

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of March 28, 2024 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), Beacon Health System, Inc., an Indiana nonprofit corporation, with offices at 3245 Health Drive, Granger, Indiana 46530 (“Beacon”) and Memorial Hospital of South Bend, Inc., a subsidiary of Beacon, with offices at 615 N. Michigan Street, South Bend, Indiana 46601 (“Memorial”) (each, a “Party,” and collectively, the “Parties”).

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the “Act”); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, Beacon and Memorial own certain real property located in South Bend, Indiana (the “City”) described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Beacon Property”), which each desire to develop; and

WHEREAS, Beacon currently has private financing and desires to construct, renovate, or otherwise rehabilitate certain elements of Memorial Property (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as **Exhibit B**; and

WHEREAS, the Memorial Property is located within the corporate boundaries of the City, within the River West Development Area (the “Area”); and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project Plan; and

WHEREAS, the Commission seeks to support Beacon’s development of a new patient tower, which will generate over \$230 million of new development in the downtown area; and

WHEREAS, it is anticipated Beacon’s Memorial Patient Tower will add additional full-time positions at the hospital; and

WHEREAS, the Commission believes that accomplishing the Project as described herein advances a public good, the expected benefits exceed the expected costs to the Commission, and is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project Plan by undertaking the local public improvements stated in **Exhibit C** (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act; and

WHEREAS, the Commission previously entered into a certain Ground Lease (the “Ground Lease”) with Memorial for the property located at 111 W. Jefferson Blvd, South Bend, Indiana 46601; and

WHEREAS, Memorial desires to surrender the Ground Lease to the Commission and the Commission is willing to accept the surrender on the terms and conditions set forth herein.

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

SECTION 1. DEFINITIONS.

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means an amount no less than Two Hundred Thirty Million Dollars (\$230,000,000.00), not including the Funding Amount, that has been or will be expended by Beacon for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, construction and any other costs directly related to completion of the Project that are expected to contribute to increased access to healthcare services at Memorial Hospital and increases to the Assessed Value of the Project Property and surrounding properties.

SECTION 2. INTERPRETATION, TERMS AND RECITALS.

2.1 Interpretation.

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 3. BEACON’S DEVELOPMENT OBLIGATIONS.

3.1 Generally. The Parties acknowledge and agree that the Commission’s agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for Beacon’s commitment to perform and abide by the covenants and obligations of Beacon contained in this Agreement.

3.2 The Project.

(a) Beacon will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as **Exhibit B** and the plans and specifications to be approved by the City Planner, or his designee, pursuant to Section 3.7 (“Submission of Plans and Specifications for Project”) of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) Beacon will expend the Private Investment to complete the Project in accordance with **Exhibit B** and the plans and specifications to be approved by the Commission pursuant to Section 3.7 (“Submission of Plans and Specifications for Project”) of this Agreement.

3.3 Cooperation. Beacon agrees to endorse and support the Commission’s efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

3.4 Grant of Easement. Beacon will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the parcels on which the local public improvements will be performed (the “Easement”) in the form attached hereto as **Exhibit D**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The

Easement shall: (a) inure to the benefit of the Commission and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) bind Beacon and its grantees, successors, and assigns; and (c) terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works. Furthermore, Beacon agrees to obtain any and all other easements from any governmental entity and/or any other third parties that Beacon or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

3.5 Timeframe for Completion. Beacon hereby agrees to complete the Project as set forth in the Project Plan and any other obligations Beacon may have under this Agreement by December 31, 2027 (the "Mandatory Project Completion Date"). Beacon further agrees the total Project will be completed in accordance with the Project Plan attached hereto as **Exhibit B**. Notwithstanding any provision of this Agreement to the contrary, Beacon's failure to complete the Project or any other obligations Beacon may have under this Agreement by the Mandatory Project Completion Dates will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

3.6 Reporting Obligations. On or before June 30 and December 31 of each year until substantial completion of the Project, Beacon shall submit to the Commission a report, in the format set forth as **Exhibit E**, demonstrating Beacon's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, and (iii) an itemized accounting generally identifying the Private Investment to date.

3.7 Submission of Plans and Specifications for Project. The Parties acknowledge and agree that, prior to the Effective Date, Beacon delivered a complete set of plans and specifications for the Project to the City's Executive Director of the Department of Community Investment who has approved of the same. Having met this standard requirement, the expenditure of the Funding Amount may occur.

3.8 Costs and Expenses of Construction of Project. Beacon hereby agrees to pay, or cause to be paid, all costs and expenses of planning, construction, management, and all other activities or purposes associated with the Project (including legal, architectural, and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

3.9 Specifications for Local Public Improvements. Beacon will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and Beacon will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. Beacon will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the

same. The Commission shall not be required to expend the Funding Amount unless the Engineering Department has approved all bid specifications.

3.10 Non-Interference. Beacon hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Project Property during construction of the Project.

3.11 Insurance. Beacon shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed by it with respect to the Project. Beacon shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, Beacon shall maintain insurance in the kinds and for at least the minimum amounts as described in Exhibit F attached hereto and the Commission and the City shall be named as additional insureds on such policies that provide coverage for Parcel 018-1014-0540, where the Local Public Improvements will be completed (but not on any worker's compensation policies).

3.12 Information. Beacon agrees to provide any and all due diligence items with respect to the Local Public Improvements reasonably requested by the Commission.

SECTION 4. COMMISSION'S DEVELOPMENT OBLIGATIONS.

4.1 Generally. The Parties acknowledge and agree that Beacon's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in this Agreement.

4.2 Completion of Local Public Improvements.

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit C, attached hereto, on a schedule to be reasonably determined and agreed to by the Commission and Beacon, as may be modified due to unforeseen circumstances and delays.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and responded in accordance with Section 3.7 ("Submission of Plans and Specifications for Project") of this Agreement, and (b) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 3.9 ("Specifications for Local Public Improvements") of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) It is the intent of the Parties that the Commission will cover the full amount of the costs associated with the Local Public Improvements. Therefore, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, the Commission will be responsible for funding the excess amount, and the Parties shall amend this Agreement as necessary to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission.

SECTION 5. GROUND LEASE SURRENDER AND ACCEPTANCE.

5.1 Generally. The Commission and Memorial entered into a certain Amended and Restated Agreement for the Lease and Development of Real Property within the South Bend Central Development Area dated January 23, 1998 (the “Central Development Area Agreement”). As part of the Central Development Area Agreement, the Commission and Memorial also entered into a Ground Lease (the “Ground Lease”), a copy of which is attached hereto as **Exhibit G**, for the property located at 111 W. Jefferson Blvd., South Bend, Indiana 46601 (the “Premises”). Memorial desires to surrender the Ground Lease to the Commission and the Commission is willing to accept the surrender on the terms set forth in this Section 5.

5.2 Surrender. Subject to the terms of this Agreement, Memorial hereby surrenders to the Commission and its successors and assigns, as of April 23rd, 2024 (the “Surrender Date”), the Ground Lease and the term and estate granted by the Ground Lease, together with the Premises, so that the Ground Lease shall be wholly extinguished, and the term of the Ground Lease shall expire on the Surrender Date.

5.3 Cancellation Payment. The Commission recognizes the benefit to be derived by the City by regaining the full use of the Premises, including more than 170 parking spaces, and in consideration of the surrender by Memorial and of the acceptance thereof by the Commission, following the execution and delivery of this Agreement, the Commission shall pay the sum of Four Million Dollars (\$4,000,000.00) to Memorial on the Surrender Date.

5.4 Mutual Release. The Commission, for itself and its successors and assigns, accepts Memorial’s surrender of the Premises as of the Surrender Date and, in consideration of the surrender by Memorial and of the acceptance thereof by the Commission, the Commission and Memorial hereby mutually release each other, and their respective heirs, executors, administrators, successors, and assigns, from any and all claims, obligations, liabilities, demands, actions, and causes of action of each and every kind and nature whatsoever arising out of, resulting from, or relating to the Ground Lease prior to, on or after the Surrender Date.

5.5 Representations and Warranties. The Commission and Memorial each hereby represent and warrant, as of the date hereof and the Surrender Date, that: (i) the person executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on its behalf; and (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary action and does not violate its formation or management documents, or any contract, agreement, commitment, order, judgment, or decree to which it is a party or to which it or the Premises are bound. Memorial hereby represents and warrants, as of the date hereof and the Surrender Date, that it has not done, or suffered anything to be done, whereby the Premises have

been encumbered in any way whatsoever, nor shall the Premises be in any way encumbered on the Surrender Date.

5.6 Indemnification. The Commission and Memorial each agree to indemnify, hold harmless, and defend the other from and against any and all claims, liabilities, losses, costs, damages, and expenses, including reasonable attorneys' fees, in the enforcement of this indemnity asserted against or suffered by the other party arising out of, related to, or caused by the breach or inaccuracy of any covenant, obligation, warranty or representation under this Agreement by such party.

5.7 Further Assurances. The Commission and Memorial shall promptly execute, acknowledge, and deliver to the other such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Section 5.

5.8 Temporary Lease Agreement. Upon execution of this Agreement, the Commission and Memorial shall enter into a Lease Agreement, in the form attached hereto as Exhibit H, for the continued operation of Memorial's physical therapy services and the Beacon Health & Fitness Center until such time as the facilities are able to relocate. This Temporary Lease Agreement shall end no later than December 31, 2025 for the Health & Fitness Center and December 31, 2025 for the physical therapy services offices.

5.9 Assignment of Existing Leases. Memorial shall assign to the Commission any leases it holds for the Premises, delivering to the Commission any rent deposits effective March 29, 2024, and effective on March 29, 2024, the Commission shall have all the rights and responsibilities of Lessor to the Premises.

SECTION 6. PARKING AGREEMENT.

6.1 Generally. The Parties acknowledge and agree that concurrently with the execution of this Agreement, Beacon, Memorial, and the Commission shall enter into or cause the execution of a certain Real Estate Purchase Agreement with Great Lakes Capital Development LLC ("GLC") for the transfer of certain real property near the Beacon Property (the "Parcels") from Beacon and Memorial to Great Lakes Capital ("GLC") for the construction of other new development ("Purchase Agreement"). In furtherance of such other new development, concurrently with the execution of this Agreement, the Commission shall enter into or cause the execution of a certain Development Agreement with GLC, under which the Commission will commit to constructing certain local public improvements on the Parcels, to include the development of new parking garages near the Beacon Property ("GLC Development Agreement"). Provided the transfer of Parcels to GLC takes place as set forth in this Section 6, in consideration of the other terms and conditions set forth in this Agreement, the Commission agrees to commit to reserving certain parking spaces for Beacon's future use at no charge, as set forth below. In the event the Purchase Agreement and GLC Development Agreement described in this Section 6 are not executed, this Section shall become null and void.

6.2 Spaces. Three Hundred (300) parking spaces will be reserved annually for the use of Beacon for its employees Monday through Friday for the hours of 6:00 A.M. – 8:00 P.M. The

City reserves the right to use any and all spaces reserved for Beacon when not in use by Beacon staff.

6.3 Term. The initial term of this parking agreement shall commence on the date of substantial completion of the garages and continue for a term of twenty-five (25) years, with a series of two (2) consecutive options to renew, for twenty-five (25) years each. To exercise an option, Beacon must not then be in default. The option will be deemed exercised unless Beacon provides written notice to the Commission not less than one (1) year before the end of the current term. Five (5) years prior to completion of the third term, if exercised by Beacon, the City and Beacon will work collaboratively to find an equivalent arrangement to serve the parking needs of Beacon.

6.4 Annual Report. Beacon shall report in writing to the Commission before December 31 of each calendar year the number of spaces being utilized along with its good faith estimation of its parking needs for the following calendar year. The Commission and Beacon will use this information to determine if the number of reserved spaces should be altered. Any alteration of the allocation of reserved spaces for Beacon must be mutually agreed to, in writing, by the Commission and Beacon.

SECTION 7. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

7.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel. In no event shall the Commission be required to bear the fees and costs of the Beacon's attorneys, and in no event shall Beacon be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 7.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 8. DEFAULTS; DISPUTE RESOLUTION; INTERPRETATION.

8.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the Parties shall proceed to resolve the default in accordance with Section 8.2 ("Dispute Resolution"). If the default is cured within thirty (30) days after the notice described in this Section 8.1, then no default shall exist and the noticing Party shall take no further action.

8.2 Dispute Resolution. The Parties agree they will attempt in good faith to resolve all claims, controversies, or disputes arising out of or relating to this Agreement or an alleged breach

of this Agreement by negotiation. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. Therefore, if a dispute cannot be resolved by negotiation, the Parties agree they shall next seek to resolve any disputes through mediation administered by an agreed upon mediator. To the extent that a dispute is not settled by mediation within 180 days of the commencement of the mediation, or such further period as the Parties shall hereafter agree in writing, the dispute or any unresolved portion thereof shall be decided by binding arbitration in St. Joseph County, Indiana. The procedures specified herein shall be the sole and exclusive methods for the resolution of disputes between the parties arising out of or relating to this Agreement. However, a Party may seek a temporary restraining order, a preliminary injunction or other preliminary judicial relief if in its judgment, such action is necessary to avoid irreparable damage. Despite such action, the Parties shall continue to participate in good faith in the procedures specified here. All applicable statutes of limitation shall be tolled while the procedures specified here are pending. The Parties will take any action required to effectuate such tolling.

8.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of “Force Majeure”). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

8.4 Interpretation; Governing Law. This Agreement was negotiated by the Parties at arm’s length and each of the Parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither Party shall be deemed the drafter of the Agreement, and neither Party shall maintain that the language in this Agreement shall be construed against any signatory hereto. The captions and Section numbers of this Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Agreement. Further, notwithstanding anything to the contrary herein, no person other than the Parties hereto, and their permitted assigns, shall have any right of action under this Agreement. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

SECTION 9. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.

9.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

- (a) The Project is a private development;

(b) None of the Commission, the Board of Works, Beacon, or Memorial has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, Beacon, and/or Memorial expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission/ Board of Works and Beacon/Memorial, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission/Board of Works and the Beacon/Memorial.

9.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to Beacon or Memorial, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Beacon or Memorial, or their successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Beacon or Memorial or the successors of them shall be personally liable to the Commission under this Agreement.

9.3 Indemnity. Beacon and Memorial agree to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Local Public Improvements.

SECTION 10. MISCELLANEOUS.

10.1 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the matters contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

10.2 Equal Employment Opportunity. Beacon, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) Beacon will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Beacon agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) Beacon will state, in all solicitations or advertisements for employees placed by or on behalf of Beacon, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

10.3 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

10.4 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

10.5 Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

10.6 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Beacon: Beacon Health System, Inc.
3245 Health Drive
Granger, Indiana 46530
Attn: Chief Financial Officer

Memorial: Memorial Hospital of South Bend, Inc.
615 N. Michigan Street
South Bend, Indiana 46601
Attn: President

Commission: South Bend Redevelopment Commission
1400S County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director
South Bend Department of Community Investment

With a copy to: South Bend Legal Department
1200S County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

10.7 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

10.8 Tax Advice. Each Party acknowledges and agrees that it is responsible for its own federal, state, and/or local tax obligations or consequences that may arise from or relate to this Agreement. No Party is relying on any representation that may be made another regarding the tax consequences of the matters contemplated herein and shall hold the other Parties harmless from any adverse tax consequences resulting from any and all provisions of this Agreement.

10.9 Assignment. Beacon's rights under this Agreement shall be personal to Beacon and shall not run with the land. Beacon may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion, provided such consent is not unreasonably withheld. In the event Beacon seeks the Commission's consent to any such assignment, Beacon shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

10.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

10.11 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

10.12 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

10.13 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

10.14 Time. Time is of the essence of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

Troy Warner, Vice President

ATTEST:

Vivian Sallie, Secretary

BEACON HEALTH SYSTEM, INC.

Jeffrey P. Costello, Chief Financial Officer

MEMORIAL HOSPITAL OF SOUTH BEND, INC.

Larry A. Tracy, Jr., President

EXHIBIT A

Description of Beacon Property

Key Number: 018-1011-0400

Legal Description: Lot 1A Ex pt sold for Street Memorial Hospital 2nd Replat cont 11.46Ac
17/18Split#21068 3-28-2016 10/11NP#4437 07-02-2010 Fixed in 17/18

Commonly Known As: 621 Memorial Dr.

Key Number: 018-1014-0540

Legal Description: Lots 187 thru 189 & N 37.5' Lot 190 & Lots 195 thru 198 & E/W & N/S vac
alleys & S1/2 vac Navarre St N & adj O P South Bend

Commonly Known As: 531 N. Main St.

EXHIBIT B

Project Plan

Beacon will complete the construction of a development known as the “Memorial Patient Tower” and consisting of each of the following elements:

- Construct Two Hundred Thirty-Two Million (\$232,000,000.00) patient tower, inclusive of major enabling projects that support the patient tower.
- Complete Project by December 31, 2027, as evidenced by a certificate of occupancy and any other necessary licenses, certificates, or permits.

Beacon will complete the work contemplated herein in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations.

EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

The work to be performed shall include furnishing of all labor, services, materials, insurance, and equipment to provide for the demolition of the structure located at 531 N. Main St., South Bend, Indiana 46601, which is comprised of a 6-story office building. The work shall include the demolition and removal of the building, basement, and foundation, as well as the demolition and removal of site improvements. Work will also include the construction of a surface parking lot on the site of demolished building, the facilitation of a connection from the newly constructed parking lot to the existing courtyard of Memorial Hospital, vacation of a section of Navarre Street, and construction of a mutually acceptable pedestrian crosswalk improvement on Main Street to access the Memorial campus

Any and all costs associated with improvements not explicitly described this Exhibit and not approved pursuant to Section 3.10 (“Specifications for Local Public Improvements”) are the sole responsibility of Beacon. In the event the costs associated with the Local Public Improvements exceed the Funding Amount, the Commission will be responsible for funding the excess amount, and the Parties shall amend this Agreement as necessary to permit timely completion of the Local Public Improvements by the Commission or an agent of the Commission.

Local Public Improvements shall be constructed on the following parcels:

Key Number: 018-1014-0540

Legal Description: Lots 187 thru 189 & N 37.5' Lot 190 & Lots 195 thru 198 & E/W & N/S vac alleys & S1/2 vac Navarre St N & adj O P South Bend

Commonly Known As: 531 N. Main St.

Key Number: 018-1014-0546

Legal Description: 36' N. Side Lot 194 Original Plat of South Bend

Commonly Known As: 524 N. Lafayette Blvd.

Key Number: 018-1014-0547

Legal Description: 16 Ft N. Side 113 Ft. W. End Lot 193 30 Ft. S. Side Ex 20x52 Ft. SE Corner Lot 194 Original Plat of South Bend

Commonly Known As: 506 N. Lafayette Blvd.

Key Number: 018-1014-0548

Legal Description: 50 Ft. S. Side 113 Ft. W. End Lot 193 OP South Bend

Commonly Known As: 502 N. Lafayette Blvd.

Key Number: 018-1014-0549

Legal Description: 52 Ft. E. End Lot 193 20x52 Ft. SE Corner Lot 194 OP South
Bend

Commonly Known As: 215 W. Marion St.

Vacated Navarre Street as part of parcels Key Nos. 018-1014-540 (S ½) and 018-
1011-0400 (N ½)

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ of _____, 2024 (the “Effective Date”), by and between Beacon Health System, Inc., 615 N. Michigan St., South Bend, Indiana 46601 (the “Grantor”), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400S County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the “Grantee”).

WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”), together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated March 28 (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee’s contractors acting on Grantee’s behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the “Construction Termination Date”) of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

BEACON HEALTH SYSTEM, INC.

Printed: Jeffrey P. Costello
Its: Chief Financial Officer

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey P. Costello, to me known to be the Chief Financial Officer of the Grantor in the above Grant of Temporary Easement, and acknowledged the execution of the same as the Grantor’s free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 20____.

_____, Notary Public
Residing in _____ County, _____

My Commission Expires: _____

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. /s/ Danielle Campbell Weiss

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, City of South Bend, Indiana, Department of Law, 227 W. Jefferson Boulevard, Suite 1200S, South Bend, IN 46601.

EXHIBIT 1

Description of Property

Local Public Improvements shall be performed on the following parcels:

Key Number: 018-1014-0540

Legal Description: Lots 187 thru 189 & N 37.5' Lot 190 & Lots 195 thru 198 &
E/W & N/S vac alleys & S1/2 vac Navarre St N & adj O P South Bend

Commonly Known As: 531 N. Main St.

Key Number: 018-1014-0546

Legal Description: 36' N. Side Lot 194 Original Plat of South Bend

Commonly Known As: 524 N. Lafayette Blvd.

Key Number: 018-1014-0547

Legal Description: 16 Ft N. Side 113 Ft. W. End Lot 193 30 Ft. S. Side Ex 20x52
Ft. SE Corner Lot 194 Original Plat of South Bend

Commonly Known As: 506 N. Lafayette Blvd.

Key Number: 018-1014-0548

Legal Description: 50 Ft. S. Side 113 Ft. W. End Lot 193 OP South Bend

Commonly Known As: 502 N. Lafayette Blvd.

Key Number: 018-1014-0549

Legal Description: 52 Ft. E. End Lot 193 20x52 Ft. SE Corner Lot 194 OP South
Bend

Commonly Known As: 215 W. Marion St.

Vacated Navarre Street as part of parcels Key Nos. 018-1014-540 (S ½) and 018-
1011-0400 (N ½)

EXHIBIT E

Form of Report to Commission

City of South Bend
Department of Community Investment

Development Agreement Review

Answer the below questions and return to the Department of Community Investment.

Project Information

Project Name: _____

Address: _____

Construction Completed to Date:

Project Schedule Update:

Itemized Accounting of Private Investment to Date:

Name: _____

Address: _____

Position: _____

Email: _____

Signature: _____

Date: _____

EXHIBIT F

Minimum Insurance Amounts

- | | | | |
|----|------------------------------------|----------------------|--|
| A. | Worker's Compensation | | |
| | 1. | State | Statutory |
| | 2. | Applicable Federal | Statutory |
| | 3. | Employer's Liability | \$100,000.00 |
| | | | |
| B. | Comprehensive General Liability | | |
| | 1. | Bodily Injury | |
| | | a. \$5,000,000.00 | Each Occurrence |
| | | b. \$5,000,000.00 | Annual Aggregate Products
and Completed Operation |
| | 2. | Property Damage | |
| | | a. \$5,000,000.00 | Each Occurrence |
| | | b. \$5,000,000.00 | Annual Aggregate |
| | | | |
| C. | Comprehensive Automobile Liability | | |
| | 1. | Bodily Injury | |
| | | a. \$500,000.00 | Each Person |
| | | b. \$500,000.00 | Each Accident |
| | 2. | Property Damage | |
| | | a. \$500,000.00 | Each Occurrence |

EXHIBIT G

Ground Lease

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AMENDED AND RESTATED
AGREEMENT FOR THE LEASE AND DEVELOPMENT
OF REAL PROPERTY WITHIN
THE SOUTH BEND CENTRAL DEVELOPMENT AREA
BY AND BETWEEN
THE SOUTH BEND REDEVELOPMENT COMMISSION
AND MEMORIAL HOSPITAL OF SOUTH BEND, INC.

STEPHEN E. JAMORSKI
ST. JOSEPH CO. RECORDER
STATE OF INDIANA
FILED FOR RECORD.

98 FEB - 3 PM 2:31

THIS AGREEMENT, made as of the 23rd day of JANUARY, 1998, by and among the CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT, acting by and through the SOUTH BEND REDEVELOPMENT COMMISSION, (COMMISSION) and Memorial Hospital of South Bend, Inc., (DEVELOPER)

WITNESSETH:

WHEREAS, to further the objectives of the Redevelopment of Cities and Towns Act of 1953, as amended, being I.C. 36-7-14-1, et seq.:

1. The Commission has investigated areas within the corporate boundaries of the City of South Bend and has prepared and approved the South Bend Central Development Area Development Plan (Plan) to develop the area known as the South Bend Central Development Area. A copy of the Plan and amendments thereto have been recorded in the St. Joseph County Recorder's Office.
2. The Commission and Developer desire to cooperate in the development of certain real property situated in the South Bend Central Development Area according to the Plan and this agreement.
3. The Commission believes that developing the said real property according to this agreement is in the best interest of the health, safety and welfare of the City and its residents and complies with the public purposes and provisions of the Act and applicable federal, state and local laws under which the development has been undertaken and is being assisted.
4. Commission and Developer, by Memorial Health System, Inc., previously entered into an Agreement for the Lease and Development of Real Property Within the South Bend Central Development Area dated as of December 20, 1996, (the "Prior Agreement"). Commission and Developer now desire to supplement and amend the Prior Agreement, and wish to have this Agreement restate, replace and supersede the Prior Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this agreement the Commission and Developer agree as follows:

SECTION I. DEFINITIONS.

"**Agreement**" means this development agreement between the Commission, and Developer.

"**Bonds**" means lease rental revenue bonds or revenue bonds issued by the City of South Bend in an amount sufficient to fund the design, construction and acquisition of the Parking Garage and Public Plaza.

"**Common Area Charge**" means an annual payment to be paid by the Developer to the Commission in consideration of the physical support and enhancement to the Memorial-Leighton Health•Plex provided by the Parking Garage and Public Plaza.

"**Construction Manager**" means a firm qualified and experienced in the field of construction management which shall be selected by Developer and Commission to coordinate the construction of the MEPT Building and the Memorial Building on the surface of the underground level of the Parking Garage and attendant issues.

"**Lease Agreement**" means the Ground Lease between the Commission and Developer for the lease of the Leased Site, substantially in the form attached as Exhibit A, hereto.

"**Leased Site**" means that portion of Property more particularly described at Exhibit B, hereto, to be leased by the Commission to the Developer pursuant to the Lease Agreement, including the entirety of the surface of the concrete deck which is the roof of the Parking Garage contained within the perimeter of the Leased Site and all air rights above that surface, but excluding any portion of the Property extending below the surface of the Parking Garage roof deck which is used as a parking garage.

"**Memorial-Leighton Health•Plex**" means an approximately 75,000 square foot multi-use building to be constructed by Developer on the Leased Site.

"**MEPT**" means Riggs & Company, a division of Riggs Bank N.A., as trustee of the Multi-Employer Property Trust, a Trust organized under 12 C.F.R. Section 9.18.

"**MEPT Site**" means that portion of the Property to be leased to MEPT, more particularly described at Exhibit E, hereto.

"**Office Building**" means a multi-tenant office building containing not less than 60,000 square feet of leasable Class A office space to be constructed by MEPT upon the MEPT Site.

"**Parking Garage**" means the parking structure, including appurtenant access drives and ramps, for motor vehicles to be constructed by the Commission below ground level at the Property and above ground level on a portion of the Property, as depicted at

Exhibits C-1 and C-2, hereto. The Parking Garage shall include approximately 215 underground parking spaces and approximately 429 above-ground parking spaces.

"Property" means the real property located in South Bend, St. Joseph County, bounded generally by Jefferson Street to the south, Michigan Street to the east, Washington Street to the north and Main Street to the west, more particularly described at Exhibit D.

"Public Plaza" means the improved Public Plaza Site.

"Public Plaza Site" means that portion of the Property depicted at Exhibit C-3 hereto, upon which the Commission is to construct the Public Plaza.

"Urban Design" means Urban Design Group, Inc., 4850 Sears Tower, Chicago, IL 60606.

"Walker" means Walker Parking Consultants/Engineers, Inc., 7330 Shadeland Station, Suite 100, Indianapolis, Indiana 46256.

SECTION II. LEASE

A. Lease Agreement. Subject to all of the terms of this Agreement and of the Lease Agreement, the Commission agrees to lease to the Developer and the Developer agrees to lease from the Commission the Leased Site for a period of fifty (50) years and extended terms under Options to Extend. All as set forth in the Lease Agreement.

B. Title Insurance. The Commission shall procure from St. Joseph Title Corp. and furnish the Developer a lessee's title insurance policy for the Leased Site which insures the Developer's leasehold interest in a sum equal to prepaid lease rental provided in the Lease Agreement, and subject only to those exceptions agreed upon by the Commission and Developer.

C. Commission's Title. The Commission's title to the Property shall be, and the Commission hereby represents and warrants to the Developer that the same is, good, merchantable and marketable fee simple title, free and clear of any liens, encumbrances, except as provided in Section II.B. of this Agreement.

SECTION III. PROJECT DEVELOPMENT

A. Architect and Engineers - The Commission shall retain, at its sole expense, Walker to design, prepare plans and specifications for, and to oversee the bidding and construction of, the Parking Garage and the structural slab upon which the Public Plaza is to be constructed. The contract between the Commission and Walker shall require Walker to subcontract with Matthews Purucker Anella, Inc. to perform architectural design services relating to the Parking Garage facades, stair and elevator towers and the interior of the Parking Garage retail space.

The Commission shall retain Urban Design to design, prepare plans and specifications for, and to oversee the bidding and construction of, the Public Plaza.

The Developer shall retain, at its sole expense, Urban Design to design, prepare plans and specifications for, and to oversee the bidding and construction of, the Memorial-Leighton Health•Plex. Developer shall be responsible, either through Urban Design or such other architect of Developer's choosing, for the design and construction of the surface of the Parking Garage contained within the perimeter of the Leased Site, as the same shall serve as the ground floor of the Memorial-Leighton Health•Plex. The Developer shall bear all costs associated with the increased design and construction costs to allow the portion of the surface of the Parking Garage contained within the perimeter of the Leased Site also to serve as the ground floor of the Memorial-Leighton Health•Plex.

The agreement between the Developer and Urban Design for architectural services shall require Urban Design, and any engineering consultant to Urban Design under such contract, to work cooperatively and coordinate its work program with Walker and to provide Walker with any and all information as may be required by Walker to allow Walker to design that portion of the Parking Garage that will serve as the foundation and support of the Memorial-Leighton Health•Plex. The agreement between the Commission and Walker for architectural services shall require Walker to work cooperatively and coordinate its work program with Urban Design in the design of that portion of the Parking Garage that will serve as the foundation and support of the Memorial-Leighton Health•Plex. Prior to the execution of any agreement with Walker by the Commission, Walker shall provide verification of and policy information concerning professional liability insurance coverage, the amount of such coverage and the name and address of the insurance carrier, all to the satisfaction of the Developer.

B. Survey - The Commission shall procure from Lang Feeney & Associates a boundary survey of the Property and a boundary survey of the Leased Site and any additional surveys as may be necessary for the development contemplated by this Agreement. The boundary survey of the Leased Site will be secured after the finalization by Developer of its final design for the Memorial-

Leighton Health•Plex. To the extent the surveys may be upgraded in order to allow standard title exceptions to be waived, the Developer may request and pay for such upgrade.

SECTION IV. CONSTRUCTION - COMMISSION

A. Parking Garage

1. Design. The Commission shall construct the Parking Garage at the Property. The Parking Garage shall be substantially of the same size, scope and nature as that specified at Exhibit F, hereto, and as designed by Walker pursuant to its proposal to the Commission dated December 6, 1996, shall conform to all plans and specifications approved by the Design Development Administrator for the City of South Bend and the Developer, and shall include the following minimum features:

a. approximately 680 total parking spaces, a minimum of 120 of which shall be made available for lease by Developer, subject to Section IV.A.3, below.

b. minimum clearance of 8'2".

c. a minimum of three (3) elevators, one (1) of which shall enter the Memorial-Leighton Health•Plex from the Parking Garage, the cost of the construction of such elevator shall be borne solely by Developer; one (1) of which shall enter the Trammell Crow Building from the Parking Garage, the cost of the construction of such elevator shall be borne solely by Trammell Crow; and at least one (1) of which shall enter at and above grade levels of the Parking Garage from the Parking Garage, the cost of the construction of such elevator shall be borne solely by the Commission.

d. approximately 11,000 square feet of leasable retail space at grade level in the Parking Garage, facing Michigan Street.

e. complementary in design and exterior materials with the design and exterior materials of the Memorial-Leighton Health•Plex and MEPT Building.

f. designed and maintained to assure the structural integrity of the support it provides for the Memorial-Leighton Health•Plex. Neither the Commission nor its designee may take any action or make any change to the Parking Garage that compromises the integrity of the structural support provided to the Memorial-Leighton Health•Plex.

2. Operations.

a. The Parking Garage shall be available for use by patrons of the Memorial-Leighton Health•Plex from 6:00 A.M. - 9:00 P.M., Monday - Friday; 8:00 A.M. - 6:00 P.M., Saturday; 10:00 A.M. - 6:00 P.M. Sunday, or such other hours as mutually agreed upon by the Developer and Commission.

b. The Commission shall maintain the Parking Garage and keep it clean from trash, defacing marks and other debris.

c. The Commission shall provide a minimum of one (1) employee to oversee the daily operation of the Parking Garage at all times during which the Parking Garage is available for use, as set forth above. Should the Developer and the Commission agree there is a need to post security personnel or take other measures to ensure the safety of persons and property within the Parking Garage, the Commission and Developer shall share in the cost of the provision of such security.

d. The Developer may institute a validation procedure with the cooperation of the Commission to facilitate the use of the Parking Garage by Developer's patrons.

e. The Commission shall not permit or suffer the presence of any food vending machines or any other manner of food vending or food sales in the Parking Garage, but not including the retail space and not including special events conducted at the Parking Garage by or with the approval of the Commission, upon notification in advance to the Developer.

f. The Commission shall not permit or suffer the presence of any signage in the Parking Garage, but not including in, outside of or at the retail space, without the prior approval of the Developer.

3. Lease of Parking Spaces. Subject to the minimum parking requirements of the Developer set forth at Section IV.A.1.a., the Developer and MEPT shall be given the first opportunity to lease parking spaces in the Parking Garage, prior to the opening of the Parking Garage for use by the public. Thereafter, the Developer and MEPT may lease additional parking spaces, to the extent the same are available. To the extent there are no additional parking spaces available for lease at the time requested by Developer, Developer shall have the first right to lease any parking spaces as they come available, subject only to the equivalent right of MEPT. As between MEPT and the Developer, the Commission shall give preference in leasing to the request that is best in terms of the development of the South Bend Central Development Area, which decision shall be within the sole discretion of the Commission.

B. Public Plaza. The Commission shall construct the Public Plaza at the Public Plaza Site. The Public Plaza shall be substantially of the same size, scope and nature as that specified at Exhibit C-3, hereto, and as designed by Urban Design pursuant to its proposal to the Commission, dated December 20, 1996, shall conform to all plans and specifications approved by the Design Development Administrator for the City of South Bend and the Developer, and shall include the following minimum features:

1. complementary in design and materials with the design and exterior materials of the Memorial-Leighton Health•Plex and MEPT Building,

2. sidewalks surrounding the Property on its south, east and western boundaries.

C. Time for Construction. Construction of the Parking Garage on the Property shall begin on or before June 30, 1997. Construction of that portion of the Parking Garage located under the Leased site and necessary to allow the construction of the Memorial-Leighton Health•Plex to commence shall be completed not later than November 15, 1997. Construction of the Parking Garage shall be completed on or before March 1, 1999. The obligation of the Commission to construct the Parking Garage is expressly conditioned upon the issuance of the Bonds.

Construction of the Public Plaza on the Public Plaza Site shall commence on or before July 31, 1998, and shall be substantially completed not later than August 1, 1999. The obligation of the Commission to construct the Public Plaza is expressly conditioned upon the issuance of the Bonds.

In the event the Bonds are not issued by June 1, 1997, the Commission or the Developer may terminate this Agreement and the Lease and any other agreements with the City of South Bend, Indiana pertaining to this project and Developer shall receive a full refund of the Deposit, plus any interest accruing thereon, and any other deposits which it has made, after which Developer may develop its project in a different location.

SECTION V. CONSTRUCTION - DEVELOPER

A. Nature of Improvements. The Developer shall construct the Memorial Leighton Health•Plex. The construction of the Memorial-Leighton Health•Plex on the Leased Site shall be substantially of the same size, scope and nature as that specified at Exhibit G, hereto, and as designed by Urban Design pursuant to its proposal to the Developer, dated November 27, 1996, and shall substantially conform to all plans and specifications approved by the Design Development Administrator for the City of South Bend.

The Memorial-Leighton Health•Plex shall include the following minimum features:

1. approximately 75,000 square foot leasable/useable floor space
2. a minimum height of four (4) stories
3. a mix of uses that includes health and fitness facilities available to the public on a membership basis, community education, clinical treatment programs, orthopedic therapy, physical therapy, educational instruction, and office uses
4. complementary in design and exterior materials with the design and exterior materials of the MEPT Building and Parking Garage
5. the design and installation of landscaping and site improvements within the perimeter of the Leased Site
6. the installation of signage, as permitted pursuant to policies and guidelines jointly established by the Developer, the Commission and MEPT.

B. Time for Construction. Construction of the Memorial-Leighton Health•Plex on the Leased Site shall begin within one (1) month of the date on which that portion of the Parking Garage located under the Leased Site and necessary to allow the construction of the Memorial-Leighton Health Plex to commence is completed. Construction of the Memorial-Leighton Health•Plex shall be completed on or before February 28, 2000.

C. Building Trades Labor - Developer shall construct the Memorial-Leighton Health•Plex primarily through a contractor or contractors signatory to a collective bargaining agreement with the St. Joseph County Building Trades.

SECTION VI. TIME FOR CERTAIN OTHER ACTIONS.

A. Time for Submitting Plans to Design Development Administrator. The Developer shall submit preliminary construction plans for the Project to the Design Development Administrator for the City of South Bend for review and approval by February 1, 1997, and shall secure the approval of the Design Development Administrator to the final site plan for the Memorial-Leighton Health•Plex prior to the commencement of construction.

B. Progress Reports. From the date of this Agreement until the Commission issues the Certificate of Completion, the Developer

shall make progress reports in such detail, at such times and in such manner as the Commission may reasonably request, and at such time as the Developer may desire. It is the expressed intention of the Developer to work closely and cooperatively with the Commission and its agents in the design of the Memorial-Leighton Health•Plex and during construction thereof, but the parties agree that speed and accuracy during construction is essential and Developer must be free to rely on timely approvals or proposed changes by the Commission or its agents.

C. Legal Status of Developer. Prior to the execution of the Lease Agreement, the Developer has provided to the Commission of Developer's legal status as an Indiana non-profit corporation.

SECTION VII. COORDINATION OF CONTRACTORS

The Commission shall retain Construction Manager to perform construction management services in order to coordinate the timing and logistics of the construction of the Parking Garage, the Memorial-Leighton Health•Plex, and the MEPT Building. All costs associated with construction management services relating exclusively to the construction of the Parking Garage shall be borne exclusively by the Commission. All costs associated with construction management services relating exclusively to the construction of the Memorial-Leighton Health•Plex shall be borne exclusively by the Developer. All costs associated with construction management services relating exclusively to the construction of the MEPT Building shall be borne exclusively by MEPT. All costs associated with the services performed by Construction Manager, but not including any services relating exclusively to the construction of the MEPT Building or to exclusively to the Memorial-Leighton Health•Plex, shall be split equally among the Commission, Developer and MEPT: Provided, however, that in the event MEPT fails or refuses to share in the cost of the services provided by Construction Manager, the Commission shall not be liable for and shall not pay any portion of MEPT's obligation to Construction Manager under this Agreement or separate agreement with Construction Manager, and in that event, the Developer shall bear MEPT's share of this cost. The Commission, Developer and MEPT shall enter into an escrow agreement to fund Construction Manager's services. Such agreement shall require that the Developer and MEPT advance their respective shares of the contract between the Commission and Construction Manager prior to the execution of the contract for construction management services and that payments from the escrow be allocated equally among the deposits: Provided, however, that the Commission shall deposit its respective share of the cost into the escrow only upon the issuance of the Bonds and, prior to that time, the escrowed deposits of the Developer and MEPT will cover the Commission's payment obligations, subject to the rights of reimbursement and set-off upon the deposit of the Commission's deposit.

SECTION VIII. FAITHFUL PERFORMANCE GUARANTEE

A. Amount. At or prior to the time of executing this Agreement, the Developer delivered to the Commission a faithful performance guarantee in a form satisfactory to the Commission in the amount of ten percent of the rental set forth at Section II.A., above (Deposit) as security for performing its obligations under this Agreement. The Commission shall deposit the Deposit in an interest bearing account.

B. Retention by Commission. If before the issuance of a Certification of Completion as provided in Section IX. of this Agreement, the Developer defaults in its obligations under this Agreement and fails to cure such defect as this Agreement provides, then the Commission may exercise any and all rights it may have pursuant to the Deposit without any reduction, offset, or recoupment, as liquidated damages. Exercise of these rights shall be in addition to any other remedies and shall not waive any other right under this Agreement or other laws.

C. Return to Developer. Upon issuing the Certificate of Completion upon completion of redevelopment as required by this Agreement, the Commission shall return the Deposit to the Developer, along with any interest that may have accrued thereon.

SECTION IX. COMPLETION.

A. Certificate of Completion. Promptly after the Developer completes construction of the Memorial-Leighton Health•Plex under this Agreement and in substantial accordance with the plans and specifications approved by the Commission, the Commission shall furnish the Developer with a Certificate of Completion. This Certificate shall be a conclusive determination of satisfaction and termination of all covenants, requirements, obligations and the like in this Agreement. After the issuance of the Certificate of Completion by the Commission, neither the Commission nor any other party shall thereafter have or be entitled to exercise any rights, remedies, or controls otherwise available with respect to the Leased Site or any easement or other portion of the said Leased Site as a result of a default in or breach of any provisions of this Agreement by the Developer or any successor in interest or assign.

B. Form of Certification. Each Certification provided for in this Section shall be in such form as to be recordable in the St. Joseph County Recorder's Office.

C. Refusal or Failure to Provide Certification. If the

Commission refuses or fails to provide Certification within thirty (30) days after the Developer's written request, the Commission shall provide the Developer with a written statement indicating how the Developer failed to comply with the provisions of this Agreement and giving the measures necessary, in the Commission's opinion, for the Developer to take in order to obtain such certification.

SECTION X. COMMON AREA CHARGE

Developer shall pay to the Commission on December 1, 1998 and each December 1 thereafter, a Common Area Charge during the term of the Lease Agreement, and any extension thereof, as follows:

1998	\$ 7,500
1999	\$ 7,500
2000	\$ 32,000
2001	\$ 55,000
2002	\$ 80,000
2003	\$ 92,000
2004	\$108,000
2005	\$125,000
2006	\$138,000
2007 and thereafter	\$150,000

Provided, however, that the amount of any real property taxes paid by the Developer in any calendar year in respect of the Property and/or the improvements thereon shall serve to reduce by a corresponding amount the amount of the Common Area Charge paid by the Developer to the Commission in such calendar year.

SECTION XI. EASEMENTS

A. Foundation Easements. The Commission shall, by separate instrument, grant to Developer, its successors and assigns, for the benefit of the Leased Site and as appurtenant thereto, the perpetual right, privilege and easement, subject to termination as provided herein, to use those portions of the Property which are designated as the Memorial-Leighton Health•Plex Foundation Easements for the construction, maintenance, repair, replacement and operation therein of underground foundations, footings, piles, caissons, columns and building supports for the Memorial-Leighton Health Plex: Provided, however, that the design and construction of said facilities must be consistent with and not compromise the structural integrity of the Parking Garage, and that the design of said facilities being subject to the approval of the Commission: Provided, further, that the increased cost to the construction of that portion of the Parking Garage constructed within the Memorial-Leighton Health•Plex Foundation Easement

necessitated by its service as the footings, foundations and support for the Memorial-Leighton Health•Plex shall be borne by Developer.

B. Easements for Underground Utilities and Mechanical Systems. The Commission shall, by separate instrument, grant to Developer, its successors and assigns, for the benefit of the Leased Site and as appurtenant thereto, the perpetual right, privilege and easement, subject to termination as provided herein, to construct, use, maintain, repair, and replace, in, under and on that portion of the Property located under the Leased Site, at such locations determined by Urban Design, provided that such locations are determined by Walker not to interfere or unreasonably complicate or increase the cost of the operation, use and maintenance of the Parking Garage, underground pipes, wires, conduits, heating and ventilation systems, elevator machine room and pits, electrical equipment vault or room, insulation on the underside of the slab under the Leased Site, service entrance, and other similar facilities, appliances or equipment to supply the Developer building with heat, air conditioning, electricity, gas, water, storm and sanitary sewer and telephone services and other utility services for the proper and convenient use and operation thereof (together with the right of ingress and egress for the installation, maintenance, repair and replacement thereof): Provided, however, that Developer shall observe, fulfill and comply with certain protocol to be established by the Commission concerning notification and the manner and timing of such activities.

C. Elevator Easement. The Commission shall, by separate instrument, grant to Developer, its successors and assigns, for the benefit of the Leased Site and as appurtenant thereto, the perpetual right, privilege and easement, subject to termination as provided herein, to use those portions of the Property which are designated as the Memorial-Leighton Health•Plex Elevator Easement Areas for the construction, maintenance, repair, replacement and operation therein of an elevator providing access between the below grade level of the Parking Garage below the Leased Site and the Leased Site and the ground and upper levels of the Memorial-Leighton Health•Plex: Provided, however, that the design and construction of the elevator and supporting and related machinery and equipment shall be the responsibility of, and the cost of the same shall be borne by, Developer.

D. Public Plaza and Parking Garage Easement. The Commission shall, by separate instrument, grant to Developer, its successors and assigns, for the benefit of the Leased Site and as appurtenant thereto, the perpetual right, privilege and easement, subject to termination as provided herein, of ingress and egress in, over and across the Public Plaza and Parking Garage to permit access to the Memorial-Leighton Health•Plex and Michigan Street, Jefferson Boulevard and Main Street.

E. Public Art and Monument Sign Easement The Commission shall, by separate instrument, grant to Developer, its successors and assigns, for the benefit of the Leased Site and as appurtenant thereto, the perpetual right, privilege and easement, subject to termination as provided herein, for the installation, maintenance, repair, and replacement of a monument sign advertising the identify of and tenants within the Memorial-Leighton Health•Plex and public art in the form of sculpture or such other form as approved by the Commission: Provided, however, that the design, installation and maintenance of such signs and public art shall be the responsibility of, and the cost of the same shall be borne by, Developer.

SECTION XII. PARKING GARAGE RETAIL

The Commission agrees with Developer that approximately 11,000 square feet of floor space for retail purposes will be made available for rent to the public by the Commission in the Parking Garage at the eastern perimeter of the Parking Garage.

For purposes of this Agreement, the term "retail purposes" shall mean any business which offers tangible merchandise for sale to the consuming public, including but not limited to: books, cameras, candies and nuts, small electrical appliances, apparel, shoes, sporting goods, hardware, toys, household accessories, drugs, toiletries and sundries, and shall also include restaurants, coffee shops, and other similar services and establishments, but shall not those business uses listed at Exhibit H, hereto.

SECTION XIII. MANAGEMENT OF PUBLIC PLAZA

The Commission shall operate and maintain the Public Plaza in a manner deemed by the Commission to be appropriate and in the best interests of the development. The Commission shall have the right (i) to establish, modify and enforce reasonable rules and regulations with respect to the Public Plaza; (ii) to enter into, modify and terminate easements, but not including any easement granted to Developer under Section XI.D, herein, and other agreements pertaining to the use and maintenance of the Public Plaza; (iii) to close all or any portion of the Public Plaza to such extent as may, in the opinion of the Commission, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein beyond that deemed appropriate by the Commission, but not to exclude Developer and its licensees, invitees, and agents; (iv) to close temporarily any portion of the Public Plaza; (v) to do and perform such other acts in and to said areas and improvements as, in the exercise of its sound discretion, the Commission shall deem advisable, but in all cases consistent with the easements granted to Developer.

SECTION XIV. INSURANCE

A. Developer Liability Insurance.

1. Developer shall purchase and maintain such insurance or require its construction manager or contractors to provide such insurance as will protect Developer from claims set forth below which may arise out of or result from the Developer's construction of the Memorial-Leighton Health•Plex, whether such activities be by the Developer, its contractors or subcontractors or by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

a. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable;

b. claims for damages because of bodily injury, occupational sickness or disease or death of the Developer's or Developer's contractors employees;

c. claims for damages because of bodily injury, sickness or disease or death of any person other than Developer's or Developer's contractors' employees;

d. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by Developer or Developer's contractors, or (2) by another person;

e. claims for damages, other than to the Memorial-Leighton Health•Plex itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

f. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

g. claims involving contractual liability insurance.

h. umbrella excess liability coverage

Liability insurance shall include all major divisions of coverage and be on a comprehensive basis.

2. The insurance required by Section XI.A.1. shall be written for not less than the limits of liability specified in the Lease Agreement, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of

SECTION XV. PROHIBITIONS AGAINST ASSIGNMENT

A. Representations as to Development. The Developer represents and agrees that it has entered into this Agreement for the purpose of development of the Leased Site and none other. The Developer further recognizes that:

1. in view of the importance of the development of the Leased Site to the general welfare of the City,

2. the substantial financial and other public assistance that has been made available by law and by the federal and local governments for the purpose of making the development of the Leased Site and of the Property possible, and

3. the fact that a transfer in ownership of the Developer is for practical purposes an assignment by Developer of its obligations under this Agreement;

the qualifications and identity of the Developer and its stockholders or partners are of particular concern to the Commission. The Developer further recognizes that it is due to such qualifications and identity that the Commission is entering into this Agreement with the Developer, and in so doing is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants.

B. Prohibition Against Transfer of Interest. The Developer agrees for itself and any successor in interest that the Developer shall not change the identity of the parties in control of the Developer whether by increased capitalization, merger with another corporation, change in corporate structure or other amendments or otherwise prior to the issuance of a Certificate of Completion under Section IX, herein, without first having obtained prior written approval from the Commission. The Developer and the parties signing the Agreement on behalf of the Developer represent that they have the authority of all of its existing stockholders to agree to this provision on their behalf and to bind them with respect to it.

C. Prohibition Against Assignment of Agreement. The Developer represents and agrees for itself, its successors and assigns, that the Developer has not made or will not make:

1. any total or partial assignment of this Agreement; or

2. any contract or agreement for any total or partial assignment of this Agreement

without prior written approval of the Commission.

D. Approval of Qualifications Prior to Transfer. The Commission may require as conditions precedent to any approval of any assignment any and all information regarding the qualifications, financial responsibility, legal status, experience, background, and any and all other information it deems necessary or desirable in order to achieve and safeguard the purposes of this Agreement.

E. No Transfer of Developer's Obligations. Absent specific written agreement by the Commission to the contrary, no transfer or approval by the Commission thereof shall relieve the Developer or any other party bound in any way by the Agreement or otherwise with respect to the construction of the improvements and completion of the Memorial-Leighton Health•Plex from any of its obligations with respect thereto.

F. Information as to Interest. The Developer agrees that during the period between execution of this Agreement and the completion of construction of the Memorial-Leighton Health•Plex, the Developer will promptly notify the Commission of any act or transaction involving or resulting in any change in the ownership of the Developer of which it or any of its officers have been notified or otherwise have knowledge or information.

SECTION XVI. REMEDIES.

A. In General. Except as otherwise provided in this Agreement, upon any default in or breach of the Agreement by any party or any successor to such party, such party (or successor), upon written notice from the other, shall proceed immediately to cure or remedy such default or breach within thirty (30) days after receiving the notice. If action is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved party may institute proceedings necessary or desirable in its opinion to cure and remedy the default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

B. Termination by Developer Prior to Execution of Lease Agreement by Commission.

If the Lease Agreement is not executed by the Commission in the manner and condition and by the date provided herein, and any such failure is not cured within forty-five (45) days after the date of written demand by the Developer, this Agreement shall be terminated at the option of the Developer, by written notice to the Commission, and, except for return of the Deposit, the Commission and the Developer shall have no further rights against or liability to the others under this Agreement.

C. Termination by Commission Prior to Execution of Lease Agreement.

In the event that:

1. prior to the execution of the Lease Agreement by the Commission and in violation of this Agreement:

a. the Developer (or successor in interest) assigns or attempts to assign the Agreement or any rights therein or the Leased Site, or

b. there is any change in the ownership of the Developer or with respect to the identity of the parties holding ownership interests in the Developer or the degree thereof, which the Commission reasonably has refused to approve; or

2. the Developer does not submit reasonably satisfactory architectural and site plans, or evidence of necessary sufficient financing for the Memorial-Leighton Health•Plex, in satisfactory form and in the manner and by the dates respectively provided in the Agreement therefor; or

3. the Developer does not pay the Lease Rental and execute the Lease Agreement pursuant to this Agreement,

then this Agreement and any rights of the Developer in this Agreement and the Leased Site shall, at the option of the Commission, without need of the consent of the Developer, be terminated.

In the event of any default or failure referred to in subdivisions a., b., or c. of this Section XVI.C., which remains uncured by the Developer after notice and opportunity to cure have been provided by the Commission, the Deposit shall be retained by the Commission as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever. Neither the Developer (or successor in interest) nor the Commission shall have any further rights against or liability to the other under this Agreement.

D. Termination of the Lease Agreement upon Happening of Event Subsequent to Execution of Lease Agreement. If subsequent to the execution of the Lease Agreement by the Commission and Developer prior to completion of the construction of the Memorial-Leighton Health•Plex as certified by the Commission:

1. the Developer (or successor in interest) shall default in or violate its obligations with respect to the construction of the Memorial-Leighton Health•Plex, including the nature and the dates for the beginning and completion thereof, or shall abandon or

substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months, if the default is with respect to the date of completion of the construction) after written demand by the Commission so to do; or

2. the Developer (or successor in interest) shall place thereon any encumbrance or lien unauthorized by the Agreement, or shall cause any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments are not paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the Commission made for such payment, removal, or discharge, within ninety (90) days after written demand by the Commission so to do; or

3. there is, in violation of this Agreement, any transfer of any part of the Leased Site, or any change in the ownership of the Developer, or with respect to the identity of the parties in control of the Developer or the degree thereof as provided in Section XV, and such violation shall not be cured within sixty (60) days after written demand by the Commission to the Developer, then the Commission shall have the right to re-enter and take possession of the Leased Site and to terminate the Lease Agreement and revert in the Commission the estate leased by the Lease Agreement to the Developer. The intent of this provision, together with other provisions of the Agreement, is that the lease of the Leased Site to the Developer shall be made upon, and that the Lease Agreement shall contain, a condition subsequent to the effect that the event of any default, failure, violation, or other action or inaction by the Developer specified in this paragraph D the Developer's failure to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the Commission at its option may declare a termination in favor of the Commission all the rights and interest in and to the Leased Site leased under the Lease Agreement to the Developer, and that all such rights and interests of the Developer, and any assigns or successors in interest to and in the Leased Site, shall revert to the Commission.

E. Reletting of Reacquired Property; Disposition of Proceeds.
Upon the termination of Developer's interest in the Leased Site as provided in Section XVI.D., above, the Commission shall use its best efforts to relet the Leased Site or part thereof as soon and in such manner as the Commission shall find feasible and consistent with the objectives of the South Bend Central Development Plan to a qualified and responsible party or parties (as determined by the Commission) who will assume the obligation of making or completing the construction of the Memorial-Leighton Health• Plex in its stead or of another project as shall be satisfactory to the Commission and in accordance with the uses specified for such Property or part thereof in the Plan. Upon such reletting of the Leased Site, the

proceeds shall be applied:

1. First, to reimburse the Commission, on its own behalf or on behalf of the City, for all costs and expenses incurred by the Commission, including but not limited to:

a. salaries of personnel, in connection with the recapture, management, and reletting of the Leased Site or part thereof, but less any income derived by the Commission from the Leased Site or part thereof in connection with recapture such management or reletting;

b. all taxes, assessments, water and sewer charges, and Common Area Charges with respect to the Leased Site and/or Memorial-Leighton Health•Plex or part thereof;

c. any payments made or needed to be made to discharge any encumbrances or liens existing on the Leased Site and/or Memorial-Leighton Health•Plex or part thereof at the time of revesting of title in the Commission or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;

d. any expenditures made or obligations incurred in making or completing the construction or any part thereof on the Leased Site and/or Memorial-Leighton Health•Plex or part thereof;

e. and any amounts otherwise owing the Commission by the Developer and its successor or transferee; and

2. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of the Lease Rental paid by it for the Leased Site (or allocable to the part thereof) and the cash actually invested by the Developer in construction on the Leased Site or part thereof.

Any balance remaining after such reimbursements shall be retained by the Commission as its property.

F. Other Rights and Remedies of Commission; No Waiver by Delay. The Commission shall have the right to institute such actions or proceedings as either may deem desirable for effectuating the purposes of this Section XVI.F. This would include the right to execute and record or file among the public land records in the office in which the Lease Agreement is recorded a written declaration of the termination of all the right, title, and interest of the Developer, and its successors in interest and assigns, in the Leased Site, and the full vesting of title in the Commission. Any delay by the Commission in instituting or prosecuting any such actions or proceedings or otherwise asserting

its rights under this Section XVI.F. shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way. This provision intends that the Commission should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this paragraph because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved; nor shall any waiver in fact made by the Commission with respect to any specific default by the Developer under this paragraph be considered or treated as a waiver of the Commission's rights to any other defaults by the Developer under this paragraph or with respect to the particular default except to the extent specifically waived in writing.

G. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative. The exercise by either party of any one or more of such remedies shall not preclude the exercise, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, manner or time thereof, any obligation of the other party, or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to that particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver of any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

H. Party in Position of Surety With Respect to Obligations. The Developer, for itself, its successors and assigns, and for all other persons who are or who shall become liable upon or subject to any obligation or burden under this Agreement, whether by express or implied assumption or otherwise, hereby waives, to the fullest extent permitted by law, any and all claims or defenses otherwise available on the ground of its or their being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

SECTION XVII. Limitation upon Encumbrance of Property and Leased Site.

Prior to the Commission's issuing a Certificate of Completion, the Developer shall not:

1. engage in any transaction creating any encumbrance upon

the Property or Leased Site, whether by express agreement or operation of law; or

2. allow any encumbrance to be made on the Property or Leased Site.

SECTION XVIII. ENFORCED DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY.

For the purposes of any of the provisions of the Agreement, neither the Commission nor the Developer, as the case may be, nor any successors in interest, shall be considered in breach of or in default in its obligations with respect to the preparation of the Property for the construction, or the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. These include, but are not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Commission with respect to the preparation of the Leased Site for development or of the Developer with respect to construction of the Memorial-Leighton Health•Plex, or the Commission with respect to construction of the Parking Garage and/or Public Plaza, as the case may be, shall be extended for the period of the enforced delays as determined by the Commission: Provided, That the party seeking the benefit of the provisions of this paragraph shall, within ten (10) days after the beginning of the enforced delay, have first notified the other party thereof in writing and of the cause or causes thereof, and shall have requested an extension for the period of the enforced delay.

SECTION XIX. NOTICES; APPROVALS

A. Notices. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

1. in the case of the Developer, is addressed to or delivered personally to the Developer as follows:

Memorial Hospital of South Bend, Inc.
615 North Michigan Street
South Bend, IN 46601

ATTN: Philip A. Newbold, President

with a copy to:

Barnes & Thornburg
100 North Michigan Street
South Bend, IN 46601; and

2. in the case of the Commission is addressed to or delivered personally in care of the Commission, 1200 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601, or at such other address with respect to either such party as that party may from time to time designate in writing and forward to the other as provided in this Section.

B. Approvals. Unless written notification to the contrary is given, as provided above, Ann E. Kolata shall be and hereby is authorized to act as the representative of the Commission for purposes of the issuance of any approvals required under this Agreement. Unless written notification to the contrary is given, as provided above, Ted Foti or Philip A. Newbold shall be and hereby are authorized to act as the representative of the Developer for purposes of the issuance of any approvals required under this Agreement.

SECTION XX. MISCELLANEOUS.

A. Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official, or employee of the Commission shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer or successor or assign or on any obligations under the terms of the Agreement.

B. No Partnership. Any intention to create a joint venture or partnership relationship between the parties is hereby expressly disclaimed.

C. Exhibits and Additional Instruments. The Commission and Developer agree, upon receipt of a request from any other, to execute additional instruments as may be necessary or desirable to evidence the easements granted pursuant to Section XI, or the termination of said easements, or the any other agreements made hereunder, in accordance with the terms and provisions thereof.

The Commission and Developer further agree that the Exhibits referenced in this Agreement shall be attached hereto and incorporated herein as the same become available, and shall be initialed by the persons referred to at Section XVIII.B., herein, to evidence the parties' approval of the same.

D. Recordation. A Memorandum of this Agreement shall be recorded in the office of the St. Joseph County Recorder immediately subsequent to its execution.

E. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

1. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

F. Provisions Not Merged With Lease. None of the provisions of the Agreement are intended to or shall be merged by reason of any Lease transferring an interest in the Leased Site from the Commission to the Developer or any successor in interest, and any such Lease Agreement shall not be deemed to affect or impair the provisions and covenants of the Agreement.

G. Titles of Articles and Sections. Any titles of the several parts, sections, and paragraphs of the Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

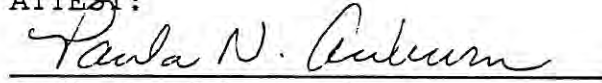
IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the date first written above.

CITY OF SOUTH BEND
DEPARTMENT OF REDEVELOPMENT

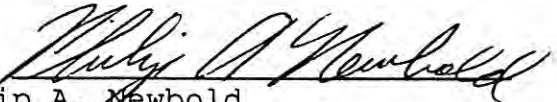


Robert W. Hunt, President

ATTEST:


Paula N. Auburn, Secretary

MEMORIAL HOSPITAL OF SOUTH BEND,
INC.

By: 
Philip A. Newbold
Its: President and C.E.O.

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

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the City of South Bend, Department of Redevelopment by Robert W. Hunt , President, and Paula N. Auburn , Secretary, and acknowledged the execution of the foregoing Agreement.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on January 23, 1998.

Cheryl K Phipps
Notary Public
Residing in St. Joseph County, IN
CHERYL K PHIPPS
NOTARY PUBLIC STATE OF INDIANA
ST. JOSEPH COUNTY
MY COMMISSION EXP. JAN. 7, 1999

My Commission Expires:

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

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Memorial Hospital of South Bend, Inc., by its President and C.E.O., Philip A. Newbold, and acknowledged the execution of the foregoing Agreement.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on January 23, 1998.

Bruce R. Bancroft
Bruce R. Bancroft Notary Public
Residing in St. Joseph County, IN

My Commission Expires:
October 4, 2001

This document prepared by Anne E. Bruneel, Chief Assistant City Attorney, 1400 County-City Building, South Bend, Indiana 46601.

LEASE\MEMORIAL.3

EXHIBIT A

GROUND LEASE

THIS LEASE is entered into effective as of the ____ day of _____, 1998, by and between MEMORIAL HOSPITAL OF SOUTH BEND, INC. ("Memorial") and the CITY OF SOUTH BEND, INDIANA, DEPARTMENT OF REDEVELOPMENT, acting by and through the SOUTH BEND REDEVELOPMENT COMMISSION (the "Commission").

RECITALS

WHEREAS, the Commission, acting pursuant to its redevelopment authority under Ind. Code §36-7-14-1 et seq., has created the South Bend Central Development Area (the "Project Area") for the purpose of carrying out in such Project Area a redevelopment project and has adopted the South Bend Central Development Area Development Plan (the "Plan") to guide such redevelopment project. A copy of the Plan is recorded in the office of the Recorder of St. Joseph County, Indiana;

WHEREAS, the Commission is the owner of certain real estate more particularly described at Exhibit A hereto and hereinafter referred to as the Lease Parcel; and

WHEREAS, Memorial desires to lease the Leased Premises, which is a part of the Lease Parcel, from the Commission; and

WHEREAS, Memorial and the Commission desire to set forth their agreement with respect to the leasing of the Lease Parcel and certain other matters affecting the Lease Parcel.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Memorial and the Commission agree as follows:

ARTICLE I

DEFINITIONS

Terms defined in the Recitals shall have the meanings set forth therein. The following terms, when used in this Lease with initial capital letters, have the following respective meanings:

"**Basic Rent**" has the meaning set forth in Section 4.01.

"**City**" means the City of South Bend, Indiana.

"**Commencement Date**" has the meaning set forth in Section 3.01.

"**Condemnation Proceeds**" means the total aggregate award, including any award for the Commission's fee simple title or

Memorial's leasehold estate, in the event of a total taking or Constructive Total Taking of the Leased Premises.

"Constructive Total Taking" means a taking of such scope that the remaining portion of the Leased Premises and Improvements after restoration thereof is not suitable to achieve the objectives of Memorial.

"Development Agreement" means the Amended and Restated Agreement for the Lease and Development of Real Property Within the South Bend Central Development Area by and between the South Bend Redevelopment Commission and Memorial Hospital of South Bend, Inc., dated _____.

"Environmental Laws" means federal, state and local laws and implementing regulations, effective on or after the date of execution of this Lease, relating to pollution or protection of the environment, including laws or regulations relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances, wastes or materials into the environment (including, without limitation, ambient air, surface water, ground water or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances, wastes or materials. Such laws shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq. the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §3251 et seq., the Clean Air Act, as amended 42 U.S.C. §1857, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §466 et seq., and Indiana Code, Title 13 - Environment, as amended.

"Improvements" means all buildings, structures, landscaping, driveways, walkways, parking lots, paved surfaces and other improvements which are to be located or constructed on the Lease Parcel as provided in this Lease.

"Lease Parcel" has the meaning set forth in Exhibit A.

"Leased Premises" has the meaning set forth in Exhibit A.

"Mortgage" or **"Mortgage Loan"** means both so-called permanent loans and interim building or construction loans, and all advances thereunder, relating to and secured by a mortgage lien upon the Commission's leasehold interest in the Leased Premises, or any part thereof, permitted under this Lease; and also shall refer to and include security agreements, financing statements and any other documentation evidencing such liens and encumbrances.

"Mortgagee" means the mortgagee or any assignee of the mortgagee under any Mortgage Loan.

"Plans" means preliminary construction plans prepared by or for Memorial in sufficient detail to show exterior design, structural design, exterior materials, positioning and appearance of the Improvements to be constructed on the Lease Parcel and landscaping plans (including a schedule of plants to be utilized).

"Rent" has the meaning set forth in Section 4.01.

"Taxes" means all real estate taxes, personal property taxes, special and general assessments, sewer service charges and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, which may be assessed, levied, or become due and payable with respect to, or become a lien on, the Leased Premises or Improvements, or any part thereof or appurtenance thereto.

"Term" has the meaning set forth in Article III.

"Unavoidable Delay" means and includes any delay caused by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, fire or other casualty, "acts of God", restrictive governmental authority, riots, insurrection, war, or the act, failure to act, or default of the other party, or other reason beyond the subject party's reasonable control and not avoidable by reasonable diligence.

ARTICLE II

LEASED PREMISES

Section 2.01. Warranty of Leasehold. The Commission hereby warrants and represents that it holds marketable title to the Lease Parcel and subject to those matters set forth at Section 2.03 and that it has the authority to convey to Memorial the leasehold estate hereby created.

Section 2.02. Leased Premises. The Commission hereby leases to Memorial and Memorial hereby leases from the Commission, upon and subject to the terms, conditions, covenants and provisions hereof, the Leased Premises described on Exhibit B attached hereto and made a part hereof, which is included as a part of the Lease Parcel, including the entirety of the surface of the concrete deck which is the roof of the Parking Garage contained within the perimeter of the Leased Premises and all air rights above that surface, but excluding any portion of the Leased

Premises extending below the surface of the Parking Garage roof deck which is used as a parking garage, and all appurtenances, rights, privileges, interests, tenements, hereditaments and easements in any way now or hereafter belonging or appertaining thereto, together with any interest that the Commission may now or hereafter have in any and all buildings, structures and improvements (including the "Improvements") that may now or hereafter be erected thereon (collectively referred to herein as the "Leased Premises"). The Leased Premises may be enlarged upon Memorial's request to allow construction and use of an elevator and stair tower to permit additions to the Memorial-Leighton Health•Plex.

Section 2.03. Leasehold Title. The leasehold estate created by this Lease and the Commission's rights hereunder are subject to the following:

(a) The lien of all real estate taxes, all general and special assessments and all other governmental dues, charges and impositions not delinquent;

(b) All easements, restrictions, agreements, covenants and other matters of record, including (without limitation), the building and use restrictions in the South Bend Central Development Plan as the same may be amended from time to time;

(c) All rights of the public, the State of Indiana and any political subdivision of the State of Indiana (including without limitation counties and municipalities) in and to that part of the Lease Parcel which has been taken or used for highways, streets, rights-of-way and related purposes;

(d) All applicable zoning, building and land use and other governmental restrictions, laws, ordinances, rules and regulations; and

(e) Bond indentures and related documents.

Section 2.04. Covenant of Quiet Enjoyment. Commission covenants and agrees that Memorial, upon paying the Rent to be paid by it as herein provided and upon keeping, observing and performing all other covenants and agreements to be kept, observed or performed by it hereunder, shall at all times during the Term have the peaceable and quiet enjoyment and possession of the Leased Premises, without hinderance from the Commission or anyone claiming under the Commission, subject to matters to which this Lease is subject as provided in the foregoing Section 2.03. Neither the Commission nor its designee may take any action or make any change to the Parking Garage, as defined in the Development Agreement, or any other portion of the Lease Parcel that compromises the integrity or in any manner affects the structural support provided to the Memorial-Leighton Health•Plex

or any other portion of the Leased Premises or improvements to be constructed thereupon.

ARTICLE III

TERM

The term of this Lease (the "Term") shall commence on November 15, 1997, or the date of substantial completion by the City of the structural slab which will serve as the ground floor of the Health•Plex, whichever is later (the "Commencement Date") and shall end on November 15, 2047, unless sooner terminated as provided in this Lease. The Commission hereby grants Memorial a series of four (4) consecutive irrevocable options to extend the term of this Lease each for an additional fifty (50) years, upon the same terms and conditions, except that the rental shall be for the annual sum of One Dollar (\$1.00). To exercise an option, the Memorial must not then be in default. The option will be deemed exercised with no notice or action required by Memorial unless and until Memorial gives written notice to the Commission not less than ninety (90) days before the end of the original term of this Lease that it does not intend to exercise the option.

ARTICLE IV

RENT

Section 4.01. Basic Rent. Memorial shall pay to the Commission as basic rent for the Leased Premises for the Term, the total sum calculated as the product of the total area, in square feet, of the surface of the Leased Premises and the rental rate of \$4.45 per square foot, the resultant product to be endorsed hereon, payable, in advance, upon the execution of the Lease Agreement (the "Basic Rent"). The Basic Rent shall be paid in full in advance on the Commencement Date. Any additional rent payments, as described in Section 4.02, below, shall be paid as provided in Section 4.02. If the Leased Premises are enlarged, additional rent shall be paid, and the amount of the additional rent shall be calculated in the same manner as the Basic Rent. The amount of the additional rent shall be paid upon the execution of an addendum concerning the increase to the Leased Premises and the amount of the additional rent shall be endorsed thereon.

Total Rental, Initial Term: Ninety-two Thousand Eight Hundred Eighty and 40/100 Dollars (\$92,880.40)

Section 4.02. Rent Payments. The term "Rent" as used herein shall mean and include Basic Rent and all additional sums,

and assignees shall use and occupy the Leased Premises for purposes consistent with its use and operation of a multi-use facility comprising office and health and fitness facilities available to the public on a membership basis, community education, physical therapy, orthopedic therapy, various clinical related programs and classes, any other similar programs related to the mission of Memorial, and for no other purposes without the prior permission of the Commission, which permission the Commission agrees not to unreasonably withhold or delay.

Section 5.02. Signs. Memorial shall have the right to erect and maintain on the Improvements and the Lease Parcel all signs that it deems appropriate to the conduct of its business, subject, however, to the provisions of the South Bend Municipal Code and to the approval of the Design Development Administrator of the City of South Bend. The Improvements shall be designated and known as the Memorial-Leighton Health•Plex.

Section 5.03. Compliance with Laws, Insurance Policies, Etc. During the Term, Memorial, at its expense, shall observe and comply with all present and future statutes, laws, ordinances, requirements, orders, rules and regulations (including, without limitation, the Americans With Disabilities Act and all Environmental Laws) of all governmental authorities and all orders, rules and regulations of the National Board of Fire Underwriters, the Indiana Board of Fire Underwriters, or any other body or bodies exercising similar functions, affecting the Leased Premises, or any part thereof, or the construction of the Improvements or the use or manner of use of the Lease Parcel and Improvements. If compliance with any such statute, law, ordinance, rule, regulation, order or requirement legally may be delayed pending the prosecution of any such proceeding, Memorial may delay such compliance until a final determination of such proceeding.

Section 5.04. Covenant Against Waste, Nuisance. Memorial shall not (i) commit or permit any waste to, or (ii) cause or permit any nuisance (public or private) to occur or exist in or on the Leased Premises, or any part thereof.

Section 5.05. Non-Discrimination. Memorial shall not discriminate on the basis of race, creed, color, ancestry, national origin, religion, handicap, sex or political affiliation in the leasing, use or occupancy of the Lease Premises and shall comply with all applicable federal, state and local laws and regulations prohibiting such discrimination.

Section 5.06. Hazardous Substances.

(a) Memorial covenants and agrees not to permit any "hazardous material" to be placed, held, located or disposed of upon, or released upon, under or at the Leased Premises, or any

part thereof. For purposes of this Lease, "hazardous material" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any Environmental Law (excluding, however, consumer goods stored or handled in the same form or manner as sold to a consumer). To the extent any substance or material is regulated ("environmentally regulated material") by any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or at any time hereafter regulating, relating to or imposing liability or standards of conduct concerning any hazardous material, underground storage tanks or petroleum products placed, held, located or disposed of on the Leased Premises or Improvements, Memorial shall place, hold, locate or dispose of such environmentally regulated material in compliance with such applicable law: Provided, however, that nothing in this Section 5.06 shall prohibit the storage, use and disposal at the Leased Premises of common swimming pool chemicals available for commercial use, provided such storage, use and disposal is conducted in compliance with all federal, state and local laws.

(b) If Memorial has knowledge of or receives any notice of (i) the happening of any event affecting the Leased Premises involving the spill or discharge of any hazardous material which is required to be reported to the Indiana Department of Environmental Management or the United States Environmental Protection Agency (a "Hazardous Discharge") or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental health or safety matter with respect to the Leased Premises (an "Environmental Complaint") from any person or entity, including without limitation the United States Environmental Protection Agency, Memorial shall give immediate notice thereof to the Commission disclosing full details of the Hazardous Discharge or Environmental Complaint, as applicable.

(c) Memorial shall indemnify and hold the Commission harmless from all loss, cost, claims, damages, fines, penalties, liability and/or expense, including but not limited to reasonable attorney's fees, incurred by any such party as a result of (i) any failure to observe the requirements in paragraph (a) above, (ii) an Environmental Complaint arising from any event or circumstance occurring during the Term, or (iii) a Hazardous Discharge occurring during the Term.

ARTICLE VI

ASSIGNMENT AND SUBLETTING

Section 6.01. Lease Termination Does Not Terminate Sublease. In the event of the termination of this Lease from any

cause whatsoever (including the voluntary surrender thereof by Lessee), and while any sublease allowed under this Lease Agreement is in full force and effect, such termination shall not act as a merger, and Memorial's interest as sublessor in each of said subleases shall be deemed automatically assigned, transferred, and conveyed to the Commission; and, from and after such termination, the Commission (as well as any such sublessee) shall be bound by the provisions of each of the subleases, then in full force and effect, on the part of Memorial (as sublessor) to be performed thereunder, and each of the sublessees shall be deemed thereupon (and without further act) to have been turned over or assigned by operation of law to the Commission. It is the intention hereof to provide that the termination of this Lease while any such sublease is in full force and effect shall not in any way, by reason thereof, terminate such sublease or militate against the rights of any such sublessee. The foregoing is further subject to the right of the Commission to terminate any sublease which is in default (notice thereof, if any required, having been given and the time for curing such default having expired), and to any other rights and remedies reserved to Memorial in any such sublease, and any other rights and remedies afforded to a lessor of real property against a defaulting lessee by law or in equity. The Commission will, at the request of Memorial, execute and deliver to any sublessee, or proposed sublessee, a document reciting, in substance, that any default by Memorial under this Lease or any termination of this Lease thereby, or otherwise, before the expiration of the term hereof, shall not, by reason thereof, affect the rights of such sublessee or proposed sublessee while such sublease or proposed sublease is in full force and effect.

Section 6.02. Default by Sublessee. Each such sublease entered into by Memorial covering any portion of the Lease Parcel shall contain a provision therein substantially providing that in the event the sublessee defaults in any of the provisions thereunder on the part of sublessee to be performed, after notice of such default and the failure to cure same by sublessee, Memorial may, after the expiration of the notice period (if notice is applicable), reenter that portion of the Lease Premises subleased by summary proceedings, or otherwise have the right to expel the sublessee; and shall further provide that the notice period for any default shall not exceed thirty (30) days for the nonpayment of any moneys due to Memorial and shall not exceed sixty (60) days for the failure to perform any other provision under such sublease on the part of sublessee to be performed, unless the performance of such other provisions cannot reasonably be accomplished within said sixty (60) day period, in which case sublessee may be permitted the additional time reasonably necessary to complete performance.

ARTICLE VII

TAXES

Section 7.01. Payment of Taxes and Assessments. To the extent the same are imposed, Memorial shall pay and discharge punctually, as and when the same shall become due and payable all Taxes which are due and payable with respect to the Lease Parcel and the Improvements, or any part thereof, or any appurtenances or equipment owned by or leased to Memorial thereon or therein during any calendar year (or part thereof within the Term or in which the Term ends), together with all interest and penalties thereon.

Memorial shall be deemed to have complied with the covenants of Section 7.01 if payment of Taxes shall have been made either within any period allowed by applicable law before the same shall become a lien upon the Lease Parcel or Improvements; or, if the Tax constitute a lien before it is due and payable, then, before any penalty or interest is assessed with respect thereto. Memorial shall send to the Commission satisfactory evidence of payment of Real Estate Taxes and any other payment hereunder if requested to do so by Memorial in writing. Memorial reserves the right to contest the assessment of the Leased Premises, following the procedures set forth for such contests in Indiana law.

Section 7.02. Proration of Real Estate Taxes. Real Estate taxes due and payable during the calendar year in which the Term ends shall be prorated based upon the number of days within such calendar year as shall fall within the last year of the Term. Memorial shall pay on the date of termination of this Lease such pro rata share of Real Estate Taxes due and payable during the calendar year in which the Term ends.

Section 7.03. Separate Assessments. Upon request of Memorial at any time, the Commission will make application individually, or will join in the Commission's application, and will execute such instruments as may be necessary or appropriate to obtain separate tax assessments for the Lease Premises and Improvements.

ARTICLE VIII

CONSTRUCTION OF IMPROVEMENTS

Section 8.01. Nature of Improvements. Pursuant to and in accordance with the terms and conditions of the Development Agreement, Memorial shall construct the Improvements.

Section 8.02. Incorporation of the terms and conditions of the Development Agreement. The terms and conditions of the Development Agreement are incorporated until such time as the Certificate of Completion as defined in the Development

Agreement, is issued. Until such time, any default by Memorial under the Development Agreement shall constitute a default under this Lease and shall entitle the Commission to exercise any and all rights and remedies provided in either the Development Agreement or this Lease or both.

ARTICLE IX

ALTERATIONS, REPLACEMENTS

Maintenance and Repair by Memorial. Memorial shall at all times during the Term, at its expense, keep and maintain or cause to be kept and maintained the Leased Premises and Improvements in good, clean and safe condition and repair including, without limitation, the making of all necessary structural repairs and replacements. The Commission shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Leased Premises or the Improvements during the Term.

ARTICLE X

MECHANICS' LIENS; INDEMNIFICATION; NONLIABILITY

Section 10.01. Mechanics' Liens. Memorial shall promptly after the filing thereof discharge of record, at Memorial's expense, any mechanics' materialmen's or other lien, or notice of intention to file any such lien, filed against the Leased Premises or Improvements or any part thereof or interest therein: Provided, however, that Memorial shall have the right to contest the validity of any such lien in any manner permitted by law so long as Memorial (i) shall provide to the Commission title insurance, an indemnity, bond or other assurance or security reasonably satisfactory to the Commission; and (ii) shall thereafter diligently proceed to cause such lien or notice of intention to file a lien to be removed and discharged. If Memorial shall fail to so discharge, or to seek to discharge, any such lien or notice of intention to file a lien, then the Commission may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or in such other manner as is or may be permitted by law, and Memorial shall reimburse and indemnify the Commission in respect thereto.

Section 10.02. Indemnification by Memorial. Unless allegedly caused or alleged to be caused by the several, joint, concurrent or comparative negligence, or sole negligence, of the Commission Memorial shall, at its sole cost and expense, indemnify and save harmless the Commission, against and from any and all claims, damages, losses, fines, penalties, liability,

costs and/or expenses (including but not limited to reasonable attorneys' fees) arising from Memorial's possession, use or control of the Leased Premises or Improvements or any part thereof; (ii) any condition of the Leased Premises or Improvements or any part thereof, (iii) any breach or default on the part of Memorial in the performance of any covenant or agreement on the part of Memorial to be performed pursuant to the terms of this Lease, (iv) any willful or negligent act or omission of Memorial, or any of its agents, contractors, licensees, subtenants or its or their servants, employees, customers or invitees, or (v) any accident, injury to or death of persons or damage to property whatsoever in or about the Leased Premises or Improvements or any part thereof; and in case any claim, action or proceeding shall be brought against the Commission by reason of any such claim, damage and/or liability, Memorial, upon written notice from such party, shall defend such action or proceeding with counsel acceptable to such party.

Section 10.03. Nonliability. The Commission shall not be responsible or liable to Memorial, or any person, firm or corporation claiming by, through or under Memorial for, or by reason of, (i) any injury or damage occurring during the Term to the Improvements or any equipment or apparatus or appliances in the Improvements, (ii) any failure or defect of water, heat, electric light or power supply, or of any apparatus or appliance in connection therewith, or for any injury or loss or damage to person or property resulting therefrom, or (iii) any injury, loss, or damage to any persons or to the Leased Premises or the Improvements, or to any property of Memorial or of any other person, contained in or upon the Leased Premises or the Improvements, caused by or arising or resulting from the electric wiring, or plumbing, water, steam, sewerage, or other pipes, or by or from any machinery or apparatus, or by or from any defect in or leakage, bursting or breaking of any of the foregoing the same, or by or from, any leakage, running or overflow of water or sewerage in any part of said premises, or by or from any other defect or other cause whatsoever, except where the same is caused by the negligence or intentional act of the Commission.

ARTICLE XI

INSURANCE

Section 11.01. Liability Insurance. Memorial shall maintain and keep in force at all time during the Term, with an insurance company or companies licensed to do business in the State of Indiana, selected by Memorial and acceptable to the Commission (i) comprehensive general public liability insurance covering any and all claims for injuries to or death of persons or damage to property occurring in or upon the Leased Premises and Improvements and having initial minimum levels of combined

coverage for bodily injury (including death resulting therefrom) and property damage, including umbrella coverage, of not less than Fifteen Million Dollars (\$15,000,000), for each occurrence and on an annual aggregate basis and (ii) workmen's compensation and employer's liability insurance in such amounts as shall be required by law from time to time, but in no event less than One Hundred Thousand Dollars (\$100,000) per accident. Memorial's comprehensive general public liability insurance shall have extensions of coverage to include blanket contractual liability for written and oral contracts, broad form property damage and premises operations (including explosion, collapse and underground coverage). In addition, Memorial shall maintain or cause its contractor(s) or construction manager to maintain products and completed operations coverage through the period ending two (2) years after completion of the construction of the Improvements. Each policy referred to in this Section 11.01 shall name the Commission as an additional insured. Such liability insurance may be provided by a single policy or combination of underlying policies, with the balance provided by an excess or umbrella liability policy; provided such excess or umbrella insurance complies with all of the other requirements of this Lease with respect to such insurance.

Section 11.02. Property Insurance. During the Term, Memorial shall keep the Improvements insured with an insurance company licensed to do business in the State of Indiana, selected by Memorial and acceptable to the Commission for the benefit of Memorial and the Commission, as their respective interests may appear, against loss or damage by fire or other casualty (including earthquake, to the extent customary and available on reasonable terms) covered by a customary extended coverage endorsement, in an amount equal to one hundred percent (100%) of the replacement cost thereof and providing for and having a deductible in an amount not exceeding Twenty Five Thousand Dollars (\$25,000). The replacement cost of the Improvements shall be certified by a registered architect, registered engineer, or professional appraisal engineer selected by Memorial and employed at the expense of Memorial at the time of completion of the Improvements and on or before each anniversary of such completion date thereafter during the Term: Provided, however, that such certification shall not be required so long as such insurance shall be maintained in an amount at least equal to the amount specified by Memorial or before such completion date and on or before each anniversary date thereof during the Term. Notwithstanding the foregoing, Memorial shall at all times maintain such insurance in an amount sufficient to meet all co-insurance requirements under such insurance policy. The Commission shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Memorial hereunder, if the effect of such separate insurance would be to reduce the protection or the payment to be made under Memorial's insurance.

Section 11.03. Proof of Insurance. Memorial shall deliver copies of the insurance policies showing the coverages required by this Article XI to the Commission on or before the date of execution of this Lease, and thereafter a copy of each replacement policy shall be provided not less than ten (10) days prior to the expiration of the policy being replaced. Each such policy referred to in this Article XI shall contain a provision providing that the policy shall not be canceled, not renewed or materially amended without thirty (30) days prior written notice to the Commission and Memorial.

Section 11.04. Waiver of Subrogation. Memorial and the Commission waive all rights against each other and against those for whom the other is legally liable for all losses covered by insurance provided under this Article XI to the extent the upper limits of such insurance are adequate to cover such losses, and if not adequate, then to the maximum of the policy limits, it being the intent of this provision to allocate all risk of such loss to such insurance: Provided, however, that this waiver shall not be effective if it would preclude or prejudice the right of Memorial or the Commission to recover under such insurance policy. If the policies of insurance provided for under this Article XI require an endorsement to provide for continued coverage where there is a waiver of subrogation, Memorial will request such policies to be so endorsed.

Section 11.05. Insurance Proceeds. The proceeds of any and all policies of insurance upon the Improvements maintained pursuant to Section 11.02 remaining after any required payment to any Mortgagee shall be used as toward the repair, reconstruction, replacement or rebuilding of the Improvements.

The Commission, Memorial, and any Mortgagee shall cooperate fully in collecting such insurance proceeds and will execute and deliver any and all proofs, receipts, releases and other instruments whatsoever as may be necessary or proper for such purpose.

Section 11.06. General Provisions. In the event Memorial shall fail or refuse to obtain any insurance required by this Article XI, the Commission, in addition to any other right the Commission may have under this Lease at law or in equity, shall have the right to obtain such insurance. The cost of such insurance shall constitute a debt payable by Memorial upon demand of the Commission.

ARTICLE XII

DESTRUCTION

Section 12.01. Memorial's Obligation to Repair. If at any

time during the Term the Improvements shall be destroyed or damaged by fire or other cause, Memorial shall cause the same to be repaired, replaced or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable, subject to Unavoidable Delays. In the repair or restoration of any Improvements hereunder, Memorial will repair, replace or rebuild the Improvements so damaged or destroyed to their condition immediately before such damage or destruction, subject to all these applicable laws, ordinances, or regulations of any governmental authority affecting the same. If the insurance proceeds recovered in respect of any such damage or destruction, less any cost of recovery and any amounts required to be paid to any Mortgagee, shall be insufficient to pay the entire cost of such restoration, repair, replacement or rebuilding, Memorial shall provide for the deficiency. In such event, the time within which Memorial shall be required to commence and complete its obligations hereunder shall include a reasonable time to obtain and close the necessary commitments for equity or mortgage financing to cover the deficiency or deficiencies.

Section 12.02. No Rent Rebate. In no event shall Basic Rent or other charges due hereunder be rebated in the event of such damage or destruction.

ARTICLE XIII

CONDEMNATION

Section 13.01. Total Condemnation. If at any time during the Term there shall be a total taking or a Constructive Total Taking of the Leased Premises or any part thereof in condemnation proceedings or by any right of eminent domain or by a conveyance in lieu thereof, this Lease shall terminate on the date of such taking and the Rent payable by the Commission hereunder shall be prorated and paid to the date of such taking.

Section 13.02. Proceeds of Total Condemnation. In the event of any such total taking or Constructive Total Taking and the termination of this Lease, the Condemnation Proceeds shall be paid to Memorial but shall be applied by Memorial in the following order or priority:

(a) First, to the payment of expenses and charges, including without limitation reasonable attorneys' fees, incurred by Memorial in connection with such taking;

(b) Second, to any Mortgagee in the order of priority of such Mortgages to the extent of unpaid principal amount of such Mortgages and all accrued and unpaid interest thereon and all costs, expenses and advances pursuant thereto and all advances

made by such Mortgagee for the benefit of the leased Premises and the continued use and operation thereof;

(c) Third, to Memorial.

Nothing herein contained shall impair the right of Memorial to the full award, compensation or damages payable as an award for loss of business or for moving expenses, as long as such award shall not reduce the amount of the award otherwise recoverable by the Commission from the condemning authority.

Section 13.03. Partial Condemnation. In the event of a taking that is less than a Constructive Total Taking, this Lease shall not terminate or be affected in any way, except as provided in Section 13.04. The Condemnation Proceeds in such event shall be apportioned and paid, to the extent available (following any required payments to Mortgagees), in the following order of priority:

(a) Memorial and the Commission shall first be entitled to their expenses and charges, including without limitation reasonable attorneys' fees, incurred in connection with the taking;

(b) The balance of the Condemnation Proceeds shall be payable to Memorial for application by Memorial to the costs of restoring, repairing, replacing or rebuilding the Improvements in the manner then reasonably feasible as required by Section 13.04;

(c) The Condemnation Proceeds, if any, remaining after restoration, repair, replacement or rebuilding shall be paid to Memorial, except to the extent of an equitable portion of the Condemnation Proceeds allocable by agreement of the Commission and Memorial on account of any taking of title to any portion of the Lease Parcel.

Section 13.04. Restoration. In the event of a taking that is less than a Constructive Total Taking, Memorial shall proceed with due diligence, subject to Unavoidable Delays, to restore, repair, replace or rebuild the remaining portions of the Improvements substantially the same as before the taking. If the Condemnation Proceeds are insufficient to pay the entire cost of such restoration, repair, replacement or rebuilding, Memorial shall pay any such deficiency.

Section 13.05. Temporary Condemnation. If, at any time during the Term, the whole or any part of the Leased Premises or Improvements or the Commission's interest therein under this Lease shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this Article shall not apply, and, except to the

extent that Memorial may be prevented from so doing pursuant to the terms of the order of the condemning authority, Memorial shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Memorial to be performed and observed, as though such taking had not occurred. In the event of any such taking of the character referred to in this Section 13.05, Memorial shall be entitled to receive the entire amount of the Condemnation Proceeds paid for such taking, whether paid by way of damages, rent, costs of moving or restoration or otherwise. Upon the expiration of any such period of temporary use or occupancy, if it be during the Term, Memorial will, at its sole cost and expense, restore the Improvements, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such taking.

Section 13.06. Rent Adjustment. In the event of a taking of the character referred to in Section 13.01, this Lease shall terminate as to the portion of the Leased Premises so taken. No such partial taking shall affect the Rent payable hereunder.

Section 13.07. Rights to Appear. Memorial, the Commission and any Mortgagee shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights hereunder, and in this connection, specifically and without limitation, to introduce evidence to establish the value of or damage to the Lease Parcel, the Leased Premises, the Improvements or any part thereof.

ARTICLE XIV

MORTGAGES

Section 14.01. Restriction of the Commission Mortgages. During the Term, the Commission shall not have the right or power to mortgage or otherwise create any security or other liens or encumbrances upon or affecting its leasehold interest in the Lease Parcel or its interest in the Improvements, or any part thereof.

ARTICLE XIV

SPECIFIC PERFORMANCE

In addition to any other rights that Memorial or the Commission may have pursuant to this Lease, if the other fails or refuses to execute, acknowledge and deliver any instrument or instruments or to take any other action (other than an action solely involving the payment of any sum of money) required to effectuate provisions of this Lease within the time period required by this Lease or, if no time period therefor is

specified in this Lease, within any reasonable time period specified in any request from the other party, then from and after the date fifteen (15) days after the date of delivery of a final written demand to the other party requesting such execution, acknowledgment and delivery or other action, the requesting party shall be entitled to specific performance, declaratory relief, or such other remedies at law or equity which may be appropriate to effectuate the provisions of this Lease.

ARTICLE XV

DEFAULTS

Section 15.01. Events of Default. Each of the following events, if not remedied as hereinafter provided, shall be deemed an "Event of Default":

(a) Memorial's failure to pay any installment of Rent within ten (10) days of the date when the same shall be due and payable; or

(b) Memorial's failure to perform any other covenant or agreement herein contained on Memorial's part to be kept or performed and the continuance of such failure for a period of ninety (90) days after notice in writing to Memorial from the Commission specifying the nature of such failure, and provided the Commission shall not cure said failure as provided in Section 15.02.

Upon the occurrence of any Event of Default, the Commission may, at its option, give to Memorial a written notice of election to end the Term of this Lease upon a date specified in such notice, which date shall be not less than ninety (90) days after the date of delivery to Memorial of such notice by the Commission. The notice shall specify, in detail, the nature of the Event of Default claimed by the Commission, shall specify the date on which the Term of this Lease is to be ended, and shall be delivered as provided in Section 18.

Section 15.02. Extensions. If the Commission gives notice at any time of a default of a nature that cannot be cured within the ninety (90) day period provided in Section 15.01(b), then such default shall not be deemed an Event of Default so long as Memorial, following notice from the Commission, proceeds to cure the default as soon as reasonably possible and continues to take all reasonable steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. In addition, no Event of Default shall be deemed to have occurred if and so long as Memorial shall be delayed in or prevented from curing the same within the applicable cure period by Unavoidable Delay.

Section 15.03. Remedies. Upon any Event of Default pursuant to Section 15.01, or at any time thereafter so long as the same is not cured, the Commission may, in addition to and without prejudice to any other rights and remedies the Commission shall have at law or in equity, (i) cure any such Event of Default and collect the cost thereof from Memorial upon demand or (ii) file suit in a St. Joseph County Court for damages and eviction.

During any period of possession hereunder, the Commission, at the Commission's option, may complete such construction, alterations, repairs, replacements and/or decorations in the Leased Premises as the Commission, in the Commission's reasonable judgment, considers advisable and necessary for the purpose of completion, leasing or reletting of the Improvements; and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Memorial from liability hereunder as aforesaid.

ARTICLE XVI

NON-WAIVER

Failure of Memorial or the Commission to complain of any act or omission on the part of the other party, however long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Memorial or the Commission at any time, express or implied, of any breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by the Commission of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

ARTICLE XVII

FORCE MAJEURE

In the event that Memorial or the Commission shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of Unavoidable Delay, then performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of the Unavoidable Delay.

ARTICLE XVIII

NOTICES

No notice, approval, consent or other communication authorized or required by this Lease shall be effective unless the same shall be deemed given when either (i) hand delivered, with signed receipt obtained therefor, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested, directed or addressed in each case to the other party at its address set forth below, or such other address as either party may designate by notice given from time to time in accordance with this Article XVIII or (iii) sent by nationally recognized overnight courier service with all charges prepaid or billed to sender.

The address for notices to Memorial is:

615 North Michigan Street
South Bend, IN 46601
Attn: President

with a copy to:

Barnes & Thornburg
100 North Michigan
South Bend, IN 46601

The address for notices to the Commission is:

1200 County-City Building
South Bend, IN 46601
Attention: Director of Redevelopment

with a copy to:

South Bend City Attorney
1400 County-City Building
South Bend, IN 46601

ARTICLE XIX

CERTIFICATES

Section 19.01. Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request:

(a) As to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;

(b) As to the validity and force and effect of this Lease, in accordance with its tenor as then constituted;

(c) As to the existence of any default hereunder;

(d) As to the existence of any offsets, counterclaims or defenses thereto on the part of such other party;

(e) As to the commencement and expiration dates of the Term;

(f) As to whether or not the Plans for the Improvements required by Article VI have been accepted and approved by Memorial; and

(g) As to any other matters as may reasonably be so requested.

Any certificate referred to in this Article XIX may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

Section 19.02. Specific Performance. Memorial shall be entitled to specific performance to enforce the provisions of this Article XIX, it being agreed that money damages is not an adequate remedy for any breach thereof.

ARTICLE XX

GENERAL

Section 20.01. Governing Law. This Lease and the performance thereof shall governed, interpreted, construed and regulated by the laws of the State of Indiana.

Section 20.02. Partial Invalidity. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall at any time or to any extent be held invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term, covenant, condition and provision of this Lease shall continue to be valid, binding and enforceable to the fullest extent permitted by law.

Section 20.03. Memorandum of Lessee. The parties shall, at the request of either of them, promptly execute and deliver

duplicate originals of an instrument, in recordable form which will constitute a memorandum of this Lease, setting forth a description of the Leased Premises, the term of this Lease and any other portions thereof.

Section 20.04. Remote Vesting. This Lease and all rights and interests created hereby are intended to comply in all respects with applicable common or statutory law, including the common law Rule Against Perpetuities or analogous statutory restrictions. Therefore, any provision of this Lease that shall be construed by a final, non-appealable judicial determination to create or permit to arise any interest in the Leased Premises that may vest in the future in any person, shall be deemed to prohibit the creation of such interest from and after the date which is twenty-one (21) years after the death of the survivor of the now living lawful descendants of any of the persons who are attorneys practicing in the Office of the South Bend City Attorney as of the date of this Lease.

Section 20.05. Interpretation. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings and references to sections used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 20.06. Entire Agreement. No oral statement or prior written matter shall have any force or effect. This agreement shall not be modified or canceled except by a writing signed by the parties.

Section 20.07. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Memorial and the Commission and their respective successors and assigns.

Section 20.08. Attorneys' Fees. Memorial shall, subject to all the terms and conditions of this Lease, pay and indemnify the Commission against all reasonable legal costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in obtaining possession of the Leased Premises after default of Memorial or upon the expiration of the Term. Each party shall pay to and indemnify the other against all such reasonable legal costs and charges lawfully and reasonably incurred in successfully enforcing any covenant or agreement of the other party herein contained.

Section 20.09. Authority. Memorial and the Commission each

represent and warrant to the other that they have the power and authority to execute and deliver this lease and to carry out and perform all covenants to be performed by it hereunder.

Section 20.10. Survival. The Commission's obligation under this Lease to indemnify and hold Memorial harmless shall survive the expiration of the Term or earlier termination of this Lease.

Section 20.11. Relationship of Parties. Nothing contained herein, including, but not limited to, the method of computing Rent, shall be deemed or construed by the parties thereto or by any third party as creating between the parties hereto the relationship of principal and agent, partnership, joint venturer, or any relationship other than the relationship of lessor and lessee.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT,
acting by and through the
SOUTH BEND REDEVELOPMENT COMMISSION

By: _____
Robert W. Hunt, President

ATTEST:

Paula N. Auburn, Secretary

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

Before me, a Notary Public in and for said County and State personally appeared Robert W. Hunt and Paula N. Auburn, President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Ground Lease as their voluntary act and deed this day of , 1998.

Notary Public
Residing in St. Joseph County, IN

My Commission Expires:

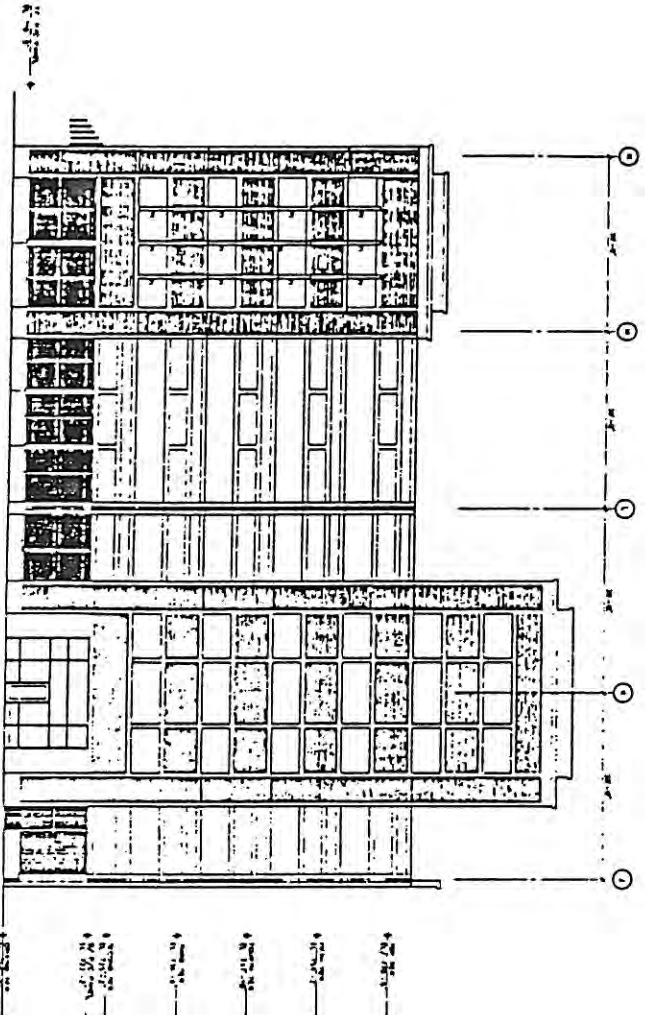
EXHIBIT B
MEMORIAL LEASED PREMISES

A parcel of land being a part of Lots 29, 30, 31 and 32 in the Original Plat of the Town (now City) of South Bend, Indiana, and adjacent vacated alley as shown in the Office of the Recorder of St. Joseph County, Indiana, and being more particularly described as follows:

Beginning at the Southwest corner of said Lot 31; thence North 0-10'-28" West along the East right-of-way line of Main Street, a distance of 92.99 feet; thence North 89-39'-15" East, a distance of 222.84 feet; thence South 0-20'-45" East, a distance of 94.22 feet to the North right-of-way line of Jefferson Boulevard; thence South 89-58'-12" West along said North right-of-way line, a distance of 223.12 feet to the place of beginning.

EXHIBIT C-1

DATE: 10/11/01 BY: [illegible]

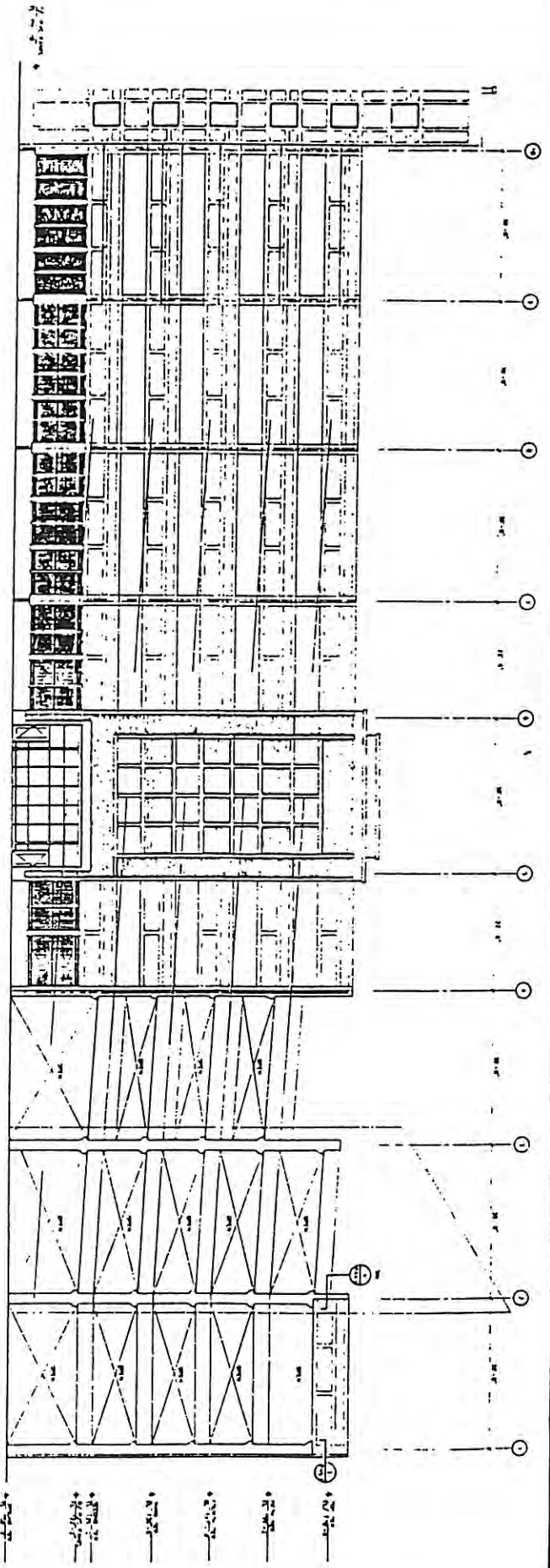


NORTH ELEVATION

11

NOT TO SCALE
 ALL DIMENSIONS IN FEET AND INCHES
 UNLESS OTHERWISE NOTED

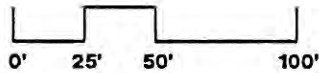
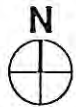
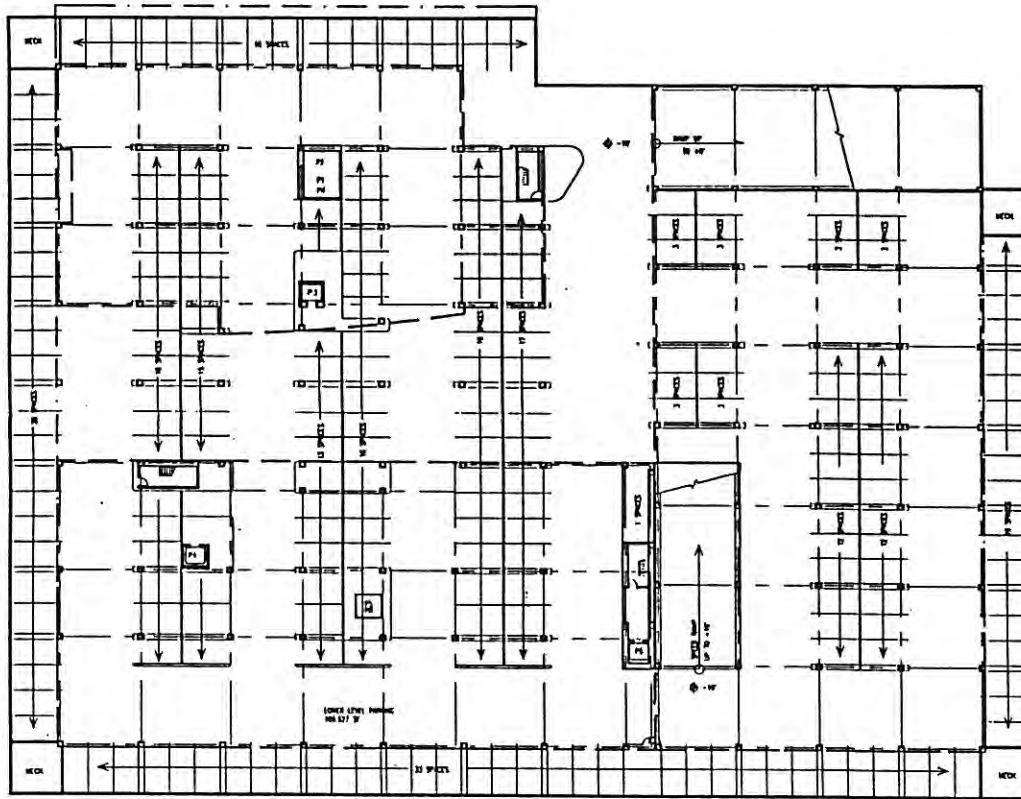
13144-03	LEIGHTON PLAZA
10/11/01	30TH FLOOR
	NOVANA
ELEVATIONS	
PA2.4	



WEST ELEVATION

12

EXHIBIT C-2

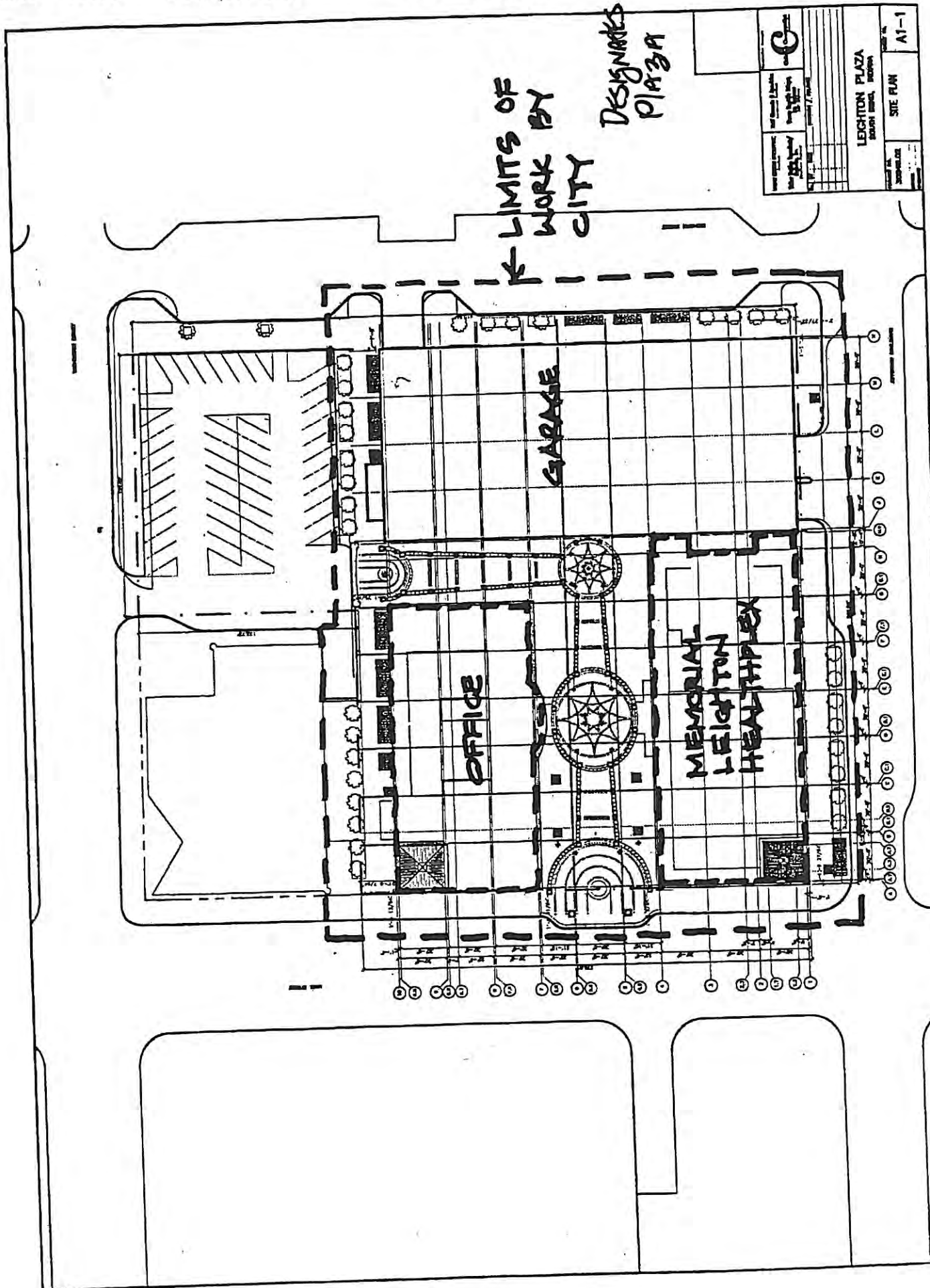


TOTAL PARKING INCLUDING RAMP: 548
TOTAL PARKING SPACES (LOWER LEVEL): 236
LOWER LEVEL PLAN

DOWNTOWN MIXED USE DEVELOPMENT

URBAN DESIGN GROUP INC

South Bend, Indiana
24 July 1998



DESIGNATES
PLAZA

LIMITS OF
WORK BY
CITY

OFFICE

GARAGE

MEMORIAL
LEIGHTON
HEALTHPLEX

EXHIBIT D

LEGAL DESCRIPTION OF PROPERTY

A parcel of land being a part of the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, and being more particularly described as follows:

Beginning at the Southwest corner of Lot 31 as the same is shown and designated on the Original Plat of the Town (now City) of South Bend and recorded in the office the Recorder of St. Joseph County, Indiana; thence North $89^{\circ}58'12''$ East (Bearing Assumed for this survey) along the North right-of-way line of Jefferson Boulevard, a distance of 345.54 feet to the Southeast corner of Lot 30 in said Original Plat; thence North $0^{\circ}20'45''$ West, along the West right-of-way line of Michigan Street, a measured distance of 277.24 feet; thence North $89^{\circ}54'06''$ West, a distance of 52.81 feet; thence North $0^{\circ}20'45''$ West, a distance of 12.49 feet; thence South $89^{\circ}39'15''$ West, a distance of 77.22 feet; thence South $0^{\circ}20'45''$ East, a distance of 11.89 feet; thence North $89^{\circ}54'06''$ West, a distance of 214.68 feet to the East right-of-way line of Main Street; thence South $00^{\circ}10'28''$ East along the East right-of-way line of Main Street, a measured distance of 278.01 feet to the place of beginning containing 96,756 square feet.

The above described parcel of land being subject to the legal rights of public highways, if any, and subject to any easements, covenants or restrictions of record.

PROPDES\ENTIRE

EXHIBIT E

**LEGAL DESCRIPTION OF THE
OFFICE BUILDING SITE**

A parcel of land being a part of Lots 27, 28, 33 and 34 in the Original Plat of the Town (now City) of South Bend, Indiana and adjacent vacated alley as shown in the Office of the Recorder of St. Joseph County, Indiana and being more particularly described as follows: Commencing at the Southwest corner of said Lot 31; thence North $0^{\circ}10'28''$ West along the East right-of-way line of Main Street, a distance of 163.82 feet; thence continuing North $0^{\circ}10'28''$ West along said East right-of-way line, a distance of 92.67 feet; thence North $89^{\circ}39'15''$ East, a distance of 182.85 feet; thence South $0^{\circ}20'45''$ East, a distance of 92.67 feet; thence South $89^{\circ}39'15''$ West, a distance of 183.12 feet to the place of beginning.

Exhibit F - Description of Parking Garage

The parking garage consists of an underground garage containing approximately 215 parking spaces that will be constructed on the site. The underground garage will be connected to the Memorial and MEPT buildings by elevators constructed by Memorial and MEPT. There will also be an above ground parking garage containing 429 parking spaces located along Michigan Street. This above ground garage will contain approximately 11,000 s.f. of retail space fronting on Michigan Street. Total parking provided by the underground and above ground garages is approximately 644 spaces.

EXHIBIT "G"

A four story building having approximately 20,360 square feet on each floor and a fifth floor of approximately 2,397 square feet for a total of approximately 83,837 square feet. The facility will house a four lane lap pool, a heated therapeutic pool, two aerobic studios, a cardiovascular exercise area, a strengthening and conditioning area, a child care room, a basketball/volleyball gymnasium, locker rooms, whirlpools, steam rooms and a virtual golf driving range. Some of the services that will be offered include wellness and disease prevention programs, support for pulmonary/cardiac rehabilitation, an outpatient traumatic brain injury program, fitness and wellness programs, and orthopedic and sports therapy.

EXHIBIT H
PROHIBITED USES-RETAIL SPACE

- 1) Any business which constitutes a controlled use within the meaning of Section 21-1(31) of the South Bend Municipal Code.
- 2) Any business which sells cigarettes.
- 3) Any business which sells liquor.

EXHIBIT H

Lease Agreement