

Cross references: Instrument Nos.:

AGREEMENT TO TERMINATE AND RELEASE REAL PROPERTY INTERESTS

This Agreement to Terminate and Release Real Property Interests (“Agreement”) is entered into effective as of 12:01 A.M. on _____, 2019 (the “Effective Date”), by and between the City of South Bend, Indiana, by and through its Board of Public Works, Board of Park Commissioners, and Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (collectively the “City”), FREG Stephenson Mill Associates, LLC, a Colorado limited liability company (“FREG”), and Wharf Partners, LLC, an Indiana limited liability company (“Wharf Partners”).

WHEREAS, the City owns real property in South Bend, Indiana known as Lot 1 of the Seitz Park Minor Subdivision (the “City Parcel”);

WHEREAS, Wharf Partners owns real property in South Bend, Indiana adjacent to the City Parcel known as Lots 1-3 of the Cascade Minor Subdivision (the “Wharf Partners Parcels”);

WHEREAS, FREG owns real property in South Bend, Indiana known as Lot 1 of the Opelika Minor Subdivision and Lot 2 of the Seitz Park Minor Subdivision (the “FREG Parcels”);

WHEREAS, the City Parcel, Wharf Partners Parcels, and FREG Parcels are each burdened by easements for access and parking or are otherwise encumbered by real property interests or rights and these encumbrances benefit one or more of the other parties to this Agreement;

WHEREAS, as part of the development of the City Parcel and Wharf Partners Parcel, the parties agree to release, terminate and quitclaim unto the applicable parcel owner all currently existing easements (other than as set forth in the recorded Seitz Park Minor Subdivision and the Shared Easement Agreement [as defined below]) and encumbrances they have over such applicable parcels identified in this Agreement and thereafter create a new easement for ingress and egress only on a portion of the City Parcel in a separate recorded Shared Perpetual, Non-Exclusive Ingress, Egress and Utility Easement Agreement (the “Shared Easement Agreement”).

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, FREG, and Wharf Partners agree as follows:

1. Except as set forth in the recorded Seitz Park Minor Subdivision, the Shared Easement Agreement and any agreements entered into by Wharf Partners and the City after the Effective Date, Wharf Partners does hereby release, terminate and quitclaim unto the City all of its right, title and interest in and to the City Parcel which it received by written instrument or otherwise. Wharf Partners does hereby release, terminate and quitclaim unto FREG all right, title and interest in and to the FREG Parcels which it received by written instrument or otherwise.

2. Except as set forth in the recorded Seitz Park Minor Subdivision, the Shared Easement Agreement, the Project Agreement dated _____, 2019 and any agreements entered into by FREG and the City after the Effective Date, FREG does hereby release, terminate and quitclaim unto the City all of its right, title and interest in and to the City Parcel which it received by written instrument or otherwise. FREG does hereby release, terminate and quitclaim unto Wharf Partners all right, title and interest in and to the Wharf Partners Parcels which it received by written instrument or otherwise.

Without limiting the release, termination and termination set forth in Sections 1 and 2 above, the City, FREG, and Wharf Partners agree that the easements specifically identified on **Exhibit A** attached hereto shall be of no further force or effect and the parties hereby release each other from any and all liabilities, claims, and obligations arising out of or in connection with any such easements.

4. Each party shall, at no additional cost to the other parties, cooperate with the other and its authorized representatives with regard to any reasonable requests made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement and to provide any and all additional documentation deemed necessary to effectuate the transaction contemplated by this Agreement. Each party further agrees that the term “cooperate,” as used in this Agreement, includes agreeing to execute or re-execute any documents that the parties reasonably deem necessary or desirable to carry out the intent of this Agreement. All parties recognize the duty of each party to act in good faith and with fair dealings when effectuating the intent of this Agreement.
5. The City, FREG and Wharf Partners intend that this Agreement shall bind every person having any fee, leasehold, or other interest therein, and shall inure to the burden or benefit of each parcel referenced herein, the owner of each such parcel and their respective successors, assigns, heirs, and personal representatives.
6. This Agreement, as well as any instrument releasing or terminating this Agreement, shall be duly recorded in the Office of the Recorder of St. Joseph County, Indiana.
7. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana without reference to its conflict of laws principles.

