

## **SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT**

This Second Amendment To Real Estate Purchase Agreement (this “Second Amendment”) is made on January 25, 2018 (the “Effective Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Michigan Street Shops LLC (as assignee of Cressy & Everett Commercial Corporation (the “Corporation”)), an Indiana limited liability company with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (“Buyer”) (each a “Party” and together the “Parties”).

### RECITALS

A. Seller and the Corporation 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 (the “Purchase Agreement”), for the purchase and sale of the Property (as defined in the Purchase Agreement) located in the City of South Bend.

B. The Corporation assigned its rights and obligations under the Purchase Agreement to Buyer and Seller consented to such assignment, as set forth in Seller’s Resolution No. 3424 dated January 11, 2018.

C. Buyer continues its examination of the Property and associated matters pursuant to Section 3 of the Purchase Agreement and has requested an extension of the Due Diligence Period.

D. Seller desires to grant the requested extension and to approve certain revised closing documents as stated in this Second Amendment.

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

1. In Section 3.B. of the Purchase Agreement, the term “one hundred sixty-five (165)” is deleted and replaced by the term “two hundred fifty-five (255).”

2. The Commission hereby approves, and will execute simultaneously with this Second Amendment, the Special Warranty Deed attached hereto as **Exhibit A** (the “Revised Deed”) conveying ownership of the Property to Buyer as the Corporation’s assignee and reflecting this Second Amendment. For purposes of Closing, the Revised Deed replaces the form of deed attached to Resolution No. 3424 as Exhibit C. The Commission hereby authorizes and instructs David Relos of the City of South Bend Department of Community Investment to deliver to Buyer, at Closing, the Revised Deed (in lieu of the form of such instrument prescribed by the Purchase Agreement). Buyer agrees to accept the Revised Deed at Closing.

3. The Parties agree that the form of tenant estoppel certificate provided for in Section 10.B(iv) of the Purchase Agreement and attached to the Purchase Agreement as Exhibit

D is deleted and will be superseded by a modified form of such certificate negotiated in good faith and agreed upon by the Parties and their respective legal counsel in advance of Closing. The Commission hereby authorizes and instructs David Relos to negotiate with Buyer concerning the modified form of tenant estoppel certificate and to deliver to Buyer, at or before Closing, an agreed and completed tenant estoppel certificate for each tenant presently occupying space in the Property. Buyer agrees to accept such certificates at or within a reasonable time in advance of Closing.

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

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

[Signature page follows.]

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

BUYER:

Michigan Street Shops LLC,  
an Indiana limited liability company

\_\_\_\_\_  
Edward Bradley, Member  
Dated:

SELLER:

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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

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**EXHIBIT A**

**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, and the Second Amendment To Real Estate Purchase Agreement dated January 25, 2018; 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.