

**ZION UNITED CHURCH OF CHRIST, AND  
CITY OF SOUTH BEND, INDIANA  
PARKING LOT IMPROVEMENT AND  
SHARED USE LEASE AGREEMENT**

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This Parking Lot Improvement and Shared Use Lease Agreement (the "Agreement") is made effective as of September 10, 2018 ("Effective Date") by and between Zion United Church of Christ ("Zion Church"), 715 E. Wayne Street, South Bend, Indiana 46617-3019 (the "Lessor") and the City of South Bend Indiana, acting by and through its Board of Park Commissioners (the "Lessee") (Each a "Party" and together the "Parties"), for the lease, shared use and improvement of the parking lot area of Lessor (hereinafter, the "Parking Premises").

1. TERM, TERMINATION AND RENEWAL. The term of this Agreement shall commence as of the Effective Date and continue for an initial lease term of ten (10) years. The Agreement shall automatically renew for three (3) successive five (5) year lease terms, for a total maximum term of twenty-five (25) years. Except for material breach, neither Party may terminate this Agreement during the initial term. Upon the expiration of the Initial Term or during any Renewal Term, either Party may terminate this Agreement by providing thirty (30) days prior written notice to the other Party.
2. OWNERSHIP AND FIRST OPTION TO PURCHASE. Lessor owns or has perpetual easement rights to the Parking Premises located at Zion Church, more particularly described as:

Lot 248:

34 Ft N Side Lot 249 W ½ Vac alley E & Adj Cottrells 1st Add To Lowell Vac Ord#10227-13 7/15/2013 [Parcel Key Number 018- 6002-001801]

Lot 249:

32 Ft S Side Lot 249 W1/2 Vac alley E & Adj Cottrells 1<sup>st</sup> Add Vac Ord #10227-13 07-15-13. [Parcel Key Number 018-6002-018]

Lots 250 and 251:

250 W1/2 Vac alley E & Adj Cottrells 1<sup>st</sup> Add 14/15 Vac Ord #10227-13 07-15-2013 [Parcel Key Number 018-6002-0019] and 251 W1/2 Vac alley E & Adj Cottrells 1<sup>st</sup> Add Vac Ord #10227-13 07-15-2013. [Parcel Key Number 018-6002-0020]

The full and complete legal descriptions of the Premises are attached herein as Exhibit "A".

In the event Lessor elects or is forced to sell said Premises during the Initial Term or any Renewal Term of this Agreement, Lessor grants Lessee an exclusive first option to

purchase ("First Option to Purchase") the Parking Premises, using the following procedure:

Lessor shall provide Lessee with prior written notice of its intention to sell the Parking Premises. Lessee shall have thirty (30) days from the date of receipt of Lessor's notice to make an offer to purchase the Parking Premises for a purchase price determined by a qualified real estate appraisal paid by the Lessee. If Lessor disagrees with Lessee's appraised value, Lessor may obtain its own qualified real estate appraisal at its expense. If the Parties still do not agree on a purchase price, the purchase price shall be the higher of the two appraisals. In determining the appraised value of the Parking Premises, there shall be no credit given for Lessee improvements to the Parking Premises. Failure of Lessee to make an offer to purchase within thirty (30) days following receipt of notice from Lessor, shall extinguish the First Option to Purchase, which shall not be applicable during any subsequent remaining term of this Agreement.

3. **RENT.** Within 10 business days from the effective date of this Agreement, Lessee shall pay the Lessor a one-time payment in the amount of Five Thousand Dollars (\$5,000.00). In addition to the one-time payment, Lessee shall pay annual rent to Lessor in the amounts herein provided. The annual rent for the first five (5) years of this Agreement shall be Twelve Thousand Dollars (\$12,000.00). The annual rent shall be increased by ten percent (10%) every 5 years of this Agreement, beginning at year 5 of the Agreement. The payment escalation schedule is as follows:

<b>RENT ESCALATION SCHEDULE (10% Escalation Every 5 Years Beginning at Year 5)</b>				
<b>1-5</b>	<b>5-10</b>	<b>10-15</b>	<b>15-20</b>	<b>20-25</b>
\$12,000.00	\$13,200.00	\$14,520.00	\$15,972.00	\$17,569.00
\$12,000.00	\$13,200.00	\$14,520.00	\$15,972.00	\$17,569.00
\$12,000.00	\$13,200.00	\$14,520.00	\$15,972.00	\$17,569.00
\$12,000.00	\$13,200.00	\$14,500.00	\$15,972.00	\$17,569.00
\$12,000.00	\$13,200.00	\$14,520.00	\$15,972.00	\$17,569.00
<b>Total:</b>	<b>Total:</b>	<b>Total:</b>	<b>Total:</b>	<b>Total:</b>
\$60,000.00	\$66,000.00	\$71,600.00	\$79,860.00	\$87,845.00

The annual rent shall be paid on a lump basis. The first payment, in the amount of Three Thousand Dollars (\$3,000.00), for the months of October, November, and December of 2018, shall be paid by Lessee on or before October 1, 2018. Subsequent annual payments shall be paid no later than January 1st of each calendar year of this Agreement.

4. **USES.** The Parking Premises shall be used for:

Lessee

- a. Daily/weekly/monthly permit parking Lessee staff, including Venues, Parks & Arts (“VPA”) employees.
- b. Special event parking, including but not limited to, parking by special event attendees, organizers and volunteers and restricted access parking for Howard Park renters.
- c. Public parking by persons accessing Howard Park.

Lessee shall develop and install signage acceptable to Lessor to explain permitted uses and restrictions. Lessee agrees not to erect, place or permit the erection or placement of temporary structures on the Parking Premises lot surface. The Lessee agrees not to cause or permit tent stakes or similar objects to be installed, nailed or otherwise embedded into the Parking Premises lot surface.

Lessor

- a. Parking for Lessor attendees on Sundays.
- b. Parking for attendees for meetings, functions and special events of Lessor.
- c. 12 Parking spaces of Lessor’s exclusive use; all as set forth below in Paragraph 7.

- 5 IMPROVEMENTS. Lessee, upon agreement from Lessor, which consent shall not be unreasonably withheld, shall facilitate changes, enhancements and/or improvements to the Parking Premises, as depicted in Exhibit B, incorporated herein by reference and attachment (the “Improvements”). The Improvements to the Parking Premises are tenant improvements which shall remain with land upon termination of this Agreement. Upon termination of the Agreement, Lessor shall have no obligation to repay Lessee for the Improvements.
- 6 WARRANTY. Lessee warrants that the Improvements to the Parking Premises furnished by the Lessee shall be performed in good and workmanlike manner. Lessee further warrants that the Improvements shall be free of any defect in equipment, material, design, or workmanship. Upon receipt of notice from Lessor, and following a reasonable investigation as to causation, Lessee agrees to remedy any failure to conform, or any defect in the Improvements caused solely by the negligence of Lessee or a contractor engaged by Lessee, normal wear and tear excepted.
- 7 SHARED USE PARKING AND SCHEDULING. Lessee shall designate and mark 12 parking spaces for the exclusive use of Lessor at all times. Lessor shall approve the location of the 12 parking spots. Lessor shall have exclusive use of the Parking Premises each Sunday from 1 a.m. to 3 p.m., and for Lessor special events, including but not limited to, weddings, christenings and funerals. Lessor shall provide Lessee with reasonable advance notice of Lessor special event parking dates and times. The Parties shall coordinate and managing scheduling of parking through the development of a shared use calendar (“Shared Use Calendar”), identifying primary and secondary scheduling contacts.

