot, including, without limitation, all expenses of surface maintenance, mowing, snow and ice removal, repairs, striping, parking barriers, and all other costs incidental to the use of the Parking Lot, tree lawns, and sidewalks.

6. Alterations. The Company will make no alterations, additions, or improvements ("Alterations") to the Parking Lot without obtaining the Commission's prior written consent to the same. To seek such consent, the Company must submit to the Director of Redevelopment Engineering (the "DRE") detailed plans and specifications, prepared by a licensed contractor, setting forth all of the Company's proposed Alterations. Following the Commission's approval (which may be rendered by the DRE on behalf of the Commission) of such plans and specifications, the Company will, at the Company's sole expense, carry out the Alterations in strict adherence to the plans and specifications submitted to and approved by the Commission or the DRE and will defend and indemnify the Commission against any liability arising out of any claim or lien against the Parking Lot in connection with such work. Any Alterations to the Parking Lot made by the Company will become the property of the Commission, without reimbursement or compensation of any kind to the Company for the value of such Alterations. At the termination of this Parking Agreement, the Commission may require the Company to remove, at the Company's sole expense, any Alterations the Company made to the Parking Lot, and the Company will defend and indemnify the Commission against any liability arising out of any claim or lien against the Parking Lot in connection with such removal.

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

8. Storage; Hazardous Materials. At all times during the term of the License, the Company will keep the Parking Lot in neat and clean order. The Company agrees that it will not

store any supplies, materials, goods, or personal property of any kind on the Parking Lot. Without limiting the foregoing, 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 Parking Lot.

9. Default. If the Company fails to cure any failure in or default of any of its obligations or covenants under this Parking Agreement within ten (10) days after receiving from the Commission written notice of the same, the Commission may (a) terminate this Parking Agreement and prohibit the Company's access to the Parking Lot and/or (b) initiate any legal action or proceeding it deems appropriate to enforce the terms of this Parking Agreement and/or (c) pursue any other remedy available at law or in equity. All of the Commission's remedies will be cumulative.

10. Commission's Use. The Commission reserves the right to use the Parking Lot during the term of this Parking Agreement for any purpose that does not substantially interfere with or obstruct the Company's permitted use of the Parking Lot in accordance with the terms of this Parking Agreement, including, without limitation, (a) evening and weekend parking for events held in or around the facility known as Four Winds Field at Coveleski Stadium, and (b) parking for City employees during weekday business hours as agreed in advance by the Company and the Commission (or its designee).

11. Compliance. The Company 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 its use of the Parking Lot.

12. Security. The Company agrees that the Commission will not be liable for any loss, damage, destruction, or theft of the Company's (or the Company's employees') property or any bodily harm or injury that may arise from the Company's use of or access to the Parking Lot. The Company agrees that it will at all times be solely responsible for the safety and security of any property, including vehicles and their contents, the Company keeps or permits to be kept on the Parking Lot.

13. Indemnification. The Company agrees and undertakes to indemnify and hold the City and the Commission, and their respective agents, employees, successors, and assigns, 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 Company's use of the Parking Lot, except to the extent caused by the grossly negligent or willful acts or omissions of the City or the Commission. If any action is brought against the City or the Commission, or their respective agents, employees, successors, or assigns, in connection with the Company's use of the Parking Lot, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

14. Insurance. The Company, at the Company's sole expense, shall maintain during the term of the License a policy of commercial general liability insurance, or such other policy or policies of insurance against any and all claims for bodily injury, death, or property damage, arising out of the Company's use of the Parking Lot 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 insureds on any such policy and produce to the Commission a copy of each such policy evidencing the same. To the extent that the Commission or the City is harmed as a result of the Company's use of the Parking Lot, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Parking Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

15. Real Estate Taxes. The Company will be responsible for the payment of all real property taxes and assessments, of any nature whatsoever (the "Taxes"), which are levied against the Parking Lot for all periods during the term of the License. The Commission will have no liability for any Taxes associated with the Parking Lot, whether accruing during the term of the License or after the term of the License, and nothing in this Parking Agreement will be construed to require the proration or other apportionment of Taxes resulting in the Commission's liability therefor.

