



South Bend

Redevelopment Commission

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

Agenda

Regular Meeting, August 10, 2017 9:30 a.m.

- 1. Roll Call**
- 2. Approval of Minutes**
 - A. Minutes of the Regular Meeting of Thursday, July 27, 2017
- 3. Approval of Claims**
 - A. Claims Submitted August 10, 2017
- 4. Old Business**
 1. Recommendation (505 - 513 S. Michigan St. - Fat Daddy's)
- 5. New Business**
 - A. River West Development Area
 1. Resolution No. 3398 (Conveyance of Certain Equipment to F Cubed LLC)
 2. Second Amendment (DTSB)
 3. Memorandum of Ground Lease Assignment
 4. Memorandum of Ground Lease Assignment (Memorial)
 5. Real Estate Purchase Agreement (Leighton & Wayne St Garage Retail Spaces)
 - B. River East Development Area
 1. Agreement with Abonmarche (Seitz Park)
- 6. Progress Reports**
 - A. Tax Abatement
 - B. Common Council
 - C. Other

7. Next Commission Meeting:

Thursday, August 24, 2017, 9:30 a.m.

8. Adjournment

NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS

Auxiliary Aid or Other Services are Available upon Request at No Charge.
Please Give Reasonable Advance Request when Possible.



South Bend

Redevelopment Commission

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

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

July 27, 2017

9:35 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard
South Bend, Indiana

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

1. ROLL CALL

- Members Present: Marcia Jones, President
Don Inks, Secretary
Gavin Ferlic, Commissioner
Kintae Lark, Commissioner
John Anella, Commissioner
- Members Absent: Dave Varner, Vice President
- Legal Counsel: Benjamin Dougherty, Esq.
- Redevelopment Staff: David Relos, Associate
Mary Brazinsky, Recording Secretary
- Others Present: James Mueller DCI
Elizabeth Maradik DCI
Dan Buckenmeyer DCI
Rich Estes DCI
Mike Divitia DCI
Jitin Kain Public Works
Aaron Perri VPA
Patrick Sherman VPA
Conrad Damian
Kasey Watkins Cressy
Erin Blasko South Bend Tribune

2. Approval of Minutes

A. Approval of Minutes of the Regular Meeting of Thursday, June 29, 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, June 29, 2017.

3. Approval of Claims

A. Claims Submitted July 27, 2017

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION		
Redevelopment Commission Claims July 27, 2017 for ratified and approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
South Bend Tribune	56.63	Berlin Place - BP #2 MEP
Jones Petrie Rafinski	2,886.25	Monroe Parking Lot and St Improvements
HGR Group Inc.	75,448.43	JMS Building North Stairtower
Usbank	500.00	SB Redev. District Taxing District Refunding Bonds of 2014
Kolata Enterprises LLC	405.00	Professional Services
Abonmarche	3,227.36	Perley Primary Center Safe Routes to School Const. Inspection
Gibson-Lewis, LLC	83,688.70	Fire Station #4
Jones Petrie Rafinski	7,963.76	Courtyard by Marriott
DLZ	2,400.00	SB Olive & Tucker Survey
Kil Architecture Planning	3,569.15	Michigan St. Assessment
Community Investment	18,875.00	Legal Services
Tri County News	61.20	100 Wayne St Plaza and Streetscape
Selige Construction Co., Inc.	317,662.75	Western Ave & Olive St. Intersection Improvement
C & S Masonry Restoration	19,186.20	Leighton Pl Improvements, Ph. 2
HRP Construction Co.	54,887.75	Berlin Place Site Development
Gibson-Lewis, LLC	400,374.65	Fire Station #4
Hull & Associates Inc.	10,124.54	Consulting Services
United Consulting	25,559.44	Coal Line Trail PH I & II
Earth Exploration	6,998.00	Coal Line Trail
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
Tri County News	66.53	Newman Center Site Development
SmithGroup JJR	4,584.00	SB Riverfront Pks and Trails Master Plan
Tri County News	56.63	Demolition of Howard Pk Recreation Center
Walsh & Kelly Inc.	40,439.60	East Bank Sewer Separation - Ph. V
Total	1,079,021.57	

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

4. Old Business

None

5. New Business

A. Receipt of Bids

1. 505 - 513 S. Michigan St. (Fat Daddy's)

Mr. Relos noted one sealed bid for this property was received this morning, prior to the 9:00 AM deadline. Mr. Relos opened the sealed bid, which was from Commonwealth Development Corporation. Commonwealth's bid was for the minimum offering price of \$45,000, and included a cashier's check in the amount of \$4,500, the required 10% Faithful Performance Guaranty.

Mr. Relos noted it appeared all forms were included in the bid submission, and asked Commission approval for staff to review and make a recommendation at a future meeting.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved DCI staff to review and bring back to it a recommendation of the bid proposal received for Fat Daddy's properties at 505 - 513 S. Michigan St. submitted on July 27, 2017.

B. River West/East Development Areas

1. First Amendment to Real Estate Purchase Agreement (Cressy & Everett)

Mr. Relos presented the First Amendment to Real Estate Purchase Agreement (Cressy & Everett), for the former Gates/Toyota Building, a part of which currently houses the VA Clinic. This First Amendment extends the due diligence period for an additional 90 days. This extension is needed for further environmental and internal roof drain system investigation.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved First Amendment to Real Estate Purchase Agreement (Cressy & Everett) submitted on July 27, 2017.

2. Second Amendment to Development Agreement (Armory LLC)

Mr. Estes presented the Second Amendment to Development Agreement (Armory LLC). The final phase of the Newman Center project came in with a bid that exceeded the remaining approved amount by \$151,941.30. The developer has agreed to pay this overage amount via a direct reimbursement to the Commission within 10 days from today and prior to formally awarding the bid. This final phase covers work including utilities, pavement, patio pavers, landscaping, and other general site improvements that the project required.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved Second Amendment to Development Agreement (Armory LLC) submitted on July 27, 2017.

3. Budget Request (Charles Black Center)

Ms. Maradik presented the Budget Request (Charles Black Center). The City wishes to complete improvements to the Charles Black Recreation Center in order to meet the current and future needs of the facility and its users. The renovations will include an expanded gym, community rooms, music studio, and bathrooms. Benefits of the renovation will include greatly enhanced community programming as well as an improved aesthetic appearance, ADA access, and safety/security, and even revenue streams. The Center is not within the TIF but it serves the TIF. Improvements will be funded through the Parks Bond and TIF funding. Commission approval from the RWDA in the amount \$1,500,000 is requested.

Aaron Perri, Executive Director of Venue Parks and Arts, stated that this is a much needed project for our community which will double the size of the Charles Black Center. He is very excited for the work that will come out of this project. The work is slated to start in late September 2017 and last approximately one year. During the construction phase all programming will be re-routed to surrounding facilities. This project is primarily being funded from the 2014 Park Bond.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (Charles Black Center) submitted on July 27, 2017.

