

RESOLUTION NO. 3420

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
CONSENTING TO THE ASSIGNMENT OF REAL ESTATE PURCHASE
AGREEMENT TO 333 WESTERN ASSOCIATES, LLC**

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

WHEREAS, pursuant to its purposes under the Act, the Commission entered into that certain Real Estate Purchase Agreement dated May 11, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated July 27, 2017, and the Second Amendment To Real Estate Purchase Agreement dated November 20, 2017 (collectively, the “Purchase Agreement”), with Cressy & Everett Commercial Corporation (the “Corporation”) for the Corporation’s purchase from the Commission of certain real property located in the River West Development Area within the City of South Bend, Indiana (as more particularly described in the Purchase Agreement, the “Property”); and

WHEREAS, Section 18 of the Purchase Agreement requires the Corporation to obtain the Commission’s consent to any assignment by the Corporation of the Corporation’s interests in the Purchase Agreement, except in circumstances not presently applicable; and

WHEREAS, by a letter dated January 3, 2018, attached hereto as **Exhibit A**, the Corporation notified the Commission of its intention to assign the Purchase Agreement to 333 Western Associates, LLC (the “Company”), and the Corporation has presented the Assignment dated January 2, 2018 (the “Assignment”), attached hereto as **Exhibit B**, evidencing the Company’s assumption of all the Corporation’s rights and obligations under the Purchase Agreement; and

WHEREAS, the Commission desires to express its consent to the Assignment, to approve necessary revisions to certain closing documents, and to direct the closing of the transaction accordingly; and

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

1. The Commission hereby consents to the Assignment and to the Company’s assumption of all the Corporation’s rights and obligations under the Purchase Agreement.

2. The Commission hereby approves, and will execute simultaneously with this Resolution, the Special Warranty Deed attached hereto as **Exhibit C** (the “Revised Deed”) conveying ownership of the Property to the Company as the Corporation’s assignee. For purposes of closing, the Revised Deed replaces the form of deed attached to the Purchase Agreement as Exhibit C.

3. The Commission hereby approves, and will execute simultaneously with this Resolution, the Temporary Access Agreement attached hereto as **Exhibit D** (the “Revised Access Agreement”) granting to the Company as the Corporation’s assignee certain rights to enter upon Commission-owned land abutting the Property. For purposes of closing, the Revised Access Agreement replaces the form of agreement attached to the Purchase Agreement as Exhibit D.

4. The Commission hereby approves, and will execute simultaneously with this Resolution, the Temporary Parking Lot Access Agreement attached hereto as **Exhibit E** (the “Revised Parking Agreement”) granting to the Company as the Corporation’s assignee certain rights to enter and use the Parking Lot (as defined in the Purchase Agreement) adjacent to the Property. For purposes of closing, the Revised Parking Agreement replaces the form of agreement attached to the Purchase Agreement as Exhibit E.

5. The Commission hereby authorizes and instructs David Relos of the City of South Bend Department of Community Investment to deliver to the Company, at closing, the Revised Deed, the Revised Access Agreement, and the Revised Parking Agreement (in lieu of the forms of such instruments prescribed by the Purchase Agreement) and to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution. Notwithstanding any term of the Purchase Agreement to the contrary, the Commission hereby consents to the transaction closing on any date mutually convenient to the parties that is within twenty-one (21) days after the date of this Resolution.

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

ADOPTED at a meeting of the South Bend Redevelopment Commission held on January 11, 2018, 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

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EXHIBIT A

Letter from Edward F. Bradley, Jr. on behalf of Cressy & Everett Commercial Corporation d/b/a Newmark Grubb Cressy & Everett dated January 3, 2018



January 3, 2018

Mr. James Mueller
Executive Director of Community Investment
City of South Bend

VIA EMAIL ONLY

RE: Assignment of Cressy Purchase Agreement to 333 Western Associates, LLC

Dear James:

As you know, Newmark Grubb Cressy & Everett ("Cressy") is under contract with the City for the purchase of the property at 333 W Western Ave, South Bend, IN. Pursuant to that contract, Cressy would like to assign its rights to the newly formed entity, 333 Western Associates, LLC. All the principals of Cressy are members of 333 Western Associates, LLC.

Please accept this letter as representation that 333 Western Associates, LLC fully intends to fulfill the obligations of Cressy as outlined in the purchase agreement between Cressy and the City.

Should you have any questions, please feel free to contact me. Thank you.

Respectfully submitted,

Edward F. Bradley, Jr.
Senior Vice President, Principal
Newmark Grubb Cressy & Everett

EXHIBIT B

Assignment dated January 2, 2018

ASSIGNMENT

This Assignment is made and entered into the 2nd day of January 2018, by and between Cressy & Everett Commercial Corporation (“Assignor”), and 333 Western Associates, LLC (“Assignee”).

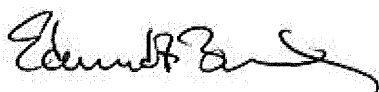
RECITALS

Assignor has entered into an agreement and subsequent amendments dated May 11, 2017, July 27, 2017, & November 20, 2017 (all together, the “Purchase Agreement”) to purchase real property from the City of South Bend, Indiana, Department of Redevelopment acting by and through its governing body, the South Bend Redevelopment Commission, for property located in South Bend, Indiana and further described in the attached Exhibit A.

Assignor wishes to assign all its right title and interest in the Purchase Agreement to Assignee, and Assignee has consented to the assignment and agreed to be bound by all the terms and conditions as set forth in the Purchase Agreement.

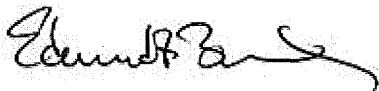
NOW, THEREFORE, Assignor hereby assigns all its right title and interest in the above referenced Purchase Agreement to Assignee, and Assignee hereby accepts such assignment and agrees to be bound by all terms and conditions contained in the Purchase Agreement.

Assignor: Cressy & Everett Commercial Corporation



By: Edward F. Bradley, Principal

Assignee: 333 Western Associates, LLC



By: Edward F. Bradley, Managing Member

Exhibit A

Description of Property

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

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

EXHIBIT C

Revised 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 333 Western Associates, LLC, an Indiana limited liability company with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (the "Grantee"), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

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

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

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

The Grantor hereby conveys the Property to the Grantee free and clear of all leases, licenses, and interests except as agreed in the Real Estate Purchase Agreement dated May 11, 2017, by and between Grantor and Grantee (as assignee of Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett), as amended by the First Amendment To Real Estate Purchase Agreement dated July 27, 2017, and the Second Amendment To Real Estate Purchase Agreement dated November 20, 2017 (collectively, the "Purchase Agreement"); subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's development area plan affecting the area in which the Property is situated and any design review guidelines associated therewith.

Pursuant to Section 11 of the Purchase Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 11 of the Purchase Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed to the Grantee by this deed and all

of the Grantee's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 11 of the Purchase Agreement will forever release and discharge the Grantor's reversionary interest stated in this paragraph.

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

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

Capitalized terms not otherwise defined in this deed will have the meanings stated in the Purchase Agreement.

[Signature page follows.]

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2018.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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

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

EXHIBIT D

Revised Access Agreement

TEMPORARY ACCESS AGREEMENT

This Temporary Access Agreement (this “Agreement”) is made on _____, 2018 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, of 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 (the “Commission”), and 333 Western Associates, LLC, an Indiana limited liability company with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (the “Company”).

RECITALS

A. Commission owns in fee simple certain real property located within the River West Development Area of the City of South Bend, Indiana (the “City”), as described and approximately depicted in attached **Exhibit 1** (the “Access Parcel”).

B. Company owns in fee simple the real property described in attached **Exhibit 2** (the “Company Parcel”), which abuts the Access Parcel along the Access Parcel’s eastern boundary.

C. In connection with Company’s purchase of the Company Parcel from Commission, as assignee of Cressy & Everett Commercial Corporation under the parties’ Real Estate Purchase Agreement dated May 11, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated July 27, 2017, and the Second Amendment To Real Estate Purchase Agreement dated November 20, 2017 (collectively, the “Purchase Agreement”), Company desires to obtain from Commission a right of access over the Access Parcel to the Company Parcel for the purpose of facilitating Company’s use of overhead doors on the western side of the building on the Company Parcel (the “Building”) for Company’s use of the Building as a self-storage facility, and Commission has agreed to grant the same on the terms and conditions stated in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Commission and Company, agree as follows:

1. Grant of Access. Commission hereby grants to Company a non-exclusive, temporary license to access the Access Parcel for the limited purpose of pedestrian and vehicular ingress and egress over and across the Access Parcel to and from the Company Parcel by Company and its agents, contractors, employees, and invitees to use the five (5) overhead doors in existence on the western side of the Building on the Effective Date of this Agreement (the “Overhead Doors”) in connection with Company’s use of the Building as a self-storage facility (the “License”).

2. Termination. Commission may revoke and terminate the License (a) immediately, in the event Company fails to satisfy any of its obligations under the Purchase Agreement, (b) immediately, in the event Company ceases to own a controlling interest in the Building, (c) immediately, in the event the Building is demolished or the use of the Overhead Doors for self-storage purposes ceases, and (d) upon Company’s failure to cure a default under

this Agreement within thirty (30) days after receiving a written notice of such default from Commission (or its authorized representative).

3. Maintenance; Restoration. Company, at its sole expense, will at all times maintain and repair the Access Parcel. In the event Company (or any of its agents, contractors, employees, or invitees) disturbs or damages any part of the Access Parcel, Company will promptly restore such area(s) to substantially the same condition that existed immediately prior to such disturbance or damage. Company agrees to complete all of the foregoing restoration work to the City's satisfaction, as determined in the City's sole discretion. In the event Company fails to preserve the Access Parcel at all times in good condition and repair, Commission or the City may, at its option, incur costs and expenses to maintain and repair the Access Parcel, which costs and expenses Company will pay promptly upon the written demand of Commission or the City, as the case may be.

4. Clear Path of Travel. Commission and Commission's agents and employees will place no permanent structures in, on, or over the Access Parcel that will obstruct or interfere with the Company's use of the Access Parcel without Company's prior consent. Further, the parties agree that Company will have no right under this Agreement to install improvements of any kind on the Access Parcel.

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

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

7. Hazardous Materials. Company shall not cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted upon the Access Parcel.

8. Indemnification; Insurance. Company shall indemnify and hold Commission and the City harmless from and against any and all claims resulting from damage to any property upon the Access Parcel or injury to any person upon the Access Parcel. In addition, Company will maintain commercial general liability insurance coverage in the minimum amount of at least Five Million Dollars (\$5,000,000.00) per occurrence and will designate the Commission and the City as additional insureds under any such policy of insurance. Promptly following the Effective Date of this Agreement, Company will produce to Commission a certificate of insurance evidencing the same.

9. Reservation of Rights. Commission reserves for itself the free use of the Access Parcel in any manner not inconsistent with the terms of this Agreement.

10. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the parties have signed this Temporary Access Agreement to be effective as of the Effective Date.

COMPANY:

333 Western Associates, LLC,
an Indiana limited liability company

Edward Bradley, Member
Dated:

COMMISSION:

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

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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Exhibit 1 to Temporary Access Agreement

Description of Access Parcel

A parcel of real property located in the City of South Bend, Indiana, approximately depicted below and more particularly described as the eastern half of Outlot A and the northern forty-six (46) feet of the eastern half of Outlot B as said outlots are shown on the recorded plat of Vail's Subdivision (First Replat) recorded on October 4, 2013, as Document No. 1330638 in the Office of the Recorder of St. Joseph County.

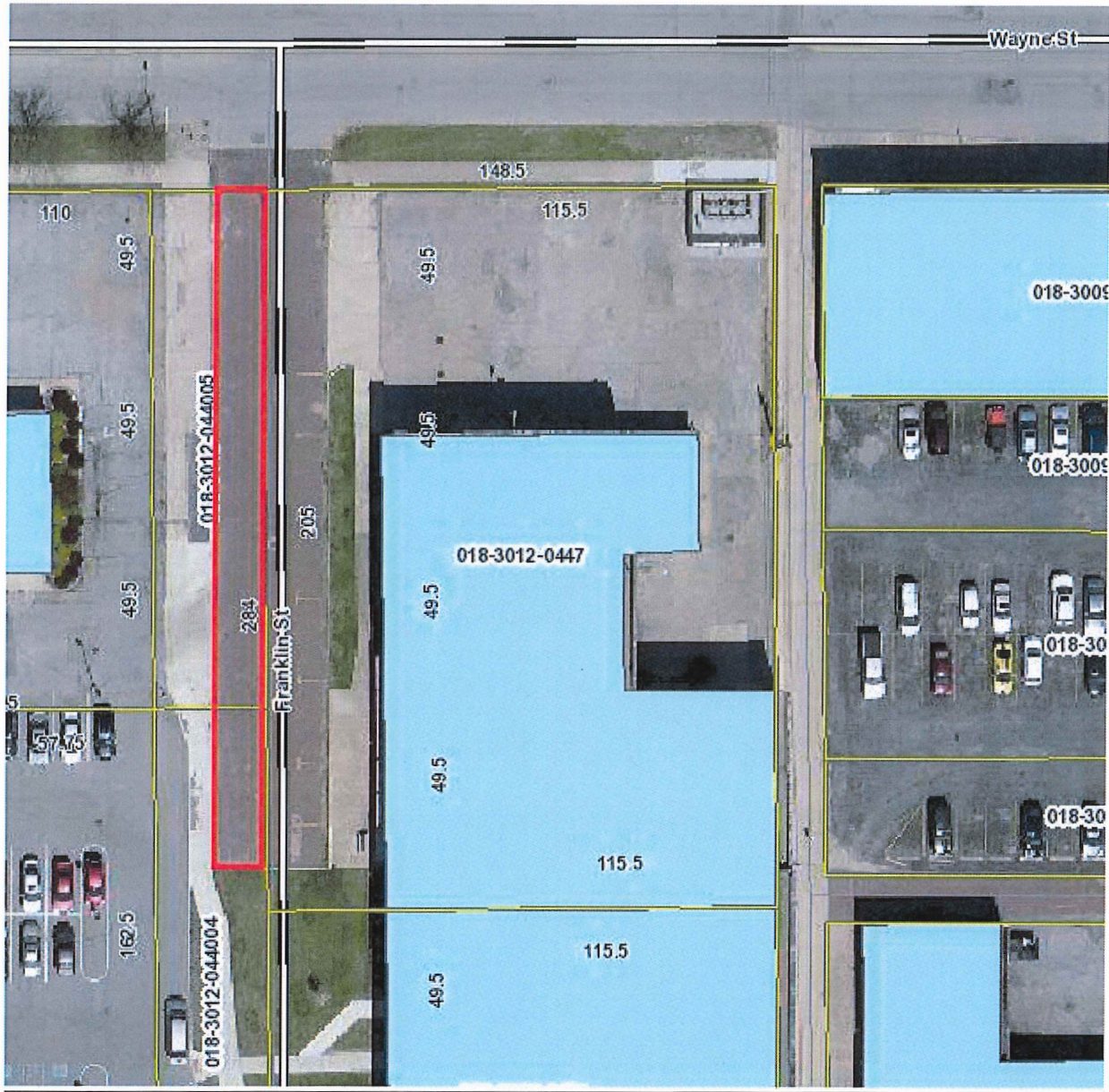


Exhibit 2 to Temporary Access Agreement

Description of Company Parcel

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

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

EXHIBIT E

Revised Parking Agreement

TEMPORARY PARKING LOT ACCESS AGREEMENT

This Temporary Parking Lot Access Agreement (this “Parking Agreement”) is made on _____, 2018 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, of 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 (the “Commission”), and 333 Western Associates, LLC, an Indiana limited liability company with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

A. The Commission owns certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana (the “City”), as more particularly described in attached **Exhibit 1** (the “Parking Lot”).

B. In connection with the Company’s purchase of abutting real property from the Commission (the “Building” or the “Building Parcel”) and the Company’s redevelopment of the same, as assignee of Cressy & Everett Commercial Corporation under the Parties’ Real Estate Purchase Agreement dated May 11, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated July 27, 2017, and the Second Amendment To Purchase Agreement dated November 20, 2017 (collectively, the “Purchase Agreement”), the Company desires to have access to and use of the Parking Lot, and the Commission agrees to permit the same, subject to the terms and conditions stated in this Parking Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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

2. Term; Termination. The term of the License will commence upon the Effective Date. The Commission may revoke and terminate the License (a) immediately, in the event the

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

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

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

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

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

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

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

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

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

8. Storage; Hazardous Materials. At all times during the term of the License, the Company will keep the Parking Lot in neat and clean order. The Company agrees that it will not store any supplies, materials, goods, or personal property of any kind on the Parking Lot. Without limiting the foregoing, the Company shall not, without the prior written consent of the Commission, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Parking Lot.

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

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

11. Compliance. The Company agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to its use of the Parking Lot.

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

13. Indemnification. The Company agrees and undertakes to indemnify and hold the City and the Commission, and their respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the City or the Commission may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the Company's use of the Parking Lot, except to the extent caused by the grossly negligent or willful acts or omissions of the City or the Commission. If any action is brought against the City or the Commission, or their respective agents, employees, successors, or assigns, in connection with the Company's use of the Parking Lot, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

14. Insurance. The Company, at the Company's sole expense, shall maintain during the term of the License a policy of commercial general liability insurance, or such other policy or

policies of insurance against any and all claims for bodily injury, death, or property damage, arising out of the Company's use of the Parking Lot in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. The Company agrees to include the Commission and the City as additional insureds on any such policy and produce to the Commission a copy of each such policy evidencing the same. To the extent that the Commission or the City is harmed as a result of the Company's use of the Parking Lot, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Parking Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

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

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

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

18. Interpretation; Governing Law. Both Parties having participated fully and equally in the negotiation and preparation of this Parking Agreement, this Parking Agreement shall not

be more strictly construed, nor shall any ambiguities in this Parking Agreement be presumptively resolved, against either Party. This Parking Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

19. Entire Agreement. This Parking Agreement embodies the entire agreement between the Commission and the Company and supersedes all prior discussions, understandings, or agreements, whether written or oral, between the Commission (or any representative of the Commission) and the Company concerning the Company's use of the Parking Lot.

20. Authority; Counterparts; Signatures. Each undersigned person signing on behalf of his/her respective Party certifies that he/she is duly authorized to bind his/her respective Party to the terms of this Parking Agreement. This Parking Agreement may be separately executed in counterparts by the Commission and the Company, and the same, when taken together, will be regarded as one original agreement. Electronically transmitted signatures will be regarded as original signatures.

[Signature page follows.]

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

COMPANY:

333 Western Associates, LLC,
an Indiana limited liability company

Edward F. Bradley, Member
Dated:

COMMISSION:

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

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

4000.0000091 49112313.002

Exhibit 1 to Temporary Parking Lot Access Agreement

Description of Parking Lot

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

Parcel Key No. 018-3012-044002