16. Assignment. The Company may not assign this Parking Agreement or the License granted herein to any other person or party without the Commission's prior written consent. Any attempt by the Company to assign or otherwise convey any interest in this Parking Agreement will be void and of no force or effect unless the Company first obtains the Commission's written consent. Notwithstanding the foregoing, the Commission will not unreasonably withhold its consent to a proposed assignment of this Parking Agreement by the Company to a third party (the "Proposed Assignee") if (i) the Proposed Assignee has purchased or is contractually obligated to purchase the Building, (ii) the Proposed Assignee's anticipated use of the Building will not materially increase the intensity of parking needs of the Building's users, and (iii) the Proposed Assignee demonstrates, to the Commission's reasonable satisfaction, that it is of sound financial condition and is capable of responsibly owning and managing the Building. In the event the Company wishes to obtain the Commission's consent regarding a proposed assignment of this Parking Agreement, the Company will provide any and all information reasonably demanded by the Commission in connection with the proposed assignment and/or the Proposed Assignee.

17. Title; No Lease or Easement. The Commission covenants that it is the sole owner in fee simple of the Parking Lot and has the lawful right to permit the Company to use it under this Parking Agreement. The Commission and the Company mutually agree and acknowledge that this Parking Agreement does not constitute a lease of or easement over the Parking Lot or any Alternative Spaces provided by the Commission in accordance with the terms of Section 3 above. This Parking Agreement grants the Company no interest of any kind in the Parking Lot except the License granted above and revocable in accordance with the terms of this Parking Agreement.

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

19. Entire Agreement. This Parking Agreement embodies the entire agreement between the Commission and the Company and supersedes all prior discussions, understandings,

or agreements, whether written or oral, between the Commission (or any representative of the Commission) and the Company concerning the Company's use of the Parking Lot.

20. Authority; Counterparts; Signatures. 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 Parking Agreement. This Parking Agreement may be separately executed in counterparts by the Commission and the Company, and the same, when taken together, will be regarded as one original agreement. Electronically transmitted signatures will be regarded as original signatures.

[Signature page follows.]

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

COMPANY:

Cressy & Everett Commercial Corporation,  
doing business as Newmark Grubb Cressy & Everett,  
an Indiana corporation

\_\_\_\_\_  
Edward Bradley, Senior VP and Principal  
Dated:

COMMISSION:

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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

**Exhibit 1 to Temporary Parking Lot Access Agreement**

**Description of Parking Lot**

Lot B as shown on the recorded plat of Vail's Subdivision (First Replat) recorded on October 4, 2013, as Document No. 1330638 in the Office of the Recorder of St. Joseph County.

Parcel Key No. 018-3012-044002

**PERSONAL PROPERTY TRANSFER AGREEMENT**

This Personal Property Transfer Agreement (this “Agreement”), is entered into as of May 11, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend, Department of Redevelopment, with offices at 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 (the “Commission”), and RDistrict One LLC, an Indiana limited liability company with its registered office at 635 S. Lafayette Blvd., South Bend, Indiana 46601 (the “Company”) (each a “Party” and together the “Parties”).

RECITALS

A. The City of South Bend (the “City”), acting by and through its Board of Public Works, and the Commission are parties to various agreements with Union Station Properties, LP and Studebaker Building 84, LLC (collectively, the “Affiliated Companies”) concerning the Affiliated Companies’ redevelopment of the real property and improvements located in the City commonly known as Studebaker Buildings 84, 112, and 113 and more particularly described in attached **Exhibit A** (the “Project Site”).

B. The Company is an affiliate of the Affiliated Companies, owns portions of the Project Site, and is engaged in the redevelopment of the Project Site with the Affiliated Companies.

C. The Commission owns certain personal property comprising, in a disassembled state, a guardhouse formerly installed at the Studebaker Corporation site in the City, along with certain fencing and columns associated with the guardhouse, as further described in attached **Exhibit B** (collectively, the “Guardhouse Property”).

D. To enhance and beautify the vehicular entrance from Lafayette Boulevard onto the Project Site, the Company desires to place the Guardhouse Property on the Project Site as depicted in attached **Exhibit C** (the “Installation Location”).

E. The Commission desires to convey ownership of the Guardhouse Property to the Company for the Company’s use in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the Parties agree as follows:

1. **Transfer; No Warranties.** The Commission hereby conveys to the Company all of the Commission’s right, title, and interest in and to the Guardhouse Property. The Commission conveys the Guardhouse Property, and the Company accepts the same, as-is, where-is, and without any representation or warranty of any kind. Without limiting the generality of the foregoing sentence, the Commission specifically disclaims any representation or warranty of merchantability or fitness for any particular use or purpose.

2. **Possession.** The Company hereby acknowledges that all of the Guardhouse Property is in the Company’s possession as of the Effective Date of this Agreement and that the

Commission's execution of this Agreement constitutes its constructive delivery of the Guardhouse Property to the Company, which will effect the Commission's conveyance of the Guardhouse Property to the Company without any further action by the Commission or the City.

3. Reversion to Commission. In the event the Company fails to perform any of its obligations under this Agreement, and such failure continues for a period of fifteen (15) days following the date of a written notice to the Company from the Commission or the City identifying such failure and demanding a cure of such failure, the Commission will be entitled, at its option, to take any one or more of the following actions: (a) take possession and control of the Guardhouse Property; (b) enter upon the Project Site to preserve, protect, or maintain the Guardhouse Property; (c) declare that the Company has abandoned ownership of the Guardhouse Property in favor of the Commission and accept ownership of the Guardhouse Property; and (d) pursue any and all rights or remedies available at law or in equity. Notwithstanding the foregoing sentence, the Commission will be entitled to pursue any of its rights and remedies under the foregoing sentence, without any requirement of notice or an opportunity to cure, in the event that the Company ceases to own a fee simple interest in Lot 1 of the Project Site.

4. Nature of Guardhouse Property. Notwithstanding anything to the contrary, the Parties acknowledge and agree that the Guardhouse Property will forever constitute personal property only and will not constitute real property or a fixture to real property.

5. Placement. Within a reasonable time after the Effective Date of this Agreement, the Company will use the Guardhouse Property to reconstruct the guardhouse and its associated elements on the Installation Location using building practices appropriate for materials of the kind and age of the Guardhouse Property. The state of the reconstructed guardhouse and its associated elements will adhere as closely as reasonably practicable to the original construction of the guardhouse and its associated elements. The Company will place the reconstructed guardhouse on the Installation Location in such a manner that it will remain easily and openly visible to the public from the public rights-of-way in the immediately vicinity of the Installation Location, and such placement will be subject to prior review and approval by the City's Department of Community Investment. The Company will bear all costs associated with the handling, reconstruction, and placement of the Guardhouse Property. Once placed, the Company will not relocate the guardhouse or its associated elements without the prior written approval of the City's Department of Community Investment.

6. Inspection; Events. The Company will allow the City's Department of Community Investment (or its designee) to enter the Project Site at all reasonable times to inspect the state and condition of the Guardhouse Property. In addition, the Company will permit the Commission or the City to host public events on or in the immediate vicinity of the Installation Location upon terms reasonably agreed by the Parties.

7. Maintenance; Alterations. The Company will, at its sole expense, keep and maintain the Guardhouse Property in a good state of repair at all times after the Effective Date of this Agreement. The foregoing obligation will include maintenance of the reconstructed guardhouse and its associated elements in the state in which they were placed on the Installation Location in accordance with the terms of Section 5 above. The Company will make no substantial



alterations to the Guardhouse Property, or to the guardhouse and its associated elements once reconstructed, without the prior written approval of the Commission.

8. Risk of Loss. Commencing on the Effective Date, the Company will bear all risk of loss, damage, destruction, and theft to or of the Guardhouse Property from any cause whatsoever (a "Loss"). The Company will notify the Commission in writing within five (5) days of any such Loss.

9. Compliance with Law. The Company will, at its sole expense, (a) comply with all applicable laws, regulations, and ordinances and (b) maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

10. Indemnification. The Company will indemnify, defend, and hold harmless the Commission and the City and their respective officers, directors, employees, agents, affiliates, and successors against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, arising out of or occurring in connection with the Guardhouse Property, whether in its disassembled form or reconstructed form, or the Company's negligence, willful misconduct, or breach of this Agreement.

11. Insurance. The Company will, at its sole expense, maintain and carry all appropriate insurance, which includes, but is not limited to, commercial general liability insurance in a sum no less than Five Million Dollars (\$5,000,000.00), inclusive of the dollar limit of any umbrella policy following the form of the commercial general liability policy, with a financially sound and reputable insurer. Upon the Commission's request, the Company will provide the Commission with a certificate of insurance from the Company's insurer evidencing the insurance coverage specified in this Agreement. The Company will require its insurer to waive all rights of subrogation against the Commission's insurers and the Commission.