4. Budget Request (West Bank Trail)

Ms. Maradik presented the Budget Request (West Bank Trail). The City wishes to implement improvements to the West Bank Trail as recommended in the Riverfront Parks & Trails conceptual framework. This work was recently approved by the Parks Board. The City would like to complete design work, and ultimately construction, of improvements for the portion of trail located between LaSalle and Jefferson - including Gwen Stiver Park, Pier Park, and the connection between Island Park and the Jefferson Blvd. Bridge. Staff requests Commission approval of a budget of \$250,000 towards work related to improving the West Bank Trail.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (West Bank Trail) submitted on July 27, 2017.

5. Budget Request (Bowman Creek Bridge)

Jitin Kain presented the Budget Request (Bowman Creek Bridge). The City is seeking approval of funding in the amount of \$40,000 from the River West Development Area to support the construction of a pedestrian bridge over Bowman Creek in Ravina Park. This is part of a larger Bowman Creek bank stabilization project. A portion of the funding is being provided by the Pokagon Band in the amount of \$100,000. Total construction cost with the bridge will be \$140,000.

Commission approval is requested to construct the bridge, which will help improve the entire area of the park and provide stronger community amenities.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the Budget Request (Bowman Creek Trail) submitted on July 27, 2017.

6. Budget Request (Lincolnway-Charles Martin Streetscape Improvements)

Mr. Divita presented the Budget Request (Lincolnway-Charles Martin Streetscape Improvements). Staff requests approval of an engineering budget of \$135,000 from the River West Development Area for streetscape improvements at the Lincolnway West-Charles Martin Sr. Drive intersections. As part of its implementation of the West Side Main Streets Revitalization Plan, the project would right size the Lincolnway West-Charles Martin intersection to promote safety and pedestrian crossings, re-establish neighborhood connections at the intersections at Leland Avenue-Marion Street-Scott Streets, and prepare City-owned land near the northwest corner of the intersection for development.

As necessary, curbs, sidewalks, driveway approaches, and street pavement will be replaced. Street trees, other landscaping, and decorative lighting will be added, while scrub vegetation, dilapidated fencing, and excess pavement will be removed.

Engineering work will proceed through the remainder of 2017. Tentatively, funds for construction will be requested in early 2018 for the project to be bid, with construction work starting in the spring.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (Lincolnway-Charles Martin Streetscape Improvements) submitted on July 27, 2017.

B. South Side Development Area

1. Budget Request (Traffic Study Ireland Road)

Mr. Estes presented the Budget Request (Traffic Study Ireland Road). In working with Redevelopment staff, Public Works has identified a need to address the traffic on Ireland Road. It is anticipated that in order to serve future developments along Ireland Road, particularly the developments on St. Joseph Street, the existing system capacity may be insufficient and improvements to the street system may be required. The budget funds will be utilized for professional engineering services to study the Ireland Road Corridor. Staff requests Commission approval in the amount of \$15,000.

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

2. Budget Request (Erskine Golf Course Improvements)

Ms. Maradik presented the Budget Request (Erskine Golf Course Improvements). The City wishes to make improvements to the facilities located at Erskine Golf Course. The existing clubhouse and course require improvements in order to meet the current and future needs of its users. The improvements will support and enable the golf development plan that was recently outlined by the Director of Golf to the Park Board, and protect one of the largest Park assets in the City for the future. Staff requests Commission approval of a budget in the amount of \$1,000,000 to support the design and construction of improvements at Erskine Golf Course.

Aaron Perri, Executive Director of Venue Parks and Arts, stated this is a good way to invest dollars to provide quality of life in our neighborhoods. The Erskine Clubhouse has been used for weddings, proms, and formal events in its better years, and we are looking to restore it to its full use.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (Erskine Golf Course Improvements) submitted on July 27, 2017.

6. Progress Reports

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

7. Next Commission Meeting:

Thursday, August 10, 2017, 9:30 a.m.

8. Adjournment

Thursday, July 27, 2017, 9:53 a.m.



David Relos, Economic Resources

Marcia I. Jones, President

ITEM: 3A

REDEVELOPMENT COMMISSION
Redevelopment Commission Claims August 10, 2017 for approval

Claims
submitted Explanation of Project

324 RIVER WEST DEVELOPMENT AREA

Jones Petrie Rafinski	20,175.01	Downtown East West Streetscapes
Hull & Associates	9,924.72	GW Assessment & Remedy Evaluation at Ignition Pk
IDEM	450.00	Remediation
Abonmarche	1,250.00	Portage Prairie Area Sewer Study
Tri County News	61.20	Marriott Hotel Site Development at HOF

435 FUND DOUGLAS ROAD DEVELOPMENT AREA TIF
Major Moves Fund 412

185,608.00 Douglas Rd. Project
217,468.93

Total



Department of
Community Investment

Redevelopment Commission Agenda Item

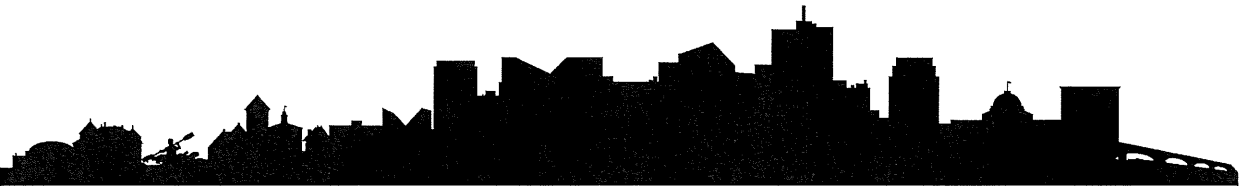
DATE: August 10, 2017
FROM: David Relos, Economic Resources *DR*
SUBJECT: Resolution No. 3398 (Conveyance of Certain Equipment to F Cubed)

On November 8, 2012 the Commission and F Cubed LLC entered in to an Economic Development Memorandum of Understanding, and on April 23, 2014 entered in to an Equipment Lease Agreement (Lease), where the Commission acquired and leased certain equipment to F Cubed.

Upon F Cubed leasing space for a term of not less than five years within a certain geographic area, the Lease included an option to purchase the equipment for \$1. This requirement has been fulfilled by F Cubed's lease agreement with Studebaker Building 84 within the Renaissance District, and F Cubed has exercised its option to purchase the equipment.

Staff requests approval of Resolution No. 3398, conveying to F Cubed the equipment included in the Lease between the parties, dated April 23, 2014.

