

LICENSE AGREEMENT
FOR USE OF REDEVELOPMENT COMMISSION PROPERTY

This License Agreement (this “Agreement”) is made on July 27, 2023 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Wharf Partners LLC, (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

A. The Commission owns certain real property and improvements located within the River East Development Area of the City of South Bend, Indiana (the “City”), as described in Exhibit A, attached hereto and incorporated herewith, Parcel Key No. 71-08-12-130-008.000-026 (the “Property”); and

B. The Company approached the Commission with its desire to use a portion of the Property, as set forth in Exhibit B, attached hereto and incorporated herewith, (the “Licensed Premises”) for the purpose of constructing and maintaining a restaurant patio open to the general public, and for appurtenant equipment and fixtures so related (the “Company Uses”) while the Company conducts its business in the vicinity of the Property; and

C. The Commission is willing to confer a personal privilege to the Company to permit the Company to use the Property for the Purposes, subject to the terms and conditions set forth in this Agreement, pursuant to IC §36-7-14-12.2(a)(3).

PROVISIONS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants stated in this Agreement, the Parties agree as follows:

1. License. The Commission grants to the Company a revocable, -exclusive license to enter and use the Licensed Premises, as fully described in Exhibit B, for the Company Uses, while the Company conducts its business in the vicinity of the Property, provided that the Company’s use of the Property is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission, or its authorized representative, reserves the right to specifically designate the location and configuration of the Licensed Premises on the Property that are available for the Company’s use and may modify such location or configuration during the Term (as defined below) upon reasonable notice to the Company. The Company’s license is limited to use of the Licensed Premises for the Company Uses as stated above and the Company may not enter or use any other structure on or other area of the Property for any reason without prior written permission or use the Licensed Premises for any purpose other than the Company Uses defined herein. Company agrees to conduct the Company Uses in a manner that complies with the Americans with Disabilities Act, as amended.

2. Term. The Company’s license to use the Licensed Premises shall be effective starting on July 27, 2023, and continuing until such time revoked by the Commission, or its designee or successor. Upon ninety (90) days’ written notice to the Company at the above-

mentioned registered office address, the Commission or the Commission's authorized representative may revoke and terminate the license at any time for any reason, including, without limitation, to accommodate future development of the Property or the surrounding area, as determined in its, his, or her sole discretion. Notwithstanding the foregoing sentence, the Commission or the Commission's authorized representative may revoke and terminate the license upon thirty (30) days' written notice in the event there exists any material default of the Company's obligations under this Agreement. Following such written notice of material default, Company shall be afforded fifteen (15) days within which to cure the default. If the default is not cured within this period, the Commission may terminate the license and demand the removal of any improvements without further notice.

3. No Lease; No Assignment; No estate or interest. The Parties acknowledge and intend that this Agreement is a license and will not constitute a lease of the Property or the Licensed Premises to the Company. This Agreement does not convey any estate or interest in the Property or the Licensed Premises to the Company and does not convey any future promise or option to the Company in any regard to an estate or interest in the Property or the Licensed Premises. Furthermore, the Company will have no right or authority to convey any interest in the Property or the Licensed Premises to any other person or entity. Any attempt by the Company to grant or lease any interest in the Property or the Licensed Premises to any other person or entity will be void ab initio and of no force or effect. The Parties agree that neither this Agreement nor any of the Company's rights or use of the Property or the Licensed Premises under this Agreement is assignable or transferable, in whole or in part, by Company to any other person or entity, except that the Company may assign this Agreement to an entity which has agreed in writing with Company to perform the Company Uses. The Commission shall receive written notice of any such assignment, together with contact information for the entity performing the Company Uses. Said provision notwithstanding, the Parties acknowledge that the Commission may assign and/or transfer its rights under this Agreement to any other department, division, or board of the City of South Bend, including but not limited to the South Bend Board of Park Commissioners, which may own the Property in the future.

4. No Improvements. Except as contemplated herein and reasonably necessary for the Company Uses, the Company shall not make any changes or improvements to the physical, electrical and mechanical features of the Property and the Licensed Premises.

5. Security. The Company understands and agrees that the Commission shall not be liable for any loss, damage, destruction, or theft of the Company's property or any bodily harm or injury that may result from the Company's use of the Property. The Company understands and agrees that it will at all times be solely responsible for the safety and security of all persons, property, and vehicles, including any property contained within the vehicles, on the Property in connection with the Company's use of the Licensed Premises under the terms of this Agreement.

6. Storage. The Company agrees that it will not store any supplies, materials, goods, or personal property of any kind on the Property without the prior written consent of the Commission. In addition, the Company will not cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

7. Regulations; Other Permits. The Company understands and 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 Licensed Premises. The Company understands and agrees that it will secure in its own name and at its own expense all other permits and authorizations, if any, necessary for its use of the Licensed Premises in accordance with the terms of this Agreement.

8. Commission's Use. The Commission retains possession and control of the Property and the Licensed Premises and reserves the right to use the Property during the Term of this Agreement for any purpose, including, but not limited to, general maintenance. The Company remains responsible for the maintenance and repair of all equipment, fixtures, or other property it places in the Licensed Premises.

9. Loss of Use. The Company agrees that full or partial closure and/or loss of use and enjoyment of the Property for a period in excess of 90 consecutive days, would result in harm to the City. The Company acknowledges that, if the work consisting of Company's initial construction and installation of its facilities suitable for the Company Uses within the Licensed Premises which requires full or partial closure of the Property ("Initial Work") is not completed within 120 days after the date the Initial Work is commenced, the City may assess a \$250.00 per day Property use fee for each day after the 120th day until the Initial Work is complete. Notwithstanding the foregoing, the City agrees that (1) Company's initial clean-up work will not trigger commencement of the 90-day period for completing the Initial Work, and (2) days where Company is prevented from performing the Initial Work due to circumstances beyond Company's reasonable control will not count toward the 90-day period. Prior to commencing the Initial Work, Company will provide the City with written notice confirming the Initial Work start date. In the event that the Initial Work is not complete prior to the riverwalk opening to the public, the Initial Work shall not impede pedestrian traffic on the riverwalk or present any safety hazards, as reasonably determined by the City.

10. Abandonment; Revocation of License. The failure of Company to use the Licensed Premises for the Company Uses, shall not be deemed to constitute an abandonment or waiver of the rights granted herein, except as otherwise provided in this paragraph. Should three years pass from the date that this Agreement is executed, and Company has either never used the Licensed Premises or has ceased using the Licensed Premises for a period of 12 consecutive months, the Commission may send Company written notice of its intention to terminate this Agreement. If Company fails to notify the Commission, within 60 days after receiving the Commission's notice, that Company has plans to resume the Company Uses in the Licensed Premises, this Agreement will terminate without any additional notice required by the Commission or Company. The provisions of this Section shall supersede any termination provisions elsewhere in this Agreement. Company will be responsible for the cost and removal of such unused facilities within six months of the termination of this Agreement under this Section. The Commission reserves the right to revoke this Agreement at any time under the terms of this Section if the Licensed Premises ceases to be used for a purpose which is open to and accessible by the general public without discrimination or based on membership (e.g., a private club) or any other basis.

11. Restoration. To the extent that any portion of the Property is disturbed or damaged in connection with the Company's use of the Property, including but not limited to the Initial Work,

the Company, at the Company's sole expense, shall restore the Property to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Commission.

12. 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 license granted herein by the Commission or the Company's use of the Property. 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 Property, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

13. Insurance. The Company, at the Company's sole expense, shall maintain during the Term of this Agreement commercial general liability insurance covering the Company 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 certificate of insurance evidencing the same. To the extent that the Commission or the City is harmed as a result of the Company's use of the Property, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana or other applicable law.

14. Integration; Amendment. This Agreement supersedes all prior negotiations, understandings, and agreements, whether written or oral, concerning the subject matter of this Agreement and constitutes the Parties' entire agreement. This Agreement may not be altered except by a written instrument signed by authorized representatives of both Parties.

15. Counterparts; Signatures. This 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.

16. Authority. 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 Agreement.

17. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

[Signature page follows.]

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

WHARF PARTNERS LLC

By: _____,
Frank A. Perri _____, Managing Member

Quick Tools

Parcel County/Id: 018-5001-0005

Owner Name: DEPARTMENT OF REDEVELOPMENT CITY OF SOUTH BEND

Property Address: 340 E COLFAX AVE

Parcel State ID: 71-08-12-130-008,000-026

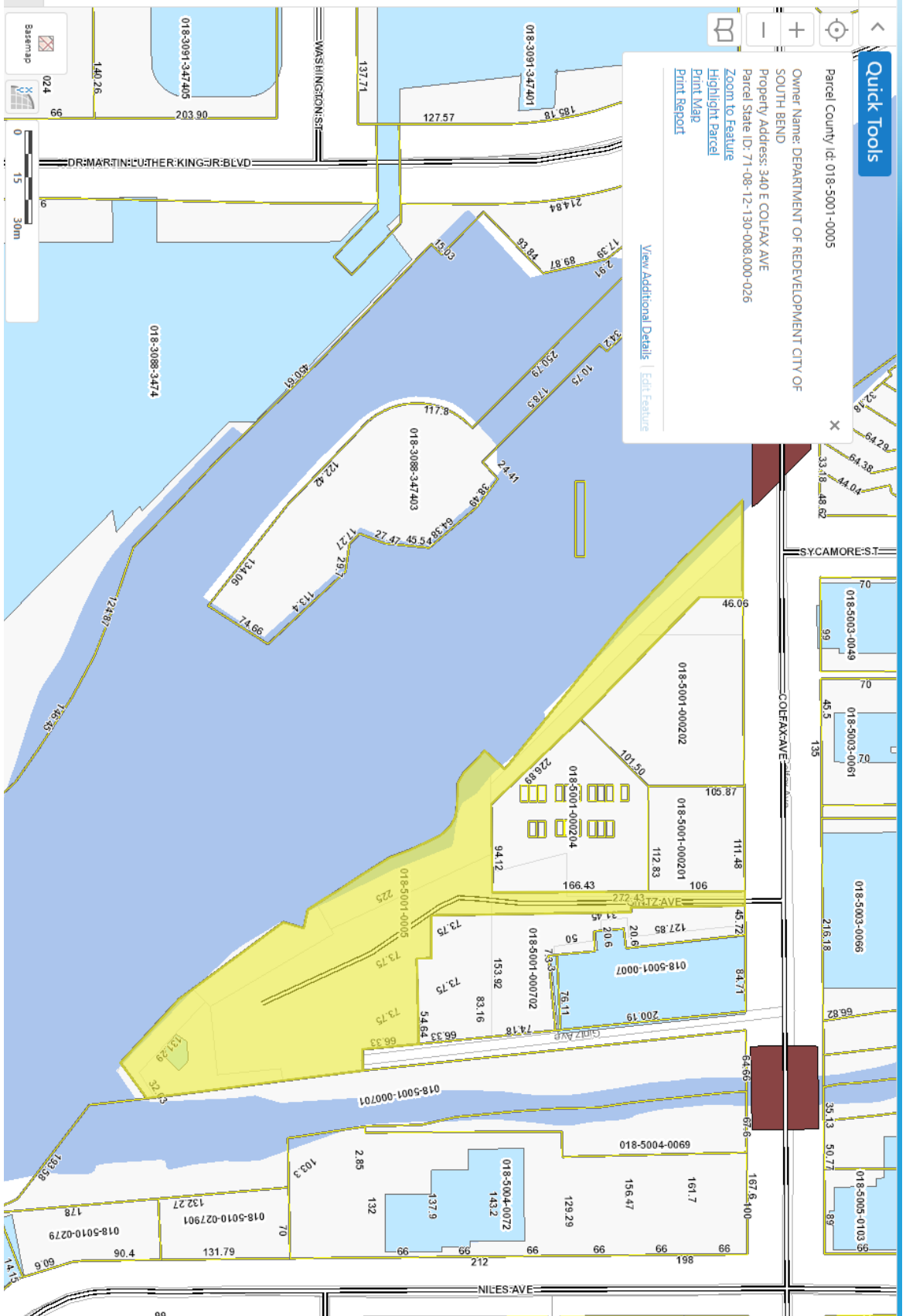
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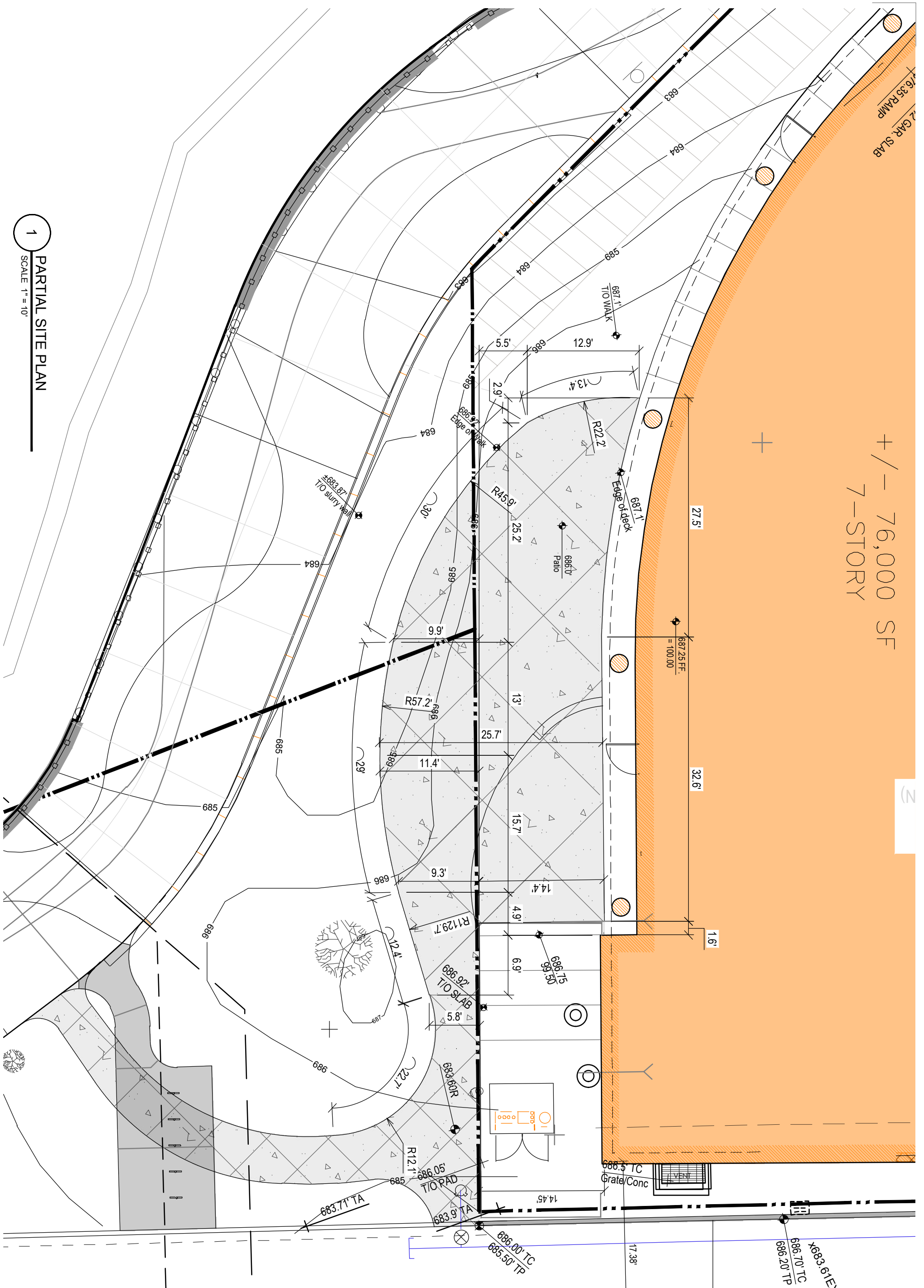
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+/- 76,000 SF
7-STORY



1 PARTIAL SITE PLAN
SCALE 1" = 10'



Panzica Construction Group

416 East Monroe St.
Suite 320
South Bend, IN 46601
574.234.0124

Job Description

Mixed Use Development
THREE TWENTY
at The Cascade
320 East Colfax Avenue at the St. Joseph River
South Bend, Indiana 46617

410516
Project #

File #
April 25, 2023
Date

Revisions

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PANZICA BUILDING CORPORATION

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