12. Entire Agreement; Recitals. This Agreement, including and together with any attached exhibits constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The above recitals are hereby incorporated into the operative provisions of this Agreement.

13. Notices. All notices, requests, consents, claims, demands, waivers, summons and other legal process, and other similar types of communications hereunder must be in writing and addressed to the relevant Party at the address set forth on the first page of this Agreement (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section 13). All notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). A notice is effective only (i) upon receipt by the receiving Party and (ii) if the Party giving the notice has complied with the requirements of this Section 13.

14. Severability. If any term or provision of this Agreement is judicially determined to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement.

15. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

16. Waiver. No waiver by any Party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

18. Assignment; Successors and Assigns. The Company's rights and obligations under this Agreement are exclusive to the Company, and the Company may not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of the Commission. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the Company of any of its obligations hereunder. The Commission may at any time assign any or all of its rights or obligations under this Agreement without the Company's consent. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Choice of Law and Choice of Forum. This Agreement and all matters arising out of or relating to this Agreement are governed by, and will be construed in accordance with, the laws of the State of Indiana, without regard to the conflict of laws provisions of such State. Any legal suit, action, or proceeding arising out of or relating to this Agreement must be instituted in the courts of St. Joseph County, Indiana, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

21. Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including exhibits, schedules, attachments and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in

respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments or appendices attached to this Agreement, or the transactions contemplated hereby.

22. Limitation of Liability. In no event will the Commission be responsible or liable for any consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of any provision of this Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not the Commission was advised of the possibility of such damages and (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

23. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

24. Headings. Headings in this Agreement are for convenience of reference only, and are not to be used in any interpretation of the agreement between the Parties.

[Signature page follows.]

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

COMMISSION:

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

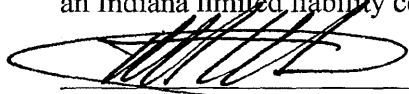
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

COMPANY:

RDistrict One LLC,  
an Indiana limited liability company



\_\_\_\_\_  
Printed: Martin V. Shrader  
Its: Authorized Agent  
Dated: May 5<sup>th</sup>, 2017

4000.0000011 40088915.003

## **EXHIBIT A**

### **Description of Project Site**

Lots 1, 2, and 3 of the recorded plat of Renaissance Minor Subdivision recorded on October 1, 2015, as Document No. 1526269 in the Office of the Recorder of St. Joseph County, Indiana.

## **EXHIBIT B**

### **Description of Guardhouse Property**

All the materials and components comprising the Studebaker guardhouse and its associated columns and fencing, including the following:

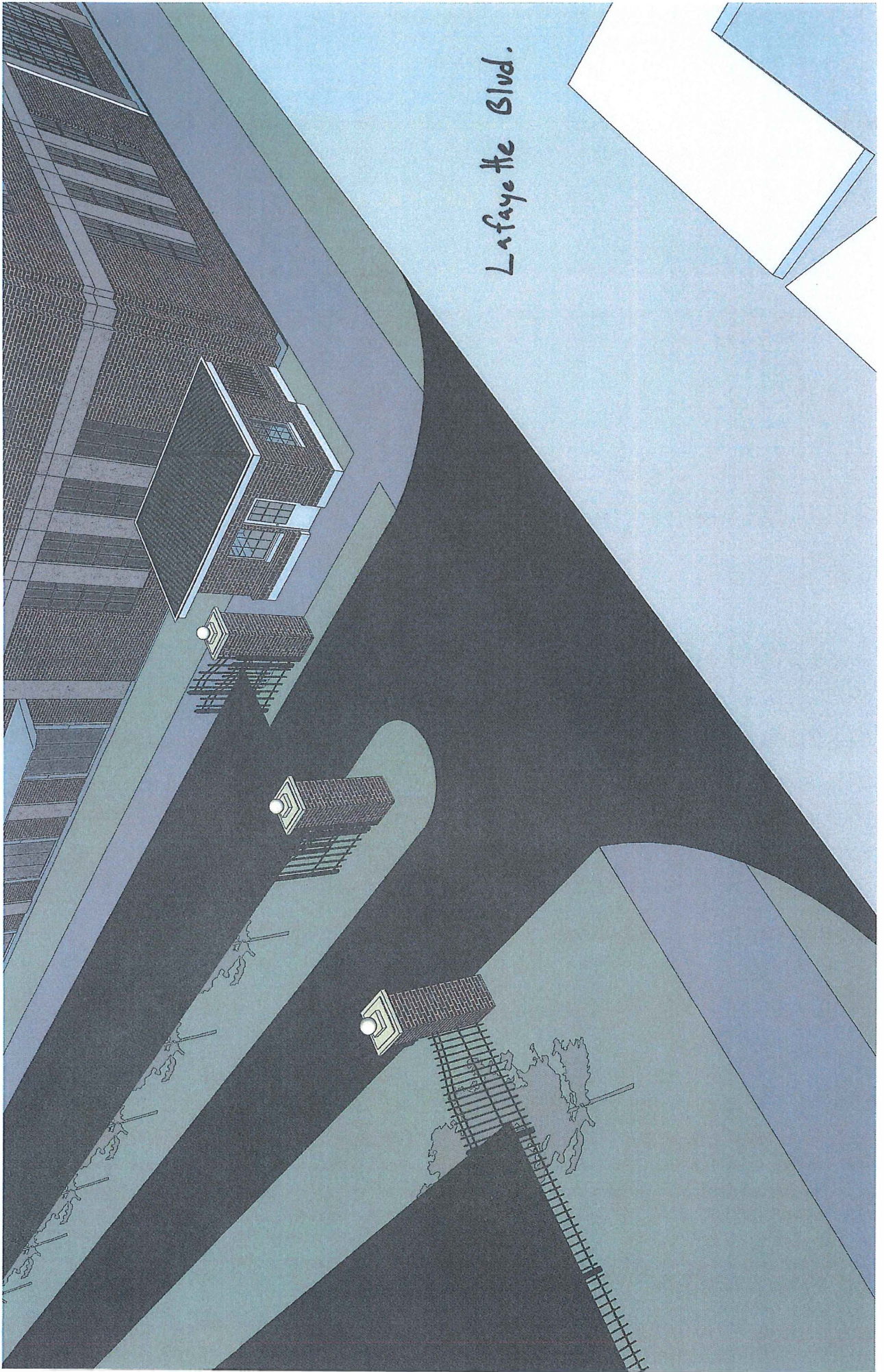
1. Approximately three thousand eight hundred sixty-three (3,863) bricks, including column bricks;
2. Approximately twenty-eight linear feet (28') of fencing approximately five feet, four inches (5'4") high;
3. One (1) gate approximately sixteen feet (16') long;
4. One (1) gate approximately three feet (3') long;
5. Four (4) limestone column caps; and
6. Crafted roofing material.

**EXHIBIT C**

**Depiction of Installation Location**

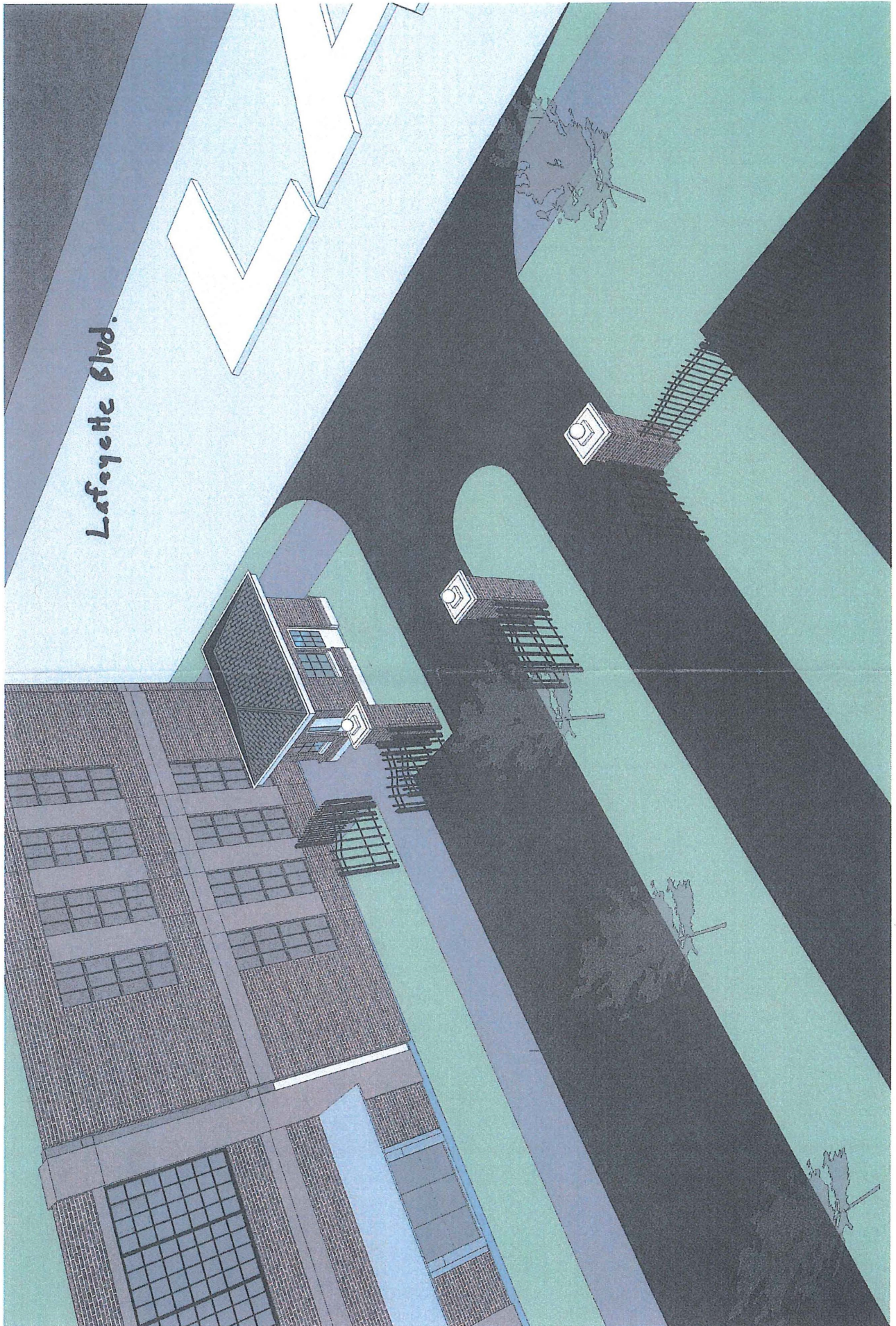
[See attached.]

Lafayette Blvd.





Lafayette Blvd.





Department of  
**Community Investment**

**Redevelopment Commission Agenda Item**

DATE: May 11, 2017  
FROM: David Relos, Economic Resources *DR*  
SUBJECT: Professional Services: R.E. Pitts & Associates (HOF Tax Appeal)

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This request is to have Rick Pitts, a MAI Certified Indiana Appraiser, assist in the 2015 pay 2016 property tax appeal currently underway for the Hall of Fame property.

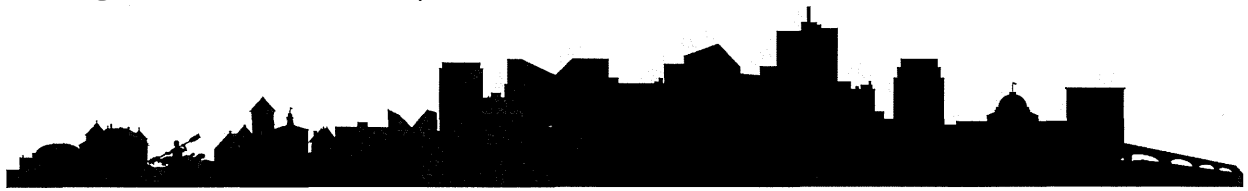
The 2015 assessed value is \$4,142,400. In the three prior years the assessed value was appealed and ultimately lowered to first \$2,450,000 and then \$2,500,000.

When staff appealed 2015 for an assessed value of \$2,500,000, the appeal was denied and a PTABOA hearing date set.

This Professional Services request is to have Mr. Pitts, who has twice appraised this property and in 2013 attended a prior PTABOA hearing, attend this upcoming hearing to assist in the 2015 appeal.