INTERNAL USE ONLY: Project Code: N/A
Total Amount new in budget: N/A ; broken down by:
Acct # N/A
Going to BPW for Contracting? No Is this item ready to encumber now? N/A
Existing PO# Inc/Dec \$



RESOLUTION NO. 3398

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPROVING THE CONVEYANCE OF CERTAIN EQUIPMENT TO F CUBED LLC**

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

WHEREAS, on November 8, 2012, the Commission and F Cubed LLC (the “Company”) entered into that certain Economic Development Memorandum Of Understanding, as amended by that certain First Amendment To Economic Development Memorandum Of Understanding dated April 23, 2014 (collectively, the “Development Agreement”), and on April 23, 2014, the Commission and the Company entered into that certain Equipment Lease Agreement (the “Equipment Lease”) (together with the Development Agreement, the “Project Agreements”); and

WHEREAS, pursuant to the provisions of the Project Agreements, the Commission purchased certain equipment (the “Equipment”) for the Company’s use under the terms of the Equipment Lease in exchange for the Company’s satisfaction of certain development requirements; and

WHEREAS, in accordance with the provisions of the Project Agreements, the Company has relocated its South Bend Operations (as defined in the Project Agreements) to space situated within a building located in the South Bend Renaissance District (the “Building”) under the terms of a lease agreement with Studebaker Building 84 LLC, as landlord; and

WHEREAS, the Building constitutes a qualifying Alternate Location under the terms of the Project Agreements, and the length of the Company’s lease for space in the Building complies with the terms of Section 9 of the Equipment Lease; and

WHEREAS, pursuant to Section 9 of the Equipment Lease, the Company has exercised its option to purchase the Equipment from the Commission for the sum of One Dollar (\$1.00), which sum the Company has paid to the Commission; and

WHEREAS, the Commission desires to take all necessary action to convey ownership of the Equipment to the Company in recognition of the Company’s satisfaction of the above-referenced obligations under the Project Agreements; and

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

1. The Commission finds that the Company has satisfied the requirements of Section 9 of the Equipment Lease and is, therefore, entitled to purchase the Equipment from the Commission on the terms stated therein.

2. The Commission hereby approves, and will execute simultaneously with this Resolution, the Bill of Sale attached hereto as **Exhibit A** (the “Bill of Sale”) conveying ownership of the Equipment to the Company.

3. The Commission hereby authorizes and instructs Daniel Buckenmeyer of the City of South Bend Department of Community Investment to deliver the Bill of Sale to the Company and, in coordination with legal counsel, to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution, including without limitation the termination of any Uniform Commercial Code financing statement with respect to the Equipment conveyed to the Company under the Bill of Sale.

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

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on August 10, 2017, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

4000.0000031 40131785.002

EXHIBIT A

Bill of Sale

BILL OF SALE

This Bill of Sale is made by the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Seller”), in favor of F Cubed LLC, an Illinois limited liability company (the “Buyer”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby conveys to the Buyer all of the Seller’s right, title, and interest in and to the personal property described in Exhibit 1 attached hereto (the “Equipment”).

The Seller hereby conveys the Equipment to the Buyer in accordance with Seller’s Resolution No. 3398 dated August 10, 2017, subject to the terms and provisions of the Economic Development Memorandum Of Understanding by and between the Seller and the Buyer dated November 8, 2012, as amended by the First Amendment To Economic Development Memorandum Of Understanding dated April 23, 2014, and subject to the terms and provisions of the Equipment Lease Agreement dated April 23, 2014. Further, the Seller hereby conveys the Equipment to the Buyer as-is, where-is, and without representation or warranty of any kind. Without limiting the generality of the foregoing sentence, the Seller specifically disclaims any representation or warranty of merchantability or fitness for any particular use or purpose.

SOUTH BEND REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

Date: August 10, 2017

ACCEPTED:

F CUBED LLC, an Illinois limited liability company

Printed:

Its:

Date:

Exhibit 1 to Bill of Sale dated August 10, 2017

Description of Equipment

[See attached.]

PHASE I REQUESTED EQUIPMENT

LEGEND	Manufacturer	Quantity	Item	Part Number	Vendor	Suggested Cost	Sub-Total	Requirement	Alternative Suppliers
	Eppendorf	1	Auto-Pipette	5070	Eppendorf	\$28,531.40	\$28,531.40	Specific: Eppendorf Provides Special Software For Linking Auto-Pipette And Other Components	Eppendorf, Tecan, Hudson Robotics
	Agilent Technologies	2	Impedance Analyzer	E4980 A	Agilent	\$16,629.00	\$33,258.00	Specific: Precision LCR Meter, 20Hz To 2MHz, Software Compatible To Eppendorf Auto-Pipette	Agilent, Wayne Kerr, Quadtech
	Branntree Scientific	2	Syringe Pump	BS-9000 12	Branntree Scientific, Inc	\$1,500.00	\$3,000.00	Specific: Infusion Withdrawal Pump With 12 Channels And Digital Control Software (Connect To Eppendorf)	Pump Systems, Inc
	ELGA Labwater, LLC	1	Water Purification	PF3XXXMIKIT	Elga / Distributor	\$3,500.00	\$3,500.00	Generic: Chosen For Low-Price, Easy-To Use, Only Self-Contained Unit Offered	Siemens, Millipore, Sartorius
	VWR	1	Incubator	414004-614	VWR / Distributor	\$789.00	\$789.00	Generic: Must Have A Minimum Of 105 Liter Capacity And Inner And Outer Door Configuration	Labasco, Fisher Scientific
	National Package Service	1	Chemical Spill Kit	-	Distributor	\$156.73	\$156.73	Generic: This Kit Was Chosen Because It Has Worked Well At Innovation Park At Notre Dame And Inexpensive	U-Line, Interstate Products
	Fisher Scientific	1	Video Microscope	12-564-160	Fisher Scientific	\$6,231.00	\$6,231.00	Generic: However, The "Zoom" Function, Boom Swing-Arm Are Required, Optical Top Source Light	Zeiss, Nikon, VWR
	Ranco	3	Thermal Fused Lab Tables	-	Distributor	\$385.00	\$1,155.00	Generic: These Lab Tables Will Be Specifically Used In Biochip Production With The Eppendorf Equipment	Labasco, Herman-Miller
	Titnauer	1	Autoclave	Model 2340	Distributor	\$4,060.00	\$4,060.00	Generic: This Model Was Chosen For It's Larger Chamber Size Of 162 Square Inches	VWR, Labasco, Fisher Scientific
	Teche	1	Thermalcycler	Personal Cycler 3Prime 24 X 0.2ml	Distributor	\$2,229.00	\$2,229.00	Generic: However, This Device Does Have An Easier-To-Use Touch Screen And A Required 24 Unit Well Layout	Eppendorf, Fisher Scientific, VWR
	SAS	1	Portable Eye Wash	5135	Distributor	\$125.00	\$125.00	Generic: This Kit Was Chosen Because It Has Worked Well At Innovation Park At Notre Dame And Inexpensive	North Safety, U-Line
	Sorvall	1	Centrifuge	Micro 17	Distributor	\$1,577.00	\$1,577.00	Generic: This Kit Was Chosen Because It Offers The Right Speed (17K RPM) And Includes A Rotor	Beckman, VWR, Fisher Scientific
	Branson	1	Sonicator	-	Branson	\$3,800.00	\$3,800.00	Generic: However, We Are Using A Device That Was Used By ND Research And Is Known To Work	Qsonica, Biologics, Inc
TOTAL							\$88,412.13		

