



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: June 29, 2017
FROM: David Relos, Economic Resources *DR*
SUBJECT: Third Amendment to Real Estate Purchase Agreement (Cressy)

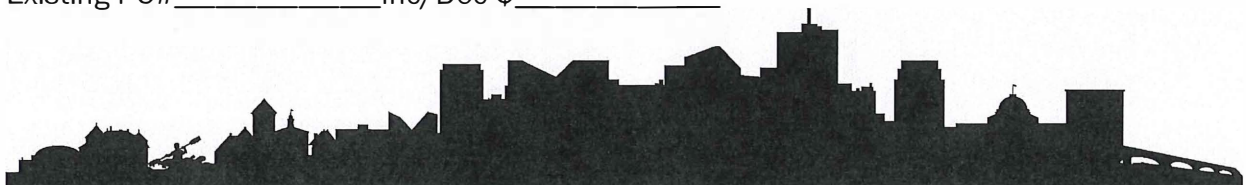
This Third Amendment with Cressy & Everett Commercial Corporation updates the original Real Estate Purchase Agreement (Agreement) approved February 9, 2017 for the fourteen Commission owned lots in Blackthorn. The original Agreement did not include the approximate 26 acre wetlands area, meaning if ownership were retained the Commission, as Declarant under the Covenants, would continue to have appointment and review responsibilities.

Cressy has agreed to have this lot included in the Agreement and become responsible for its maintenance and property taxes, as well as assuming the Declarant functions under the Covenants.

Also, to determine if there was any environmental impact of the Commission owned properties to the south and west of the old Indiana State Police Post, JPR was hired by Cressy to install monitoring wells to test ground water and soils on these properties. At closing a credit will be given in the amount of \$11,901.50, the amount of JPR's invoice to install four monitoring wells and perform the necessary lab work to determine whether the properties had been impacted, which thankfully were not.

Staff requests approval of the Third Amendment to Real Estate Purchase Agreement with Cressy & Everett, for the sale of Commission owned property in Blackthorn Corporate Park.

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 \$ _____



THIRD AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This Third Amendment To Real Estate Purchase Agreement (this “Third Amendment”) is made on June 29, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (“Seller”), and 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 collectively the “Parties”).

RECITALS

A. Seller and Buyer entered into that certain Real Estate Purchase Agreement dated February 9, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated March 23, 2017, and the Second Amendment To Real Estate Purchase Agreement dated May 25, 2017 (collectively, the “Purchase Agreement”), for the purchase and sale of the Property located in the City of South Bend and situated in Blackthorn Corporate Park (the “Park”).

B. In the course of investigating the Park, Buyer has determined it wishes to purchase from Seller certain additional real property constituting a common area of the Park under the Covenants (the “Additional Parcel”). The Additional Parcel was a part of the 1993 Disposition Parcel for which no bids were received, as described in the Recitals of the Purchase Agreement, and, as set forth in this Third Amendment, Seller has agreed to sell the Additional Parcel to Buyer as part of the transaction contemplated in the Purchase Agreement. Further, as a condition precedent to Seller’s conveyance of the Additional Parcel at Closing, Buyer has agreed to assume all of the Declarant’s rights and obligations under the Covenants.

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

1. In Exhibit A to the Purchase Agreement, the following is inserted immediately after the legal description of Lot 4R:

Additional Parcel

Lot Numbered One (1) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor Subdivision #8, recorded September 4, 1998 as Document Number 9846533 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062203]

2. Exhibit B attached to this Third Amendment is inserted in place of Exhibit B to the Purchase Agreement.

3. In Section 10.C of the Purchase Agreement, the term “Reserved” is deleted and replaced by the following:

Closing Condition. As a condition precedent to Seller's delivery of the Deed at Closing, Buyer will execute and deliver to Seller the Assignment And Assumption Of Declarant's Functions Under Declaration Of Protective Covenants & Restrictions Of The Blackthorn Corporate Park attached hereto as **Exhibit C**, which will be effective in accordance with Sections 1.12 and 11.2 of the Covenants.

4. Exhibit C attached to this Third Amendment is inserted as Exhibit C to the Purchase Agreement.

5. The following new Section 10.B(iii) is inserted immediately following Section 10.B(ii) of the Purchase Agreement:

(iii) At Closing, Buyer will receive a credit against the Purchase Price in the amount of Eleven Thousand Nine Hundred One and 50/100 Dollars (\$11,901.50), which amount Buyer expended in conducting its Due Diligence examination of the Property.

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

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

[Signature page follows.]

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

BUYER:

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

Printed:

Its:

Dated:

SELLER:

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

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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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 real estate located in St. Joseph County, Indiana, more particularly described in attached Exhibit 1 (the "Property").

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

The Grantor hereby conveys the Property to the Grantee free and clear of all leases, licenses, and interests except as agreed in the Real Estate Purchase Agreement dated February 9, 2017, between Grantor and Grantee; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's development area plan affecting the area in which the Property is situated and any design review guidelines associated therewith.

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

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

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

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

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

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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

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

Exhibit 1

Description of Property

Lot 1B

Lot Numbered One BB (1BB) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor #3, First Replat, recorded October 30, 2007 as Instrument No. 0742906 in the Office of the Recorder of Saint Joseph County, Indiana. [Parcel Key No. 025-1018-062401]

Lot 1C

Lot Numbered One CC (1CC) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor #3, First Replat, recorded October 30, 2007 in Document No. 0742906 in the Office of the Recorder of Saint Joseph County, Indiana. [Parcel Key No. 025-1018-062410]

Lot 1F

Lot Numbered One (1) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor #9, recorded September 16, 1998 as Document Number 9848692 in the Office of the Recorder of St. Joseph County, Indiana.