Staff requests approval in a not-to-exceed amount of \$1,500.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_  
Total Amount new in budget: \$1,500; broken down by:  
Acct # 677-0414-645-36.01  
Going to BPW for Contracting? No Is this item ready to encumber now? Yes  
Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_





Department of  
**Community Investment**

**Memorandum**

May 9, 2017

TO: Redevelopment Commission  
FROM: Chris Dressel, Staff *CD*  
SUBJECT: Request to Budget for City contribution to Portage Bridge Replacement

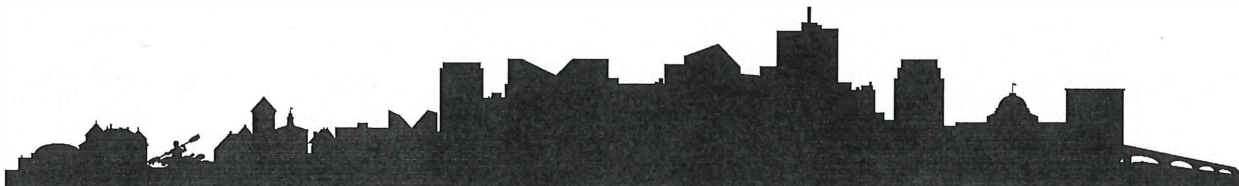
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Staff requests approval of \$60,000 in funds from the River West TIF to assist with the replacement costs for the Portage Avenue Bridge over the former Norfolk Southern Railroad corridor.

The contribution of funds serves to beautify and outfit the bridge deck with a decorative rail and lighting plus install a wider sidewalk that accommodates more comfortable use by pedestrians and cyclists. These investments would serve to facilitate safer connections both to the existing Angela multiuse trail and adjacent Martin's Plaza while complimenting future streetscape improvements along the Portage Avenue corridor.

If you should have any questions or are in need of more information, please feel free to contact me at either [cdressel@southbendin.gov](mailto:cdressel@southbendin.gov) or 235-5847.

INTERNAL USE ONLY: Project Code: 162008  
Total Amount <sup>new</sup> change (inc/dec) in budget: \$160,000; broken down by:  
Acct # 324.1050.460.42.02 Amt: 60,000; Acct # \_\_\_\_\_ Amt: \_\_\_\_\_;  
Acct # \_\_\_\_\_ Amt: \_\_\_\_\_; Acct # \_\_\_\_\_ Amt: \_\_\_\_\_;  
Going to BPW for Contracting? Y/N Is this item ready to encumber now? \_\_\_\_\_  
Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_





Department of  
**Community Investment**

**Memorandum**

May 9, 2017

TO: Redevelopment Commission  
FROM: Chris Dressel, Staff *CD*  
SUBJECT: Request to Amended Budget For "Coal Line" Engineering Services

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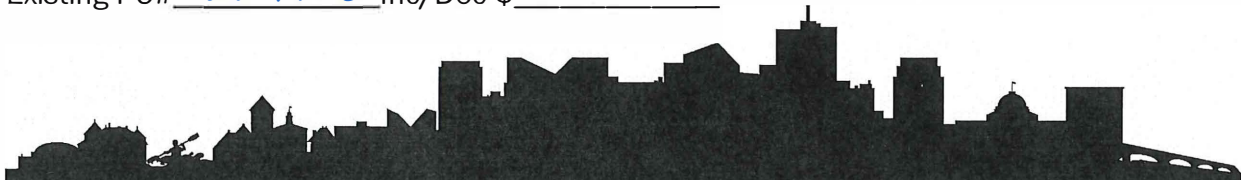
Staff requests approval of \$254,300 in additional funds from the River West TIF to complete supplemental engineering services for Phase I and Phase II of the "Coal Line" multiuse trail project. This supplement is required to fund revised services included in the original scope of work and provide new services including:

- Topographic/Environmental Survey
- Trail Design and Plans
- Landscape Architecture Design and Plans
- Lighting Design and Plans
- Title Searches
- Right of Way Services

The City of South Bend through its Board of Public Works has contracted with United Consulting out of Indianapolis to complete the necessary engineering work Trail construction is anticipated for 2020/2021. In May 2016, the commission approved \$750,000 to initiate the project. The project is programmed with federal funds with construction of both phases anticipated for completion by 2021. The CMAQ (Congestion, Mitigation, and Air Quality) funds will reimburse the City of South Bend for 80% of funding for the initial contract and federally approved cost increases beyond that amount.

If you should have any questions or are in need of more information, please feel free to contact me at either [cdressel@southbendin.gov](mailto:cdressel@southbendin.gov) or 235-5847.

INTERNAL USE ONLY: Project Code: *16J008*  
Total Amount new/change (inc/dec) in budget: *\$ 254,300*; broken down by:  
Acct # *324.1050, 400.42.02* Amt: *\$ 254,300*; Acct # \_\_\_\_\_ Amt: \_\_\_\_\_;  
Acct # \_\_\_\_\_ Amt: \_\_\_\_\_; Acct # \_\_\_\_\_ Amt: \_\_\_\_\_;  
Going to BPW for Contracting? Y/N Is this item ready to encumber now? \_\_\_\_\_  
Existing PO# *227700* Inc/Dec \$ \_\_\_\_\_



**RESOLUTION NO. 3393**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
AMENDING RESOLUTION NO. 3361 REGARDING TRANSFER OF THE WAYNE  
STREET PARKING GARAGE TO THE SOUTH BEND BOARD OF PUBLIC WORKS**

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

WHEREAS, the plat of Wayne Street Parking Garage Minor Subdivision was recorded on February 19, 2016, as Document No. 1604082 in the Office of the Recorder of St. Joseph County, Indiana (the “Plat”); and

WHEREAS, the Plat shows the building commonly known as the Wayne Street Garage (the “Garage”) as Lot 1 and the first-floor storefront contained within the same building as Lot 2 (the “Storefront”); and

WHEREAS, on September 15, 2016, the Commission adopted its Resolution No. 3361 (the “Original Resolution”) concerning, among other matters, the Commission’s conveyance of the Garage to the City of South Bend Board of Public Works (the “Board”), which conveyance the Board approved and accepted under its Resolution No. 44-2016 dated September 27, 2016; and

WHEREAS, the warranty deed provided in the Original Resolution erroneously identified both Lots 1 and 2 for the Commission’s conveyance to the Board, and the deed was executed, delivered, and recorded as Document No. 1626183 in the Office of the Recorder of St. Joseph County, Indiana; and

WHEREAS, despite the erroneous description set forth in the deed, the Commission intended to convey, under the Original Resolution, only the Garage (i.e., Lot 1) to the Board for purposes of parking-related operations pursuant to Ind. Code 36-9-11; and

WHEREAS, the Commission intended to retain for redevelopment purposes the Storefront, which the Commission offered to the public for disposition in accordance with Section 22 of the Act and its Resolution No. 3365 dated November 10, 2016; and

WHEREAS, the Commission wishes to clarify the record of its actions with respect to the Garage and the Storefront.

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

1. The Commission hereby amends the form of warranty deed attached as Exhibit A to the Original Resolution by deleting the term “Lots 1 and 2” in the deed’s real property description and inserting in its place the term “Lot 1.”

2. The Commission hereby authorizes and instructs David Relos of the City's Department of Community Investment, in cooperation with the South Bend Legal Department, to take all necessary administrative actions to correct the chain of title of the affected real property and otherwise to accomplish the purposes of this Resolution.

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

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on May 11, 2017, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary

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Department of  
**Community Investment**

**Redevelopment Commission Agenda Item**

DATE: May 11, 2017  
FROM: Liz Maradik, Planner  
SUBJECT: Budget Increase Request – Seitz Park Survey

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PURPOSE OF REQUEST:

As part of the implementation of the Riverfront Parks & Trails effort, Abonmarche previously completed a topographic survey of Seitz Park. During coordination meetings with various stake holders and consultants related to the planned improvements at Seitz Park, it was discovered that their plans rely on a survey using a different vertical datum (i.e. reference point). In order to ensure improvement plans to the park are compatible, it's necessary to adjust our survey so the vertical datum matches.

Staff requests Commission approval of a not-to-exceed increase of \$1,000.

INTERNAL USE ONLY: Project Code: 15J025  
Total Amount new/change (inc/dec) in budget: \$1,000; broken down by:  
Acct # 429.1050.460.31-06 Amt: \$                     ; Acct #                       
Amt:                     ;  
Acct #                      Amt:                     ; Acct #                      Amt:                     ;  
Going to BPW for Contracting? Y/N Is this item ready to encumber now?                       
Existing PO# 233066 Inc/Dec \$                     