LEGEND

Specific
Generic

PHASE II REQUESTED EQUIPMENT

LEGEND	Manufacturer	Quantity	Item	Part Number	Vendor	Suggested Cost	Sub-Total	Requirement	Alternative Suppliers
	Eppendorf	1	Auto-Pipette	5070	Eppendorf	\$28,531.40	\$28,531.40	Specific: Eppendorf Provides Special Software For Linking Auto-Pipette And Other Components	Eppendorf, Tecan, Hudson Robotics
	Braintree Scientific	2	Syringe Pump	BS-9000 12	Braintree Scientific, Inc	\$1,500.00	\$3,000.00	Specific: Infusion Withdrawal Pump With 12 Channels And Digital Control Software (Connect To Eppendorf)	Pump Systems, Inc.
	Lab Research Products	1	-20C Refrigerator	MFP-2020	Distributor	\$5,545.35	\$5,545.35	Generic: Chosen For Low Price: Must Maintain A Constant -20 Centigrade Temperature	Fisher Scientific, VWR
TOTAL							\$37,076.75		

LEGEND
 Specific
 Generic



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: August 10, 2017
FROM: David Relos, Economic Resources *DR*
SUBJECT: Second Amendment to Temporary Use and Management Agreement
(DTSB)

This Second Amendment with DTSB is to update the list of parking lots they manage and add the Board of Public Works, who will be paying DTSB a monthly management fee for their services (parking enforcement, maintenance of landscaping, cleaning, safety patrols, signage, and snow and ice removal, etc.).

Staff requests approval of the Second Amendment to Temporary Use and Management Agreement with DTSB.

INTERNAL USE ONLY: Project Code: N/A
Total Amount new in budget: N/A ; broken down by:
Acct # N/A
Going to BPW for Contracting? No Is this item ready to encumber now? N/A
Existing PO# Inc/Dec \$



SECOND AMENDMENT TO TEMPORARY USE AND MANAGEMENT AGREEMENT

This Second Amendment To Temporary Use And Management Agreement (this “Second Amendment”) is made and entered into as of August 10, 2017 (the “Effective Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (“Owner”), the City of South Bend Board of Public Works (the “Board”), and Downtown South Bend, Inc., an Indiana non-profit corporation with offices at 217 South Michigan Street, South Bend, Indiana 46601 (“DTSB”).

RECITALS

A. Owner and DTSB entered into that certain Temporary Use And Management Agreement dated April 30, 2015, as amended by the First Amendment To Temporary Use And Management Agreement dated April 27, 2017 (collectively, the “Agreement”), regarding DTSB’s use and management of certain Premises located in the City of South Bend (the “City”).

B. Since the commencement of the Agreement, certain Premises have ceased to require DTSB’s services under the Agreement, and certain other surface parking lots now require DTSB’s services under the Agreement.

C. The parties wish to add the Board as a party to the Agreement, update the list of Premises subject to the Agreement, and to provide for additional compensation to DTSB for its services under the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the Agreement and this Second Amendment, and in accordance with Section 3 of the Agreement, the parties agree as follows:

1. The parties hereby agree that the City of South Bend Board of Public Works is added as a party to the Agreement as of the Effective Date of this Second Amendment.

2. The list of Premises set forth in Exhibit A to the Agreement is deleted in its entirety and replaced by the following:

<u>Lot #</u>	<u>Location</u>
--------------	-----------------

- | | |
|---|---|
| 1 | Parking lot located at the intersection of Main St. and Jefferson Blvd. (Parcel Key No. 018-3007-0231) [Owned by South Bend Redevelopment Commission] |
| 2 | Parking lot located at the St. Joseph County Public Library (Parcel Key Nos. 018-3008-027802, 018-3008-0279, 018-3008-0280, 018-3008-0281, 018-3008-0282, and 018-3008-028301) [Owned by South Bend Redevelopment Commission] |
| 3 | Parking lot located at 313 S. Lafayette Blvd. (Parcel Key Nos. 018-3009-0305 and 018-3009-0306) [Owned by Redevelopment Commission] |

- 4 Parking lot located at 117 S. Lafayette Blvd. (Parcel Key No. 018-3009-0289) [Owned by South Bend Board of Public Works]
- 5 Parking lot located at 214-216 W. Wayne St. (Parcel Key No. 018-3008-0251) [Leased by Mary Coyne Investments, LLC to City of South Bend]

3. Immediately following Section 7(b) of the Agreement, the following new subsection (c) is inserted:

(c) In addition to the Management Fee, DTSB will be entitled to a service fee in the amount of Three Hundred Dollars (\$300.00) per month for rendering services to the Owner and the Board in accordance with the terms of this Agreement (the "Service Fee"). The Service Fee will be payable by the Board to DTSB within a reasonable time after receipt of an invoice from DTSB.

4. Capitalized terms used but not otherwise defined in this Second Amendment will have the meanings set forth in the Agreement.

5. All terms and conditions of the Agreement will remain in full force and effect unless expressly modified by this Second Amendment.

6. This Second Amendment may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Second Amendment to be effective as of the Effective Date stated above.

CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT,
BY AND THROUGH THE SOUTH BEND
REDEVELOPMENT COMMISSION

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

Marcia I. Jones, President

By: _____
Printed: _____
Title: _____
Date: _____

ATTEST:

Donald E. Inks, Secretary

CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS

Gary Gilot, President

Therese Dorau, Member

Suzanna Fritzberg, Member

Elizabeth Maradik, Member

James Mueller, Member

ATTEST:

Linda Martin, Clerk

4000.0000049 37852496.002



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: August 10, 2017
FROM: David Relos, Economic Resources *DR*
SUBJECT: Memorandum of Assignment and Assumption of Ground and Airspace Lease
& Memorandum of Assignment and Assumption of Ground Lease (Leighton
Complex)

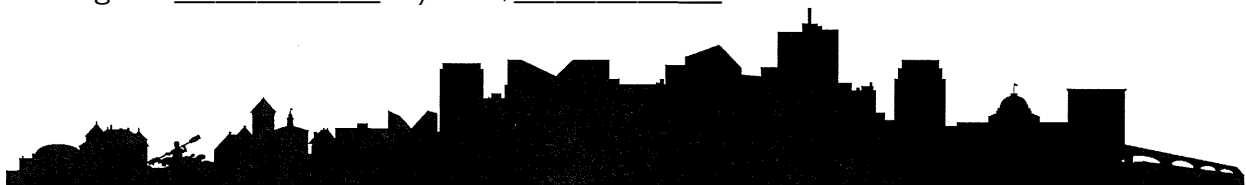
In an effort to consolidate the City's parking garage ownership and management, on September 15, 2016 the Commission approved the assignment to the Board of Public Works leases that were in its name related to the parking garages. Two of these leases were entered in to in 1998 between the Commission and developers of the two office buildings of the Leighton Complex.

These two ground leases allow the buildings to sit atop the lower level of the Leighton parking garage. In both instances they allow air rights above the ground, though one specifies a height limit while the other does not, and is the reason one includes "Airspace" in its name and the other does not.

Because the original ground leases were recorded, these Memorandums will be recorded and put on record their assignment to the Board of Public Works.

Staff requests approval of the Memorandum of Assignment and Assumption of Ground and Airspace Lease and the Memorandum of Assignment and Assumption of Ground Lease for the Leighton Complex's two office buildings.

INTERNAL USE ONLY: Project Code: _____ N/A _____
Total Amount new in budget: _____ N/A _____; broken down by:
Acct # _____ N/A _____
Going to BPW for Contracting? No Is this item ready to encumber now? N/A
Existing PO# _____ Inc/Dec \$ _____



Cross-Reference: Document No. 9810420

**MEMORANDUM OF ASSIGNMENT AND ASSUMPTION
OF GROUND AND AIRSPACE LEASE**

This Memorandum Of Assignment And Assumption Of Ground And Airspace Lease (this “Memorandum”) is made as of August 10, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission (the “Commission”), and the City of South Bend Board of Public Works (the “Board”) (each a “Party” and together the “Parties”).

RECITALS

WHEREAS, pursuant to the Commission’s Resolution No. 3361 dated September 15, 2016, and the Board’s Resolution No. 44-2016 dated September 27, 2016, the Commission and the Board entered into that certain Assignment And Assumption Of Garage-Related Agreements dated September 27, 2016 (the “Assignment”); and

WHEREAS, by the Assignment, the Commission assigned to the Board all of the Commission’s rights, interests, and obligations in, to, and under that certain Ground and Airspace Lease dated March 6, 1998, and recorded on March 9, 1998, as Document No. 9810420 in the Office of the Recorder of St. Joseph County (the “Ground Lease”); and

WHEREAS, the Parties desire to place as a matter of public record their respective interests as the assignor and the assignee, respectively, of the Ground Lease.

NOW, THEREFORE, the Parties state as follows:

1. Effective on September 27, 2016, the Commission assigned the Ground Lease to the Board, and the Board assumed all rights, interests, and obligations of the Commission under the terms and provisions of the Ground Lease.
2. No third party’s consent was required to effect the Parties’ assignment and assumption of the Ground Lease under the Assignment.
3. The recitals set forth above are true and correct and are hereby incorporated herein by reference.
4. This Memorandum will be governed by and construed in accordance with the laws of the State of Indiana.

[Signature pages follow.]

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

SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the South Bend Department of Redevelopment of the City of South Bend, Indiana

By: _____
Marcia I. Jones, President

ATTEST:

By: _____
Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared Marcia I. Jones and Donald E. Inks, known by me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission, and who, in such capacity, acknowledged the execution of the foregoing instrument as said Commission's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS

Gary Gilot
Gary Gilot, President

Therese Dorau
Therese Dorau, Member

Suzanna Fritzberg, Member

Elizabeth Maradik
Elizabeth Maradik, Member

James Mueller
James Mueller, Member

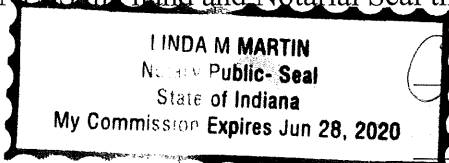
ATTEST:

Linda Martin
Linda Martin, Clerk

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared the Board of Public Works members, of the City of South Bend Board of Public Works, and acknowledged the execution of the foregoing instrument as said Board's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this 8 day of August, 2017.



Linda M. Martin
_____, Notary Public
Residing in St. Joseph County, IN

My Commission Expires: _____

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

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

4000.0000013 44697412.004

Cross-Reference: Document No. 9804643

**MEMORANDUM OF ASSIGNMENT AND ASSUMPTION
OF GROUND LEASE**

This Memorandum Of Assignment And Assumption Of Ground Lease (this “Memorandum”) is made as of August 10, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission (the “Commission”), and the City of South Bend Board of Public Works (the “Board”) (each a “Party” and together the “Parties”).

RECITALS

WHEREAS, pursuant to the Commission’s Resolution No. 3361 dated September 15, 2016, and the Board’s Resolution No. 44-2016 dated September 27, 2016, the Commission and the Board entered into that certain Assignment And Assumption Of Garage-Related Agreements dated September 27, 2016 (the “Assignment”); and

WHEREAS, by the Assignment, the Commission assigned to the Board all of the Commission’s rights, interests, and obligations in, to, and under that certain Ground Lease dated January 23, 1998, and recorded on February 3, 1998, as Document No. 9804643 in the Office of the Recorder of St. Joseph County (the “Ground Lease”); and

WHEREAS, the Parties desire to place as a matter of public record their respective interests as the assignor and the assignee, respectively, of the Ground Lease.

NOW, THEREFORE, the Parties state as follows:

1. Effective on September 27, 2016, the Commission assigned the Ground Lease to the Board, and the Board assumed all rights, interests, and obligations of the Commission under the terms and provisions of the Ground Lease.
2. No third party’s consent was required to effect the Parties’ assignment and assumption of the Ground Lease under the Assignment.
3. The recitals set forth above are true and correct and are hereby incorporated herein by reference.
4. This Memorandum will be governed by and construed in accordance with the laws of the State of Indiana.

[Signature pages follow.]



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: August 10, 2017
FROM: David Relos, Economic Resources *DR*
SUBJECT: Real Estate Purchase Agreement (Leighton & Wayne St garage retail spaces)

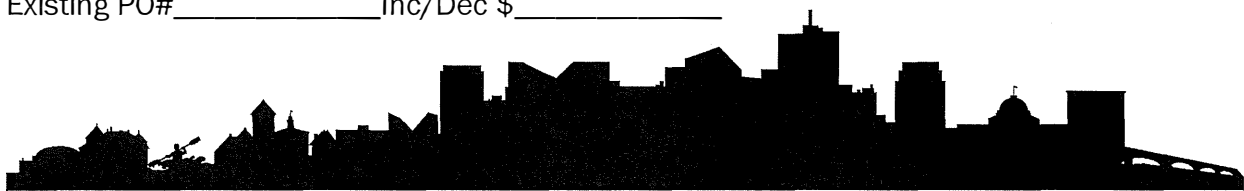
This Real Estate Purchase Agreement (Agreement) is for the Leighton and Wayne St. garage retail spaces. In late 2016 the Wayne St. garage's retail space was taken through the disposition process, and in early 2017 the Leighton retail spaces, with no bids being received for either.