EXCEPT: That portion of Lot Numbered One (1) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor #9, recorded September 16, 1998 as Document Number 9848692 in the Office of the Recorder of St. Joseph County, Indiana, which lies in Section 29, Township 38 North, Range 2 East.

[Parcel Key No. 025-1018-062411]

Lot 2c1

Lot Numbered One (1) as shown on the recorded Plat of Davita F.J. Nimitz Parkway Minor recorded August 24, 2012 as Document No. 1226706 in the Office of the Recorder of Saint Joseph County, Indiana [Parcel Key No. 025-1018-062402]

Lot 2c2

Lot Numbered Two (2) as shown on the recorded Plat of Davita F.J. Nimitz Parkway Minor recorded August 24, 2012 as Document No. 1226706 in the Office of the Recorder of Saint Joseph County, Indiana [Parcel Key No. 025-1018-062422]

Lot 2c3

Lot Numbered Three (3) as shown on the recorded Plat of Davita F.J. Nimitz Parkway Minor recorded August 24, 2012 as Document No. 1226706 in the Office of the Recorder of Saint Joseph County, Indiana [Parcel Key No. 025-1018-062423]

Lot 3

Lot Numbered Three "B" (3B) as shown on the recorded Plat of Blackthorn Corporate Office Park, Minor #10 and Blackthorn Corporate Office Park First Replat, recorded July 19, 2006 as Document Number 0630469 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062403]

Lot 4D

Lot Numbered One (1) as shown on the recorded Plat of Blackthorn Corporate Office Park Major Subdivision # Two, Section Three, recorded July 20, 2000 as Document Number 0034671 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-0622]

Lot 4G

Lot Numbered Five (5) as shown on the recorded Plat of Blackthorn Corporate Office Park Major Subdivision # Two, Section Three, recorded July 20, 2000 as Document Number 0034671 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062216]

Lot 4H

Lot Numbered Six (6) as shown on the recorded Plat of Blackthorn Corporate Office Park Major Subdivision # Two, Section Three, recorded July 20, 2000 as Document Number 0034671 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062217]

Lot 4I

Lot Numbered Seven (7) as shown on the recorded Plat of Blackthorn Corporate Office Park Major Subdivision # Two, Section Three, recorded July 20, 2000 as Document Number 0034671 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062218]

Lot 4J

Lot Numbered Eight (8) as shown on the recorded Plat of Blackthorn Corporate Office Park Major Subdivision # Two, Section Three, recorded July 20, 2000 as Document Number 0034671 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062219]

Lot 4Q

Lot Numbered Seven (7) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor Subdivision #7, recorded July 13, 1998 as Document Number 9836274 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062209]

Lot 4R

Lot Numbered Eight (8) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor Subdivision #7, recorded July 13, 1998 as Document Number 9836274 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062210]

Additional Parcel

Lot Numbered One (1) as shown on the recorded Plat of Blackthorn Corporate Office Park Minor Subdivision #8, recorded September 4, 1998 as Document Number 9846533 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062203]

EXHIBIT C

**Form of Assignment And Assumption Of Declarant's Functions Under Declaration Of
Protective Covenants & Restrictions Of The Blackthorn Corporate Park**

**ASSIGNMENT AND ASSUMPTION OF DECLARANT’S FUNCTIONS UNDER
DECLARATION OF PROTECTIVE COVENANTS & RESTRICTIONS OF THE
BLACKTHORN CORPORATE PARK**

This Assignment And Assumption Of Declarant’s Functions Under Declaration Of Protective Covenants & Restrictions Of The Blackthorn Corporate Park (this “Assignment”) is made as of _____, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission (“Assignor”), and Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation (“Assignee”).

RECITALS

A. Assignor is the Declarant of that certain Declaration of Protective Covenants & Restrictions of the Blackthorn Corporate Park, as amended as of November 12, 2015, and recorded on November 13, 2015, as Document No. 1530509 in the Office of the Recorder of St. Joseph County (the “Covenants”).

B. Pursuant to Sections 1.12 and 11.2 of the Covenants and subject to and upon the terms and conditions of this Assignment, Assignor desires to assign, and Assignee desires to assume, all of Assignor’s rights, powers, privileges, reservations, obligations, liabilities, and duties under the Covenants.

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

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

2. Assumption. Assignee hereby accepts the foregoing assignment and assumes and agrees to perform all of the obligations, liabilities, and duties of the Declarant under the Covenants from and after the date upon which this Assignment is recorded in the Office of the Recorder of St. Joseph County.

3. Protections Preserved. This Assignment will not be construed to eliminate, reduce, or otherwise affect the protections against and exclusions of liability afforded to Assignor or the City of South Bend, among other parties, under Sections 5.6 and 11.3 of the Covenants.

4. Recordation. Immediately following recordation of the deed delivered by Assignor to Assignee under the terms of their Real Estate Purchase Agreement dated February 9, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated March 23, 2017, the Second Amendment To Real Estate Purchase Agreement dated May 25, 2017, and the Third Amendment To Real Estate Purchase Agreement dated June 29, 2017, the parties will record this Assignment. Recordation of this Assignment will have the effect stated in Sections 1.12 and 11.2 of the Covenants.

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

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

ASSIGNOR:

South Bend Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

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

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

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

ASSIGNEE:

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

Printed:

Its:

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____, known to me to be the _____ of Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation, and acknowledged the execution of the foregoing instrument.

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

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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

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