- 8 FEES. Lessee may charge, collect and retain all revenues from regular, daily or special event parking from Lessee use of Parking Premises. Lessor may charge and retain all revenues for any special events that are organized by Lessor.
- 9 SUPERVISION & ENFORCEMENT. With the exception of scheduled and permitted Lessor events, the Lessee shall be responsible for supervision and enforcement of parking on the Parking Premises.
- 10 SECURITY. With the exception of scheduled and permitted Lessor events, the Lessee shall be responsible for security of the Parking Premises consistent with the level of security provided at other Lessee venues, operations and events.
- 11 MAINTENANCE. Lessee shall be responsible for the on-going and annual maintenance of the Parking Premises and for the ongoing maintenance of lighting and associated utility costs. With the exception of permitted and scheduled Lessor events, the Lessee shall be responsible for trash removal from the Parking Premises.
- 12 SNOW REMOVAL. Lessee shall be responsible for snow removal from the Parking Premises, including the 12 reserved Lessor parking spaces, adjacent alleys and public sidewalks immediately surrounding the Parking Premises by 8:30 AM every morning. Snow removal procedures shall include installation of reflective markers to surrounding Parking Premises landscaping and infrastructure. Lessee agrees to not dump plowed snow on Lessee lawn or to block access to reserved parking spaces or refuse containers. Lessor shall be responsible for snow removal from other areas of Lessor property.
- 13 RESTITUTION AND REPAIR. Lessor shall be responsible for any Parking Premises damage caused at or during permitted and scheduled Lessor events. The Lessee shall be responsible for any Parking Premises damage caused at or during all other times.
- 14 INSURANCE. The Lessee maintains blanket insurance coverage over real and personal property and is covered by a non-reverting insurance premium and liability reserve fund created by the Lessee, pursuant to Indiana Code 34-13-3-4, as amended from time to time. The Lessee shall maintain insurance coverage throughout the term of this Agreement.

Lessor maintains a commercial general liability insurance policy with limits in the following amounts:

Each Occurrence Limit: \$2,000,000  
General Aggregate Limit: \$4,000,000

Lessor shall maintain commercial general liability coverage throughout the term of this Agreement, and upon request, agrees to provide the Lessee with a Certificate of Insurance.

- 15 INDEMNIFICATION. Each Party agrees to defend, indemnify and save harmless the other Party from and against any and all claims, losses, actions, damages, liability and expenses (including reasonable fees and expenses of legal counsel) arising out its material breach of this Agreement.
- 16 GOVERNING LAW. This Agreement is governed by and construed according to the laws of the State of Indiana. Any action to enforce the terms of this Agreement or to construe the terms of this Agreement must be filed in the State Courts of St. Joseph County, Indiana. Due to the complexity, high cost and time involved in commercial litigation before a jury, the parties knowingly, voluntarily, and irrevocably waive any and all rights to trial by jury of any dispute to enforce the terms of or to construe the terms of this Agreement.
- 17 RECORDATION. The Parties agree that this lease shall not be recorded, but rather a Memorandum of Lease shall be prepared by Lessee and shall be promptly executed, delivered, and recorded in the Office of the Recorder of St. Joseph County by Lessee, with a recorded copy provided to Lessor.
18. NOTICES. Any notice required or permitted to be given under the terms of this Agreement shall be deemed given when reduced to writing and placed in the United States Mail, with first-class and certified mail, return receipt requested, postage fully prepaid, and addresses to the other Party at the address shown, as follows:
- A. Zion United Church of Christ  
Attn: President of the Elders  
211 South St. Peter Street  
South Bend, Indiana 46617
- B. City of South Bend  
Venues Parks and Arts Department  
Attn: Executive Director  
301 S. St. Louis Blvd.  
South Bend, Indiana 46617
19. AUTHORITY. The Parties warrant that each has approved the terms of this Agreement and the person signing on behalf of each Party is duly authorized to execute this Agreement.
20. RELATIONSHIP. Nothing contained herein shall be deemed or construed to create between the Parties any relationship other than that of landlord and tenant.
21. SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided herein, this Agreement, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Lessor and Lessee.