Cressy & Everett Commercial Corporation would like to purchase these retail spaces. The Agreement includes:

- Purchase price of \$625,000
- Earnest money deposit of \$10,000
- Due diligence period of 120 days
- Assumption of current leases
- Subject to mutually agreeable forms of agreement with BPW regarding ownership and maintenance of the garages' facades and structures, and use restrictions for the Leighton spaces
- Subject to mutually agreeable form of agreement with the Park's Board for parking spaces in the Leighton and Wayne St. garages

Staff requests approval of this Real Estate Purchase Agreement with Cressy & Everett Commercial Corporation, for the Leighton and Wayne St. garages' retail spaces.

INTERNAL USE ONLY: Project Code: ___N/A___
Total Amount new in budget: ___N/A___; broken down by:
Acct # ___N/A___
Going to BPW for Contracting? No Is this item ready to encumber now? N/A
Existing PO# _____ Inc/Dec \$ _____



REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "Agreement") is made on August 10, 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 real property located in South Bend, Indiana (the "City"), comprised of the storefront parcels (the "Michigan Street Lots") abutting Michigan Street within the east side of the building commonly known as the Leighton Parking Garage at 109 W. Jefferson Boulevard in the City (the "Leighton Garage") and the storefront parcel (the "Wayne Street Lot") abutting Wayne Street within the south side of the building commonly known as the Wayne Street Garage at 121 W. Wayne Street in the City (the "Wayne Street Garage") (collectively, the "Property"), as more particularly described in attached **Exhibit A**.

C. Pursuant to the Act, Seller adopted its Resolution No. 3365 on November 10, 2016, whereby Seller established an offering price of Two Hundred Thirty-Two Thousand Dollars (\$232,000.00) for the Wayne Street Lot. Pursuant to the Act, on November 10, 2016, Seller authorized the publication, on November 18, 2016, and November 25, 2016, respectively, of a notice of its intent to sell the Wayne Street Lot and its desire to receive bids for the Wayne Street Lot on or before December 15, 2016. As of December 15, 2016, Seller received no bids for the Wayne Street Lot, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Wayne Street Lot to Buyer on the terms stated in this Agreement.

D. Pursuant to the Act, Seller adopted its Resolution No. 3383 on February 23, 2017, whereby Seller established an offering price of Eight Hundred Sixty-Seven Thousand Dollars (\$867,000.00) for the Michigan Street Lots. Pursuant to the Act, on February 23, 2017, Seller authorized the publication, on March 3, 2017, and March 10, 2017, respectively, of a notice of its intent to sell the Michigan Street Lots and its desire to receive bids for the Michigan Street Lots on or before March 23, 2017. As of March 23, 2017, Seller received no bids for the Michigan Street Lots, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Michigan Street Lots to Buyer on the terms stated in this Agreement.

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

1. OFFER AND ACCEPTANCE

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

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 AND EARNEST MONEY DEPOSIT

A. Purchase Price. The purchase price for the Property shall be Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) (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").

B. Earnest Money Deposit. Within five (5) business days after the Contract Date, Buyer will deliver to Seller the sum of Ten Thousand Dollars (\$10,000.00), which Seller will hold as an earnest money deposit (the "Earnest Money Deposit"). Seller will be responsible for disposing of the Earnest Money Deposit in accordance with the terms of this Agreement. The Earnest Money Deposit shall be credited against the Purchase Price at the Closing or, if no Closing occurs, refunded or forfeited as provided below.

C. Termination During Due Diligence Period. If Buyer exercises its right to terminate this Agreement by written notice to Seller in accordance with Section 3 below, the Earnest Money Deposit shall be refunded to Buyer within thirty (30) days after Seller receives Buyer's written notice of termination. If Buyer fails to exercise its right to terminate this Agreement by written notice to Seller within the Due Diligence Period, then the Earnest Money Deposit shall become non-refundable.

D. Liquidated Damages. If Seller complies with its obligations hereunder and Buyer, not having terminated this Agreement during the Due Diligence Period in accordance with Section 3 below, fails to purchase the Property on or before the Closing Date, the Earnest Money Deposit

shall be forfeited by Buyer and retained by Seller as liquidated damages in lieu of any other damages.

3. BUYER'S DUE DILIGENCE

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to use the Property for commercial retail purposes consistent with the Property's use as of the Contract Date (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 sole 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, financial feasibility, the proposed forms of the Maintenance And Façade Easement Agreement and the Parking Agreement (as hereinafter defined), and the like, as applicable.

B. Due Diligence Period. Buyer shall have a period of one hundred twenty (120) 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. Environmental Site Assessment. 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 this Section 3.

E. 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. In the event of such termination, the Earnest Money Deposit will be disposed of in accordance with Section 2 above.

4. SELLER'S DOCUMENTS

Within thirty (30) days after the Contract Date, Seller will deliver to Buyer a copy of all material information in Seller's possession concerning the Property, including, but not limited to (a) environmental inspection, engineering, title, and survey reports and documents, (b) a recorded copy of the subdivision plat defining the Michigan Street Lots, (c) a recorded copy of the subdivision plat defining the Wayne Street Lot, (d) copies of leases, agreements, and other legal documents affecting any portion of the Property as of the Contract Date, and (e) management reports for at least the three (3) months prior to the Contract Date and, as they become available, for each month during the Due Diligence Period. From time to time following the Contract Date, Seller will make reasonable efforts to obtain and provide such other documents as Buyer may reasonably request for purposes of its Due Diligence review. In the event the Closing does not occur, Buyer will immediately return all reports and documents to Seller's Representative with or without a written request by Seller.

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 after 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

Within twenty (20) days after Buyer's receipt of the Title Commitment, Buyer shall give Seller written notice of any objections to the Title Commitment. Within twenty (20) days after Buyer's receipt of the Survey, Buyer shall give Seller written notice of any objections to the Survey. Any exception identified in the Title Commitment or Survey to which written notice of objection is not given within such respective periods 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 in accordance with Section 3 above. In the event of such termination, the Earnest Money Deposit will be disposed of in accordance with Section 2 above. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

8. DISPUTE RESOLUTION

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

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

9. NOTICES

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

10. CLOSING

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

B. Closing Procedure.

(i) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of the Deed, in the form attached hereto as **Exhibit B**, conveying the Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than Permitted Encumbrances, and the Title Company's delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer in accordance with Section 6 above.

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

(iii) At Closing, Buyer will execute and deliver the Assignment And Assumption Of Leases attached hereto as **Exhibit C** (the "Assignment"), in accordance with Section 11 below.

