



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)

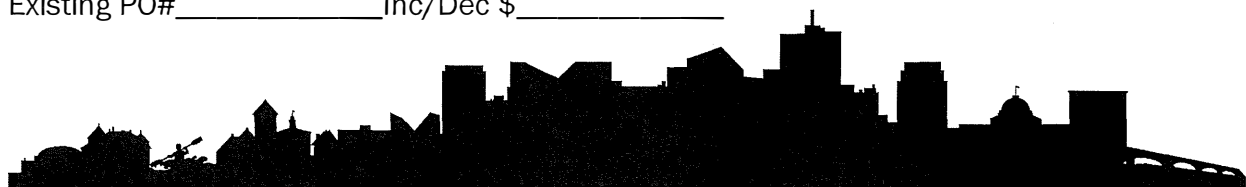
This Real Estate Purchase Agreement (Agreement) is for the Leighton and Wayne St. garage retail spaces. In late 2016 the Wayne St. garage's retail space was taken through the disposition process, and in early 2017 the Leighton retail spaces, with no bids being received for either.

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.

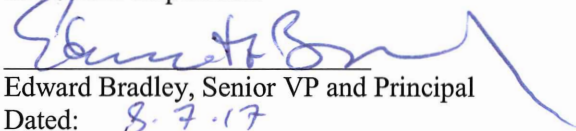
19. AUTHORITY TO EXECUTE; EXISTENCE

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

4000.0000038 37389222.007

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: