



South Bend

Redevelopment Commission

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

Agenda

Regular Meeting, January 11, 2018 9:30 a.m.

1. **Roll Call**
2. **Approval of Minutes**
 - A. Minutes of the Regular Meeting of Thursday, December 14, 2017
3. **Approval of Claims**
 - A. Claims Submitted January 11, 2018
4. **Old Business**
5. **New Business**
 - A. Administrative
 1. Resolution No. 3419: 2018 Meeting Schedule
 2. Resolution No. 3421: 2018 Procedures for Property Related Services
 3. Resolution No. 3422: 2018 Authority for Administrative Acts
 4. Resolution No. 3423: 2018 Procedures for Temporary Use Agreements (2018)
 - B. River West Development Area
 1. Resolution No. 3420: Consenting to the Assignment of Real Estate Purchase Agreement to 333 Western Associates, LLC
 2. Resolution No. 3424: Consenting to the Assignment of Real Estate Purchase Agreement to Michigan Street Shops LLC
 3. Second Amendment to Agreement: JMS Development, LLC
6. **Progress Reports**
 - A. Tax Abatement
 - B. Common Council
 - C. Other
7. **Next Commission Meeting:**

Thursday, January 25, 2018, 9:30 a.m.

8. Adjournment

NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS

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



South Bend

Redevelopment Commission

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

ITEM: 2A

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

December 14, 2017

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard
South Bend, Indiana

The meeting was called to order at 9:35 a.m.

1. ROLL CALL

Members Present:

Marcia Jones, President
Don Inks, Secretary
Gavin Ferlic, Commissioner
Kintae Lark, Commissioner

Members Absent:

Dave Varner, Vice-President
John Anella, Commissioner

Legal Counsel:

Benjamin Dougherty, Esq.

Redevelopment Staff:

David Relos, Associate
Mary Brazinsky, Recording Secretary

Others Present:

Dr. James Mueller	DCI
Dan Buckenmeyer	DCI
Tim Corcoran	DCI
Roger Nawrot	Engineering
Frank Perri	Greater Lowell Holdings
Mark Peterson	WNDU
Caleb Bauer	South Bend Tribune
Bryan Glendening	IngenAE
Sue Kesim	Michiana Observer

South Bend Redevelopment Commission
 Regular Meeting – December 14, 2017

2. Approval of Minutes

A. Approval of Minutes of the Regular Meeting of Monday, November 20, 2017

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Monday, November 20, 2017.

3. Approval of Claims

A. Claims Submitted November 20, 2017

REDEVELOPMENT COMMISSION Redevelopment Commission Claims November 17, 2017 for ratified and approval	Claims submitted	Explanation of Project
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
South Bend Tribune	101.22	Fellows Streetscape & Berlin PI Notice to Bidders
Tri New County	60.44	100 Wayne St Plaza Notice to Bidders
South Bend Tribune	127.76	Marriott Hotel & Hibberd Building Sites Notice to Bidders
South Bend Tribune	59.40	2017 Demolition Ph. I
HGR	72,079.06	JMS Building
Walsh & Kelly Inc.	169,496.49	Monroe St. Parking Lot
Umbaugh	6,320.00	TIF Consulting
Walsh & Kelly Inc.	378,248.20	Fellows Streetscape
Kolata Enterprises LLC	427.50	Professional Services
C & S Masonry Restoration	1,009.80	Leighton Plaza Improvements Ph. 2
City of SB	18,875.00	Legal Service
Plews Shadley Racher & Braun LLP	2,680.10	Bosch/Honeywell
Hull & Associates Inc.	17,709.26	GW & Vapor Intrusion Evaluation
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>		
Umbaugh	208.00	TIF Consulting
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
Northern Indiana Roofing	4,514.10	Newman Center Roofing Repairs
Alliance	5,500.00	Howard Pk Redevelopment
Umbaugh	1,130.00	TIF Consulting
Smithgroup JJR	15,416.44	SB Riverfront Pks and Trails Master Plan
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
Umbaugh	895.00	TIF Consulting
Walsh & Kelly Inc.	47,262.50	Bowen St Drainage Improvements
Reith Riley Construction Co.	173,893.24	One Way to Two Way Street Conversion
Lawson & Fisher Association		
<u>435 FUND DOUGLAS ROAD DEVELOPMENT AREA TIF</u>		
Umbaugh	116.00	TIF Consulting
<u>436 FUND TIF NORTHEAST RESIDENTIAL</u>		
Umbaugh	1,331.00	TIF Consulting
US Bank	500.00	Authority Lease Rental Revenue Refunding Bonds of 2015 Eddy St. Common
Total	917,960.51	

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the claims submitted on Monday, November 20, 2017.

4. Old Business

5. New Business

A. River West Development Area

1. Certificate of Completion (Xanatek – 402 S. Lafayette)

Mr. Relos presented a Certificate of Completion for Xanatek. When Xanatek purchased the Jones Petrie Rafinski building at 412 S. Lafayette, we sold them the abutting lot at 402 S. Lafayette, at the SE corner of Lafayette and Western. Per our Agreement with Xanatek, they were to complete certain improvements to the lot and building within 18 months. This Certificate of Completion will be recorded to acknowledge Xanatek has met its obligations, and the RDC no longer has a reversionary interest in the property. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Certificate of Completion (Xanatek – 402 S. Lafayette) submitted on December 14, 2017.

2. First Amendment to Real Estate Purchase Agreement (Cressy & Everett Commercial Corporation)

Mr. Buckenmeyer presented the First Amendment to Real Estate Purchase Agreement with Cressy & Everett Commercial Corporation. This First Amendment adds an additional 45 days to the Due Diligence period to allow Cressy more time to investigate their potential purchase of the Michigan and Wayne St. garage's retail spaces. Commission approval is requested.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the First Amendment to Real Estate Purchase Agreement (Cressy & Everett Commercial Corporation) submitted on December 14, 2017.

3. First Amendment to Temporary License Agreement for Site Examination (Great Lakes Capital Development LLC)

Mr. Buckenmeyer presented the First Amendment to Temporary License Agreement for Site Examination with Great Lakes Capital Development LLC. This First Amendment extends by 45 days Great Lakes' time to complete site examination for the property at the SW corner of Jefferson and Main. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the First Amendment to Temporary License Agreement for Site Examination (Great Lakes Capital Development LLC) submitted on December 14, 2017.

4. Budget Request (933 / Lincolnway East Road Diet and Sidewalks)

Mr. Corcoran presented a budget request for the 933 / Lincolnway East Road Diet and Sidewalks project. The City would like to partner with INDOT to study Lincolnway East between Sample and Twyckenham. The Department of Public Works along with the Department of Community Investment would like to initiate

engineering work for this project, which dovetails with the Riverfront Parks and Trails framework. This project will help connect our assets on the south side of the river to those on the north. It is expected that in January 2018 the Board of Public Works will approve the engineering work, budgeted at \$100,000. INDOT plans to repave and restripe Lincolnway in this area. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (933 / Lincolnway East Road Diet and Sidewalks) submitted on December 14, 2017.

B. River East Development Area

1. Budget Request (Howard Park)

Mr. Nawrot presented the budget request for Howard Park. This is for additional soil testing work for planned improvements to Howard Park, and will aid in the current design work that is underway. A budget increase of \$2,800 is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (Howard Park) submitted on December 14, 2017.

2. Development Agreement (Greater Lowell Holdings LLC)

Mr. Buckenmeyer presented the Development Agreement with Greater Lowell Holdings LLC. This Agreement incorporates two properties with buildings on both. The first property is the 8,300 sf historic J.C. Lauber building at LaSalle and Niles, which will be redeveloped in to a retail / restaurant / community center. Private investment for this property is a minimum of \$2M.

The second property is the former 5,300 sf LaSalle Body Shop at Niles and Colfax, which will be redeveloped in to an office / professional event space to be known as The Garage. Private investment for this property is a minimum of \$1.4M.

An employment obligation of this Agreement is 24 new full-time employees. To support both projects, River East funding in a total amount of \$400,000 is requested, to be used for façade, parking lot, and infrastructure improvements.

Frank Perri, the developer, spoke about the historic J.C. Lauber building. The project will take a minimalist approach in fixing up the building. They will try to keep the feeling of nostalgia to the building and keep the interior and uniqueness about it. The building will also include a part for the community.

The Garage already has a tenant lined up, J2 Marketing, led by Eric Johnson and 12 creative individuals. Eric states J2 is postured and ready to be a conduit of creative and collaborative energy in South Bend. He looks forward to making their home in the East Bank along with other visionary businesses and locals. They can't wait to see what other businesses / locals may be attracted to this part of the City. J2 will employ mostly under 30 year old millennials and bring that feel to that side of the river. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Development Agreement (Greater Lowell Holdings) submitted on December 14, 2017.

6. Progress Reports

A. Tax Abatement

1. The Jefferson and Main tax abatement was Confirmed on Monday.

B. Common Council

C. Other

1. Mr. Relos gave an update that our Hall of Fame tax appeal for the years 2015, 2016, and 2017 have been agreed to by the Assessor's office, so we are now current for the appeals filed. It is hoped when the 2018 assessment is received a new appeal will not need to be filed.

7. Next Commission Meeting:

Thursday, December 28, 2017, 9:30 a.m.

8. Adjournment

Thursday, December 14, 2017, 9:54 a.m.

David Relos, Economic Resources

Marcia I. Jones, President

ITEM: 3A

REDEVELOPMENT COMMISSION	Claims submitted	Explanation of Project
Redevelopment Commission Claims January 11, 2018 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Jones Petrie Rafinski	6,373.75	Patel Plaza Marriott at Hall of Fame Site
Lawson-Fishers Associates P.C.	16,429.00	SBN-West Bank Improvements Jefferson Blvd to LaSalle Ave.
Joseph Dzierla & Associates, Inc.	10,000.00	Zike Sample St. Project
Abonmarche	8,340.00	Portage Prairie Area Sewer Study / Lincoln Way W and Charles Martin Sr. Intersection
United Consulting	5,528.45	Coal Line Trail Ph. I & II
Wells Fargo	295,000.00	So. Bend Bldg. Corp County Option Income Tax Lease Rental Rev refunding Bonds of 2010
Jones Petrie Rafinski	22,774.20	Downtown East-West Streetscapes
Gibson-Lewis, LLC	462,911.81	Fire Station #4
Plews Shadley Racher & Braun	2,422.50	Environmental General
USBank	785,000.00	Refunding Bonds, Series 2012 (Polies & Fire Station)
USBank	856,500.00	Authority Lease Rental Revenue Refunding Bonds of 2015
Kolata Enterprises LLC	315.00	Professional Services
Plews Shadley Racher & Braun	473.50	Legal Service
St. Joseph County	1,042,706.01	Negative TIF Distribution
Aecom	28,982.91	South Shore Line station Alternatives Feasibility Study
IDEM	75.00	Professional Services
City of South Bend	18,875.00	Legal Service
Danch, Harner & Associates, Inc.	345.00	Preparation of rezoning Petition St. & Alley, Utility Easement
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
Earth Exploration	12,569.50	Howard Park Renovation
Lawson-Fishers Associates P.C.	3,563.44	Corby St Storm Sewer System Evaluation
Robert Henry Corporation	239,960.90	Newman Center Site Development Division A and Alternate A1
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
McCormick Engineering	1,417.50	Bowen St. Improvements
American Structurepoint Inc.	1,470.00	Mernard St. Traffic Impact Study
<u>436 FUND TIF NORTHEAST RESIDENTIAL</u>		
Usbank	1,234,500.00	Authority Lease Rental Revenue Refunding Bonds of 2015 Eddy St. Common
Total	5,056,533.47	

RESOLUTION NO. 3419

A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPROVING A SCHEDULE OF
REGULAR MEETING TIMES FOR CALENDAR YEAR 2018

WHEREAS, pursuant to Ind. Code § 36-7-14, the South Bend Redevelopment Commission (“Commission”) is the governing body of the City of South Bend Department of Redevelopment; and

WHEREAS, pursuant to Ind. Code § 36-7-14-8(g), the Commissioners may adopt the rules and bylaws it considers necessary for the proper conduct of Commission proceedings and the carrying out of Commission duties; and

WHEREAS, Article IV, Section 1 of the *Amended and Restated By-Laws of the South Bend Redevelopment Commission* effective July 16, 2015, provides that the Commission shall adopt a schedule of regular meetings at its first meeting of each year; and

WHEREAS, the Commission desires to approve and adopt a schedule of regular meeting dates and times for calendar year 2018; and

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The Commission approves and adopts as its regular meeting schedule for calendar year 2018 the meeting dates and times stated in the schedule attached hereto as **Exhibit A**.
2. Unless otherwise announced, regular meetings shall be held without further notice at 9:30 a.m., local time, at the Board of Public Works Meeting Room, 1308 County-City Building, 227 West Jefferson Street, South Bend, Indiana 46601.
3. This Resolution shall be in full force and effect after its adoption by the South Bend Redevelopment 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

Resolution No. 3419

Exhibit A

**South Bend Redevelopment Commission
2018 Regular Meeting Dates and Times
County-City Building, 227 W. Jefferson Boulevard
Board of Public Works Conference Room 1308, South Bend, IN 46601**

January 11	9:30 a.m.
January 25	9:30 a.m.
February 8	9:30 a.m.
February 22	9:30 a.m.
March 8	9:30 a.m.
March 22	9:30 a.m.
April 12	9:30 a.m.
April 26	9:30 a.m.
May 10	9:30 a.m.
May 24	9:30 a.m.
June 14	9:30 a.m.
June 28	9:30 a.m.
July 12	9:30 a.m.
July 26	9:30 a.m.
August 9	9:30 a.m.
August 23	9:30 a.m.
September 13	9:30 a.m.
September 27	9:30 a.m.
October 11	9:30 a.m.
October 25	9:30 a.m.
November 8	9:30 a.m.
November 19	9:30 a.m.
December 13	9:30 a.m.
December 27	9:30 a.m.

**FOR HEARING AND SIGHT IMPAIRED PERSONS
Auxiliary aid or other services are available upon request at no charge.
Please give reasonable advance request when possible.**

RESOLUTION NO. 3421

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
SETTING PROCEDURES FOR CONTRACTS FOR PROPERTY
RELATED SERVICES**

WHEREAS, I.C. 36-7-14-12.2 provides that the Redevelopment Commission may acquire, hold, use, sell, exchange, lease, rent or otherwise dispose of property for the purposes set forth and described in I.C. 36-7-14 (the “Act”); and

WHEREAS, the Commissioners have the authority under I.C. 36-7-14-8(g) to adopt such rules and bylaws as they consider necessary for the proper conduct of their proceedings and the carrying out of their duties and the safeguarding of money and property placed in their custody; and

WHEREAS, the Commission enters into contracts, from time to time, with title companies, appraisers, surveyors, and environmental contractors so as to better understand the status of title and the condition of real estate in which the Commission has a current or prospective interest; and

WHEREAS, the Commission wishes to delegate to certain staff members of the City of South Bend (the “City”) the authority to initiate certain contracts with title companies, appraisers, surveyors, and environmental contractors subject to the limitations stated in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The following staff members or their successors (“Staff”) are authorized to initiate contracts for services (the “Contracts”) on behalf of the Commission:
 - a. James Mueller;
 - b. Daniel Buckenmeyer;
 - c. David Relos; and
 - d. Tim Corcoran.
2. All Contracts initiated by Staff must be related to property the Commission owns, is interested in acquiring, or intends to sell, use, exchange, lease or otherwise dispose in furtherance of its purposes under the Act. The Contracts shall be strictly limited to the services identified in paragraph 5 of this Resolution.
3. Each Contract must be approved by the Executive Director of the City’s Department of Community Investment (the “Director”).
4. Each Contract must be made with one of the service providers on the Director’s list of approved service providers, as amended from time to time.
5. Staff’s authority to initiate the Contracts is limited to the following maximum amount for each respective service:

<u>SERVICE</u>	<u>MAXIMUM FEE</u>
Title Searches and Policies	\$ 200.00 per parcel
Appraisals (Commercial/Industrial)	\$ 5,000.00 per appraisal
Appraisals (Residential)	\$ 1,000.00 per appraisal
Land Surveys/Replats/Subdivisions	\$ 5,000.00 per survey/replat/subdivision
Environmental Assessments	\$ 5,000.00 per assessment

6. All Contracts initiated by Staff must be presented to the Commission at its next regular meeting as part of the Commission's regular claims approval process or separately for ratification by the Commission.
7. The authority granted under this Resolution expires on December 31, 2018.
8. This Resolution shall be in full force and effect after its adoption.

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

4000.0000001 60864281.001

RESOLUTION NO. 3422

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPOINTING AUTHORIZED REPRESENTATIVES TO CONDUCT CERTAIN
ADMINISTRATIVE ACTS RELATING TO REDEVELOPMENT PROPERTY**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) is the governing body of the City of South Bend Department of Redevelopment established under the Redevelopment of Cities and Towns Act of 1953, as amended, being I.C. 36-7-14-1 *et seq.* (the “Act”); and

WHEREAS, I.C. 36-7-14-12.2 provides that the Commission may acquire, hold, use, sell, exchange, lease, rent, or otherwise dispose of property for the purposes set forth and described in I.C. 36-7-14; and

WHEREAS, the Commissioners have the authority under I.C. 36-7-14-8(g) to adopt such rules and bylaws as they consider necessary for the proper conduct of their proceedings and the carrying out of their duties and the safeguarding of money and property placed in their custody; and

WHEREAS, the Commission owns, manages, leases, and sells property within the boundaries of the City of South Bend (the “City”); and

WHEREAS, as a result of such owning, managing, leasing, and selling of property, City staff members receive frequent requests to perform administrative functions on behalf of the Commission, including but not limited to, the approval of plats, the release of obsolete financing documents, the submission of forms to other various entities, and the execution of documents related to the ownership, maintenance, and disposition of property; and

WHEREAS, the City’s staff members are familiar with the property owned by the Commission; and

WHEREAS, the Commission desires to expressly authorize certain members of the City’s staff to take such administrative acts and to execute such administrative documents as necessary to provide for the proper maintenance and management of its property interests.

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The following staff members of the City are authorized to perform, on behalf of the Commission, all administrative acts related to the Commission’s owning, managing, leasing, and selling of property, including, but not limited to, acts relating to the disposition of property, the closing of a property transaction, a replatting process, a tax appeal process, the release of obsolete financing documents, a petition or application regarding land use before an administrative

body, or any other review process, whether such process was initiated by the Commission or another entity:

- a. James Mueller;
- b. Daniel Buckenmeyer;
- c. David Relos; and
- d. Tim Corcoran.

Such authority shall include the authority to execute documents on behalf of the Commission that relate to the completion of such administrative acts, provided, however, that staff members are not authorized to execute any deed of conveyance on behalf of the Commission. For purposes of this Resolution, an administrative act is one in which the authorized staff member determines, upon the advice of legal counsel, that said act occurs within the normal course of owning, managing, leasing, or selling property and does not adversely impact an interest of the Commission in light of the Commission’s overall purpose and goals as set forth under the Act.

- 2. This Resolution supersedes Resolution No. 3373, and the authority granted under this Resolution continues until further action of the Commission.
- 3. This Resolution shall be in full force and effect after its adoption.

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

4000.0000001 61263197.001

RESOLUTION NO. 3423

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
SETTING PROCEDURES FOR TEMPORARY USE AGREEMENTS**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) is the governing body of the City of South Bend Department of Redevelopment (the “Department”) established under the Redevelopment of Cities and Towns Act of 1953, as amended, being Ind. Code 36-7-14 (as amended, the “Act”); and

WHEREAS, Ind. Code 36-7-14-12.2 provides that the Commission may acquire, hold, use, sell, exchange, lease, rent, or otherwise dispose of property for the purposes set forth and described in the Act; and

WHEREAS, the Commissioners have the authority under Ind. Code 36-7-14-8(g) to adopt such rules and by-laws as they consider necessary for the proper conduct of their proceedings and the carrying out of their duties and the safeguarding of money and property placed in their custody; and

WHEREAS, the Commission enters into agreements, from time to time, with individuals and entities for temporary access to and/or use of Commission-owned property; and

WHEREAS, the Commission wishes to delegate to certain staff members of the City of South Bend (the “City”) the authority to execute temporary use agreements on the Commission’s behalf, subject to ratification by the Commission.

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The following staff members (“Staff”) are authorized to execute temporary use agreements on behalf of the Commission:
 - a. James Mueller;
 - b. Daniel Buckenmeyer;
 - c. David Relos; and
 - d. Tim Corcoran.
2. All temporary use agreements executed by Staff must be related to property that the Commission owns and intends to sell, use, exchange, lease, or otherwise dispose.
3. All temporary use agreements must be approved by the Executive Director of the City’s Department of Community Investment and by the South Bend Department of Law.
4. Each temporary use agreement executed by Staff must be submitted to the Commission at its next regular meeting after the date such agreement was executed, and the effectiveness of such agreement is subject to the Commission’s ratification.

5. The authority granted under this Resolution continues until further action of the Commission.
6. This Resolution supersedes and replaces Resolution No. 3341 and shall be in full force and effect upon its adoption.

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

4000.0000001 56324572.001

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

4000.0000091 49112313.002

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”).

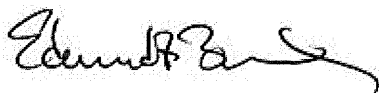
RECITALS

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.

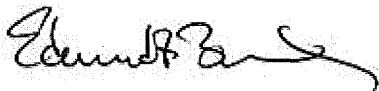
NOW, THEREFORE, Assignor hereby assigns all its right title and interest in the above referenced Purchase Agreement to Assignee, and Assignee hereby accepts such assignment and agrees to be bound by all terms and conditions contained in the Purchase Agreement.

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

4000.0000091 49112313.002

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

RESOLUTION NO. 3424

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
CONSENTING TO THE ASSIGNMENT OF REAL ESTATE PURCHASE
AGREEMENT TO MICHIGAN STREET SHOPS, 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 August 10, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated December 14, 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 17 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 9, 2018, attached hereto as **Exhibit A**, the Corporation notified the Commission of its intention to assign the Purchase Agreement to Michigan Street Shops, LLC (the “Company”), and the Corporation has presented the Assignment dated January 8, 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 B.

3. The Commission hereby acknowledges that, in advance of delivery at closing, the form of Assignment And Assumption Of Leases attached to the Purchase Agreement as Exhibit

C (the "Lease Assignment") will be amended (a) to identify Michigan Street Shops, LLC, as the assignee of all the leases described in the Lease Assignment and (b) to include all current amendments to said leases.

4. 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 (in lieu of the form of such instrument prescribed by the Purchase Agreement) and to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution.

5. 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

4000.0000038 44784448.001

EXHIBIT A

Letter from Edward F. Bradley, Jr. on behalf of Cressy & Everett Commercial Corporation d/b/a Newmark Grubb Cressy & Everett dated January 9, 2018



January 9, 2018

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

VIA EMAIL ONLY

RE: Assignment of Cressy Purchase Agreement to Michigan Street Shops, LLC

Dear James:

As you know, Newmark Grubb Cressy & Everett ("Cressy") is under contract with the City for the purchase of the properties commonly known as the retail storefronts for the Leighton Parking Garage and Wayne Street Parking Garage in downtown South Bend. Pursuant to that contract, Cressy would like to assign its rights to the newly formed entity, Michigan Street Shops, LLC. All the principals of Cressy are members of Michigan Street Shops, LLC.

Please accept this letter as representation that Michigan Street Shops, LLC, fully intends to fulfill the obligations of Cressy as outlined in the purchase agreement and amendment 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 8, 2018

ASSIGNMENT

This Assignment is made and entered into the 8th day of January 2018, by and between Cressy & Everett Commercial Corporation (“Assignor”), and Michigan Street Shops, LLC (“Assignee”).

RECITALS

Assignor has entered into an agreement and subsequent amendments dated August 10, 2017, & December 14, 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: Michigan Street Shops, LLC



By: Edward F. Bradley, Managing Member

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 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 Michigan Street Shops, 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 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 (as assignee of Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett) under the terms of the Real Estate Purchase Agreement dated August 10, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated December 14, 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

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.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement (this “Second Amendment”) is made effective as of January 11, 2018 (the “Effective Date”), by and between JMS Development, LLC (the “Developer”), and the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”).

RECITALS

A. The Developer and the Commission are parties to that certain Development Agreement dated December 10, 2015, as amended by the First Amendment to Development Agreement dated September 15, 2016 (collectively, the “Development Agreement”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Development Agreement.

B. Pursuant to the Development Agreement, the Commission agreed to complete certain Local Public Improvements relating to the Developer Property, which were determined and approved by the parties through the First Amendment to Development Agreement dated September 15, 2016.

C. The Parties desire to amend the Development Agreement further to supplement the scope of the Local Public Improvements to be completed by the Commission.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Second Amendment and the Development Agreement, the adequacy of which consideration is hereby acknowledged, the Developer and the Commission agree as follows:

1. The following is inserted immediately following point 3 of Exhibit C to the Development Agreement: “4. Improvements, such as asphalt replacement and the installation of new fencing (including an automated gate), to the parking lot located on the Developer Property.”

2. The parties mutually agree that the completion of any contract(s) let by the South Bend Board of Public Works, in its capacity as the Commission’s agent, to accomplish the supplemental scope of work added to the Development Agreement by this Second Amendment, irrespective of the final amount(s) of said contract(s), will satisfy all the Commission’s obligations under the Development Agreement for its completion of the Local Public Improvements. The parties mutually acknowledge and agree that no further supplementation of the scope of the Commission’s work under the Development Agreement will be made.

3. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay any and all costs of completing the Local Public Improvements in excess of the Funding Amount, including any such excess costs arising out of any contract(s) let to accomplish the supplemental scope of work added to the Development Agreement by this Second Amendment and any change orders thereto.

4. This Second Amendment may be executed in any number of counterparts, and each counterpart shall constitute an original instrument, but all such separate counterparts shall constitute one and the same agreement. The signature page to this Second Amendment may be delivered by facsimile or other electronic transmission and the signatures thereon shall be deemed effective upon receipt by the intended receiving party.

5. To the extent that any of the provisions of this Second Amendment are inconsistent with the provisions in the Development Agreement, the provisions of this Second Amendment shall control. To the extent not inconsistent with the provisions in this Second Amendment, the Development Agreement shall remain unchanged, unaltered, and in full force and effect.

IN WITNESS WHEREOF, the Parties hereby execute this Second Amendment to Development Agreement to be effective on the Effective Date stated above.

COMMISSION:

DEVELOPER:

City of South Bend, Department of
Redevelopment

JMS Development, LLC
By: Great Lakes Capital Management, LLC
Its: Manager

Marcia I. Jones, President

DocuSigned by:
By: *Ryan C. Rans*

Ryan C. Rans, Managing Member

DS
KS

ATTEST:

Donald E. Inks, Secretary

4000.0000059 56369748.003