(iv) At Closing, Seller will deliver to Buyer an estoppel certificate, in substantially the form attached hereto as **Exhibit D**, with respect to and signed by each tenant occupying space in the Property as of the Closing Date.

C. Conditions Precedent to Closing. Unless waived by the Parties before or at Closing, the following shall be conditions precedent to Closing:

(i) Neither Party will be obligated to complete the transaction contemplated in this Agreement unless, before the Closing Date, Buyer and the City of South Bend, acting by and through its Board of Public Works (the "BPW"), the owner of the Leighton Garage and the Wayne Street Garage, have agreed upon the form of a written agreement to be delivered by Buyer and the BPW at Closing concerning ownership and maintenance of the façade of the Leighton Garage, maintenance of the Leighton Garage structure, ownership and maintenance of the façade of the Wayne Street Garage, maintenance of the Wayne Street Garage structure, use restrictions on the Michigan Street Lots and the Wayne Street Lots, and other matters of mutual interest (the "Maintenance And Façade Easement Agreement"). The Commission agrees to endorse and support Buyer's effort to reach such an agreement with the BPW.

(ii) Neither Party will be obligated to complete the transaction contemplated in this Agreement unless, before the Closing Date, Buyer and the City of South Bend, acting by and through its Board of Park Commissioners (the "BPC"), acting as the BPW's agent for management and operations of the parking facilities within the Leighton Garage under that certain Agency Agreement dated October 24, 2016, have agreed upon the form of a written agreement to be delivered by Buyer and the BPC at Closing concerning the provision of no more than sixteen (16) parking spaces in the Leighton Garage for use by Buyer's tenants and Buyer's tenants' employees, and of no more than three (3) parking spaces in the Wayne Street Garage for use by Buyer's tenants and Buyer's tenants' employees (the "Parking Agreement"). Such agreement will provide that the BPC's provision of said parking spaces will be subject to the parking rules and rates established under Resolution No. 42-2016 of the BPW, as confirmed by Resolution No. 4603-16 of the South Bend Common Council, as such rules and rates may be amended from time to time by official action of the BPW and the South Bend Common Council pursuant to IC 36-9-11-7, as amended. The Commission agrees to endorse and support Buyer's effort to reach such an agreement with the BPC.

Notwithstanding any provision of this Agreement to the contrary, in the event this transaction is not completed due to the failure of one or more of the foregoing conditions, Seller shall have no liability for any of Buyer's losses, damages, costs, or expenses of any kind, including attorney fees, incurred in connection with its proposed acquisition of the Property under this Agreement, provided, however, that Seller will return the Earnest Money Deposit to Buyer in the event this transaction is not completed due to the failure of one or more of the foregoing conditions that is within Seller's responsibility and control.

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

11. ACCEPTANCE OF PROPERTY AS-IS AND SUBJECT TO EXISTING LEASES

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 the leases of space within the Michigan Street Lots in effect as of the Closing Date (collectively, the "MSS Leases"). Buyer agrees to be bound by the terms of the MSS Leases and to assume the rights and obligations of the lessor in accordance with the same. Seller will recommend the BPW's approval and execution of the Assignment in advance of the Closing Date. At Closing, Buyer will execute and deliver the Assignment evidencing Buyer's assumption of the MSS Leases effective immediately upon Closing.

12. TAXES

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

13. REMEDIES

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

14. COMMISSIONS

The Parties mutually acknowledge and warrant to one another that neither Buyer nor Seller is represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement. It is further understood and disclosed that Buyer is a licensed real estate broker in the State of Indiana.

15. INTERPRETATION; APPLICABLE LAW

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

16. ENTIRE AGREEMENT

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

17. ASSIGNMENT

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

18. BINDING EFFECT; COUNTERPARTS; SIGNATURES

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

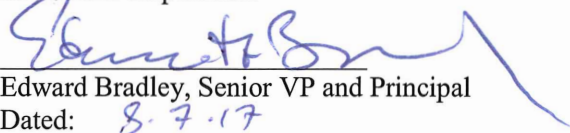
19. AUTHORITY TO EXECUTE; EXISTENCE

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

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: 8.7.17

SELLER:

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

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

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EXHIBIT A

Description of Property

Michigan Street Lots

Lots 2 through 9 as shown on the recorded plat of Leighton Plaza First Minor Subdivision recorded on February 23, 2017, as Document No. 1704410 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key Nos. 018-3006-019002, 018-3006-019003, 018-3006-019004, 018-3006-019005, 018-3006-019006, 018-3006-019007, 018-3006-019008, 018-3006-019009]

Wayne Street Lot

Lot 2 of the recorded plat of Wayne Street Parking Garage Minor Subdivision recorded on February 19, 2016, as Document No. 1604082 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 018-3003-005801]

EXHIBIT B

Form of Special Warranty Deed

SPECIAL WARRANTY DEED

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

CONVEYS AND SPECIALLY WARRANTS to 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 2 through 9 as shown on the recorded plat of Leighton Plaza First Minor Subdivision recorded on February 23, 2017, as Document No. 1704410 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key Nos. 018-3006-019002, 018-3006-019003, 018-3006-019004, 018-3006-019005, 018-3006-019006, 018-3006-019007, 018-3006-019008, 018-3006-019009]

and

Lot 2 of the recorded plat of Wayne Street Parking Garage Minor Subdivision recorded on February 19, 2016, as Document No. 1604082 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 018-3003-005801]

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

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses, except as agreed by the Grantor and the Grantee under the terms of the Real Estate Purchase Agreement dated August 10, 2017; 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 and any design review guidelines associated therewith.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

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

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

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

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

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

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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

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

EXHIBIT C

Form of Assignment And Assumption Of Leases

ASSIGNMENT AND ASSUMPTION OF LEASES

This Assignment And Assumption Of Leases (this “Assignment”) dated as of _____, 2017 (the “Effective Date”), is entered into by and between the City of South Bend, acting by and through its Board of Public Works (the “Board”), and 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 City of South Bend (the “City”), through its governing bodies, has constructed, equipped, maintained, and operated the parking facilities located at 109 W. Jefferson Boulevard (the “Leighton Garage”) and 121 E. Wayne Street (the “Wayne Street Garage”) (collectively, the “Garages”).

B. The Board holds legal title to the Garages and, pursuant to the Assignment And Assumption Of Garage-Related Agreements dated September 27, 2016, accepted from the South Bend Redevelopment Commission (the “Commission”) the assignment of certain leases of storefront retail space in the Michigan Street Shops (the “Leases”). Following the Board’s assumption of the Leases on September 27, 2016, certain of the Leases were amended.

C. In accordance with Section 11 of the Real Estate Purchase Agreement between the Commission and the Company dated August 10, 2017 (the “Purchase Agreement”), the Company desires to assume all of the Board’s rights, powers, privileges, reservations, obligations, liabilities, and duties under the Leases (as the same have been amended from time to time).

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, the Board and the Company, intending to be legally bound, agree as follows:

AGREEMENT

1. Assignment. The Board hereby assigns, sets over, transfers, grants, and conveys unto the Company, its successors and assigns, all of the Board’s rights, powers, privileges, reservations, obligations, liabilities, and duties, of any kind or character, as the lessor under the following Leases:

- (a) Lease by and between the Commission and J Weldy, LLC, as successor-in-interest to Bruno Cataldo, dated August 1, 2010, as amended by the Second Amendment to Lease, dated January 13, 2014, and the Third Amendment to Lease, dated November 22, 2016, collectively attached hereto in reverse chronological order as Exhibit 1;
- (b) Lease by and between the Commission and First Church of Christ Scientist South Bend, dated September 7, 2007, as amended by the First Amendment

to Lease, dated August 16, 2012, collectively attached hereto in reverse chronological order as Exhibit 2;

- (c) Lease by and between the Commission and Le Peep of South Bend, Inc., dated October 20, 2000, as amended by the First Amendment to Lease, dated February 13, 2003, the Second Amendment to Lease, dated November 2, 2007, the Third Amendment to Lease, dated November 1, 2008, the Fourth Amendment to Lease, dated May 10, 2011, and the Fifth Amendment to Lease, dated September 27, 2016, collectively attached hereto in reverse chronological order as Exhibit 3;
- (d) Lease by and between the Commission and Gordon Ventures, LLC d/b/a Edible Arrangements, dated October 11, 2012, attached hereto as Exhibit 4; and
- (e) Lease by and between the Commission and Times Five, LLC d/b/a Linden Grill, dated April 27, 2016, attached hereto as Exhibit 5.

2. Assumption. The Company hereby accepts the foregoing assignment and assumes and agrees to perform all of the obligations, liabilities, and duties of the lessor under the Leases, whether presently existing or arising hereafter, from and after the date upon which this Assignment is delivered to the Company in accordance with Section 11 of the Purchase Agreement.

3. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the Board and the Company and their respective successors and assigns.

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

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

[Signature page follows.]

IN WITNESS WHEREOF, the Board and the Company have executed this Assignment
And Assumption Of Leases as of the Effective Date stated above.

BOARD:

City of South Bend
Board of Public Works

Gary Gilot, President

Therese Dorau, Member

Elizabeth Maradik, Member

James Mueller, Member

David Relos, Member

ATTEST:

Linda Martin, Clerk

COMPANY:

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



Edward Bradley, Senior VP and Principal

Dated: 8.7.17

EXHIBIT D

Form of Tenant Estoppel Certificate

TENANT ESTOPPEL CERTIFICATE

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

Tenant hereby certifies to Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation (the "Purchaser"), who, in material reliance on the certifications included in this Certificate, is purchasing the Property pursuant to that certain Real Estate Purchase Agreement by and between the Purchaser and the South Bend Redevelopment Commission, dated August 10, 2017, that as of the Effective Date:

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

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

3. The current term of the Lease commenced on _____, and will end on _____. At the conclusion of the current term, Tenant will have the option to renew the Lease for _____ additional term(s) of _____ year(s) each.

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

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

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

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

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

8. Tenant has read this Certificate and acknowledges and understands the certifications and representations made herein. Tenant hereby executes this Certificate intending reliance hereon by Purchaser. Tenant will defend, indemnify, and hold harmless the City of South Bend (including all of its boards, commissions, and officials) against any harm or damages arising out of Tenant's certifications and representations made herein. Tenant has full authority to execute this Certificate, which has been duly authorized by all necessary action.

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

Tenant:

By: _____

Printed:

Its:

Dated:



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: August 10, 2017
FROM: Liz Maradik, Planner
SUBJECT: Seitz Park Survey Professional Services Agreement

Staff requests approval of a professional services agreement with Abonmarche Consultants, Inc. in an amount not to exceed \$6,200 in order to complete a boundary survey of Seitz Park and the surrounding area. The survey work will assist in the development of final plans for Seitz Park and the adjacent portion of the East Bank Trail, furthering the implementation of the Riverfront Parks & Trails Conceptual Framework.

INTERNAL USE ONLY: Project Code: 17J030
Total Amount **new**/change (inc/dec) in budget: \$6,200; 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? Yes
Existing PO# _____ Inc/Dec \$ _____



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission ("Owner") and

Abonmarche Consultants (Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Seitz Park Area Boundary (“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

Field Survey

PROJECT SCOPE

The proposed project consists of gathering field data to create a base map/boundary survey (referenced in state plain coordinates) of the Seitz park area (see attached map for limits). Client to provide title work for the properties involved.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period:

1. **Field Survey** **4 Weeks from Authorization to Proceed and signed Contract**

- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding 3 months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within ~~30~~ **35** days of receipt. ~~If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.~~ In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all **non-disputed** claims against Engineer for any such suspension. ~~Payments will be credited first to interest and then to principal.~~

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all **non-disputed** services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and

consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to **\$6,200** or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

~~7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses.*~~

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. ~~An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.~~

The following Lump Sum amount for each task:

- a. Field Survey **\$6,200**
- 2. Engineer's Standard Hourly Rates are attached as Appendix 1.

3. The total compensation for services and reimbursable expenses is not to exceed **\$6,200**.

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates


Appendix 2, Map of Project Limits

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
South Bend Redevelopment
Commission, governing body of the
City of South Bend Department of
Redevelopment

Engineer:
Abonmarche Consultants, Inc.

By: _____
Title: Marcia I. Jones, President

By: 
Title: Michael J. Rozycki, Survey Manager

Attest:
Title: Donald E. Inks, Secretary

Date: _____

Date: 08/08/2017

Engineer License or Firm's Certificate No. LS20500010
State of: Indiana

Address for giving notices:
227 W. Jefferson Boulevard, Suite 1400 S., South Bend,
IN, 46601

Address for giving notices:
750 Lincoln Way East, South Bend, IN 46601

Designated Representative (Paragraph 8.03.A):
Elizabeth Maradik

Designated Representative (Paragraph 8.03.A):
Michael J. Rozycki

Title: Planner

Title: Survey Manager

Phone Number: 574-235-5821

Phone Number: 574-220-4544

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: emaradik@southbendin.gov

E-Mail Address: mrozycki@abonmarche.com

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated **8-08-2017**.

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

Principal	\$ <u>225.00/hour</u>
Project Manager	<u>175.00/hour</u>
Project Engineer	<u>135.00/hour</u>
Project Surveyor	<u>125.00/hour</u>
Staff Engineer	<u>85.00/hour</u>
Cadd Technician	<u>78.00/hour</u>
1 Person Survey Crew	<u>95.00/hour</u>
2 Person Survey Crew	<u>125.00/hour</u>
Support Staff	<u>65.00 /hour</u>