22. ENTIRE AGREEMENT. This Agreement and the exhibit(s) attached hereto sets forth all the covenants, provisions, agreements, conditions and understandings between the Parties concerning the matters contained herein and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.
23. INTERPRETATION and SURVIVAL. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. It is agreed that, without limiting any other provision, all obligations of the Parties to indemnify, hold harmless, and/or defend the other shall survive the termination or cancellation of this Agreement.
24. SEVERABILITY. The invalidity of any provision, clause, or phrase will not serve to render the balance of this Agreement ineffective or void.
25. COUNTERPARTS AND EXECUTION. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All Parties to this Agreement acknowledge that they are relying upon the advice of counsel and enter into this Agreement pursuant to their own free will.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

(LESSOR)

**ZION UNITED CHURCH OF  
CHRIST**

Thomas W. Whiskey  
Printed Name

[Handwritten Signature]  
Signature:

President, Board of Elders  
Title

(LESSEE)

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS**

\_\_\_\_\_  
Mark Neal, President

\_\_\_\_\_  
Consuella Hopkins, Vice President

\_\_\_\_\_  
Aimee Buccellato, Member

\_\_\_\_\_  
Dan Farrell, Member

ATTEST:

\_\_\_\_\_  
Eva Ennis, Clerk

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

Before me, the undersigned, a Notary Public for and in said County and State this \_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared \_\_\_\_\_, \_\_\_\_\_ of Zion Church of Christ and acknowledge execution of the foregoing Agreement on behalf of the organization.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_, Notary Public  
Resident of St. Joseph County, Indiana

My Commission expires: \_\_\_\_\_

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

Before me, the undersigned, a Notary Public for and in said County and State this \_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared Mark Neal and Eva Ennis, known to me to be the President and Clerk, of the South Bend, Indiana Board of Park Commissioners and acknowledge execution of the foregoing Agreement on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_, Notary Public  
Resident of St. Joseph County, Indiana

My Commission expires: \_\_\_\_\_



## **EXHIBIT A**

### **Description of Property**

Lot 248:

Lot or parcel of land Thirty-four (34) feet in width, North and South, taken off the entire length of the North side of Lot Numbered Two Hundred Forty nine (249) as shown on the recorded Plat of Samuel L. Cottrell's Addition to the Town of Lowell, now within and a part of the City of South Bend, in St. Joseph County, Indiana. Recorded on June 24, 1963 in book 639 and page 355 in the St. Joseph County Recorder's Office. [Parcel Key Number 018-6002-00801], together with the west one-half of the vacated alley east of and adjacent thereto (Vac Ord #10227-13, 7/15/2013).