[Signature Pages Follow]

WHARF PARTNERS, LLC,
an Indiana limited liability company

By: _____

Its: _____

Date Signed: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Wharf Partners, LLC, an Indiana limited liability company, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such officer or other representative.

WITNESS my hand and Notarial Seal this ___ day May, 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

FREG STEPHENSON MILL ASSOCIATES, LLC,
a Colorado limited liability company

By: Forum Management, Inc.,
a Colorado corporation, its Manager

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Forum Management, Inc., a Colorado corporation, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such officer or other representative.

WITNESS my hand and Notarial Seal this ___ day of June 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**

Gary Gilot, President

Therese J. Dorau, Member

Elizabeth Maradik, Member

Genevieve Miller, Member

Laura O’Sullivan, Member

Attest: _____
Linda Martin, Clerk

Date Signed: _____

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

Before me, a Notary Public in and for said County and State, personally appeared Gary Gilot, Therese Dorau, Elizabeth Maradik, Genevieve Miller, Laura O’Sullivan, and Linda Martin, President, Members, and Clerk, respectively, of the South Bend Board of Public Works, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such representatives.

WITNESS my hand and Notarial Seal this ___day of June 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

**SOUTH BEND
BOARD OF PARK COMMISSIONERS**

Mark Neal, President

Consuella Hopkins, Vice President

Dan Farrell, Member

Aimee Bucellato, Member

ATTEST:

Eva Ennis

Date Signed: _____

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

Before me, a Notary Public in and for said County and State, personally appeared Mark Neal, Consuella Hopkins, Dan Farrell, Aimee Bucellato, and Eva Ennis, President, Vice President, Members, and Clerk, respectively, of the South Bend Board of Park Commissioners, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such representatives.

WITNESS my hand and Notarial Seal this ___ day of June 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Marcia I. Jones, President

ATTEST:

Quentin Phillips, Secretary

Date Signed: _____

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

Before me, a Notary Public in and for said County and State, personally appeared Marcia I. Jones and Quentin Phillips, President and Secretary, respectively, of the South Bend Redevelopment Commission, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such representatives.

WITNESS my hand and Notarial Seal this ___ day May, 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

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. Sandra L. Kennedy

Prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601

EXHIBIT A

1. The driveway, ingress and egress easement disclosed in a Warranty Deed from the Southern Mills Products Company, an Indiana Corporation, to Opelike Manufacturing Corporation, an Illinois Corporation, dated February 25, 1966 and recorded March 2, 1966 in Deed Record 673, page 636 in the Office of the Recorder of St. Joseph County, Indiana, and also disclosed in Special Warranty Deed from First Bank and Trust Company of South Bend, as Successor Trustee under a certain agreement and declaration of trust dated April 15, 1936 and recorded in Miscellaneous Record 57, pages 442-459, wherein First Bank and Trust Company of South Bend, Liquidating Agent of First National Bank of South Bend, American Trust Company of South Bend, St. Joseph Loan & Trust Company of South Bend and Joseph E. Neff, Receiver of Citizens National Bank of South Bend are designated as parties of the first part, P.W. Van Antwerp, as party of the second part and D.K. Stephenson as part of the third part, an Indiana corporation, to the Southern Mills Products, an Indiana corporation, dated October 31, 1941 and recorded November 10, 1941 In Deed 340, page 198 in the Office of the Recorder of St. Joseph County, Indiana.
2. The Easement as disclosed in a quit claim deed from the Southern Mills Products Company, an Indiana corporation to Opelika Manufacturing Corporation, an Illinois corporation, dated February 25, 1966 and recorded March 2, 1966 in deed record 673, page 639 in the Office of the Recorder of St. Joseph County, Indiana.
3. The Easement Agreement by and between Char King, Inc. and Opelike Manufacturing Company of Chicago, dated April 6, 1976 and recorded April 27, 1976 in Deed Record 815, page 112 in the Office of the Recorder of St. Joseph County, Indiana (as modified by the Parking Agreement Document #9526973).
4. The Easement Agreement recorded as Document No. 1123732, dated September 13, 2011, and recorded September 14, 2011, by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, and Stephenson Mills Associates, LLC.