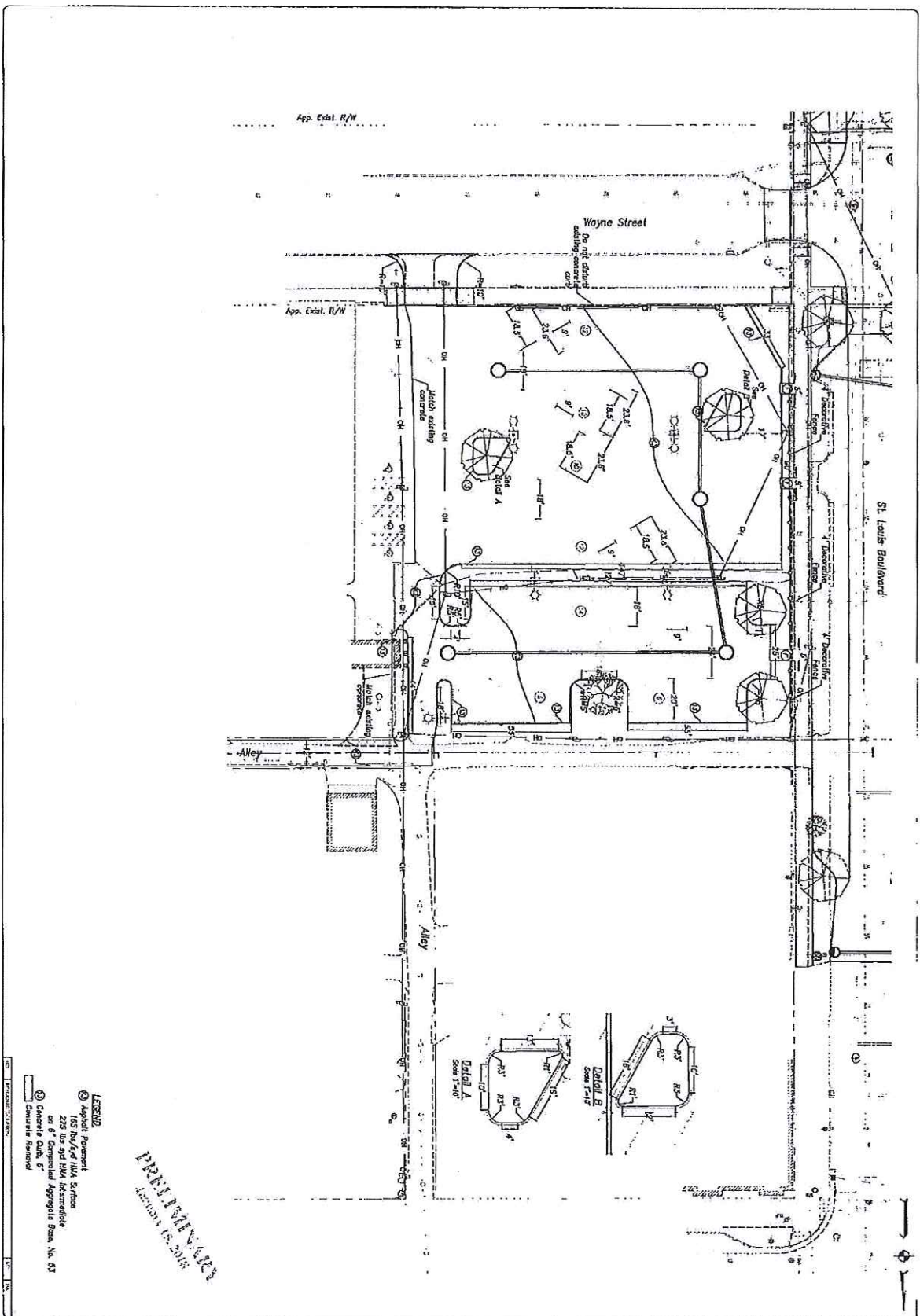
Lot: 249:

Lot or parcel of land thirty-two (32) feet in width, North and South, taken off of and from the entire length of the South side of Lot Numbered Two Hundred Forty-nine (249) as shown on the recorded Plat of Samuel L. Cottrell's Addition to the Town of Lowell, now within a part of the City of South Bend. Recorded on June 17, 1975 in book 802 and page 231 in the St. Joseph County Recorder's Office. [Parcel Key Number 018-6002-0018], together with the west one-half of the vacated alley east of and adjacent thereto (Vac Ord #10227-13, 7/15/2013).

Lots 250 and 251:

Lots Numbered 250 and 251 in Cottrell's First Addition to the Town of Lowell, now a part of the City of South Bend, St. Joseph County, Indiana. Recorded on January 25, 1952 in book 495 and page 282 in the St. Joseph County Recorder's Office. [Parcel Key Numbers 018-6002-0019 and 018-6002-0020], together with the west one-half of the vacated alley east of and adjacent thereto (Vac Ord #10227-13, 7/15/2013).

# EXHIBIT B



**LEGEND**  
 (Symbol) Asphalt Pavement  
 (Symbol) Concrete Curb, 6"  
 (Symbol) Concrete Ramp  
 (Symbol) 8" Compensated Aggregate Base, No. 57  
 (Symbol) Concrete Curb, 6"  
 (Symbol) Concrete Rework

**PRELIMINARY**  
 12/24/18 10:20 AM

17-0920  
 19 of 39

NO.	DATE	DESCRIPTION
1	12/24/18	PRELIMINARY
2		
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10		

### CHURCH PARKING LOT SITE PLAN

ST. LOUIS BOULEVARD  
 "FESTIVAL STREET" IMPROVEMENTS  
 PROJECT NO. 117-083

**ABONMARCHÉ**  
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