



Department of  
**Community Investment**

**Memorandum**

May 7, 2015

TO: South Bend Redevelopment Authority  
FROM: David Relos, Economic Resources  
SUBJECT: Consent and Subordination of Leases – Eddy Street Commons parking garage

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This Consent and Subordination of Leases (Consent) is between the Redevelopment Authority, Redevelopment Commission, and Kite Realty Eddy Street Garage LLC (Kite).

This Consent will allow a Parking Easement Agreement to be entered in to between Kite and the University of Notre Dame, allowing parking spaces in the Eddy Street garage to be reserved for the accommodation of customers for the full service hotel, to be constructed at Eddy Street Commons.

This full service hotel is the second hotel planned for Eddy Street Commons, and will complete the planned components of Phase I.

Because the Redevelopment Authority is party to certain leases with the Redevelopment Commission and Kite related to the parking garage, the Authority is being asked to consent to and make the leases subordinate to the Parking Easement.

The Parking Easement will allow an exclusive easement for 285 parking spaces for the hotel, and a non-exclusive easement for vehicular and pedestrian ingress / egress in the garage.

Staff requests approval of the Consent and Subordination of Leases.



## Consent and Subordination of Leases

Kite Realty Eddy Street Garage, LLC, an Indiana limited liability company ("Landlord"), and the South Bend Redevelopment Authority, a separate body corporate and politic and an instrumentality of the City of South Bend, Indiana ("Master Tenant"), are parties to that certain Lease dated November 18, 2008, as evidenced by that certain Corrective Memorandum of Lease dated December 30, 2008, and recorded on January 5, 2009, as Instrument 0900201, with the St. Joseph County Recorder's Office (collectively, the "Lease"), by which Landlord leased to Master Tenant certain real property described in **Exhibit A** attached hereto (the "Garage"). Master Tenant and South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment (the "Sub-Tenant"), are parties to that certain Lease dated October 15, 2007 (collectively, the "Sub-Lease"). Sub-Tenant and Kite Realty Eddy Street Garage, LLC, an Indiana limited liability company (the "Sub Sub-Tenant"), are parties to that certain Sub-Sublease dated December 30, 2008 (collectively, the "Sub Sub-Lease"). Landlord, Master Tenant, Sub-Tenant and Sub Sub-Tenant do hereby grant their consent in all respects to the FS Hotel Parking Easement Agreement dated as of April 27, 2015, between Landlord, as grantor, and University of Notre Dame Du Lac, an Indiana non-profit corporation, as grantee (the "Easement Agreement"), and agree and consent that said Lease, Sub-Lease and Sub Sub-Lease are hereby made subject and subordinate to the Easement Agreement, provided, however, that such subordination is strictly limited to the leasehold interests in the Garage and no other real property. Master Tenant, as the owner of Garage, does hereby grant its consent in all respects to the Easement Agreement and hereby agrees that its ownership interest in the Garage shall be subject to the Easement Agreement.

[SIGNATURE PAGE FOLLOWS.]





SOUTH BEND REDEVELOPMENT COMMISSION,  
governing body of the South Bend Department of  
Redevelopment

By: Marcia I. Jones  
Marcia I. Jones, President

ATTEST:

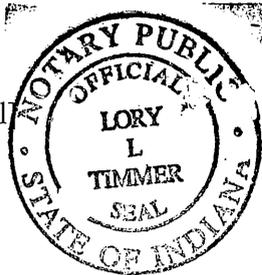
Donald E. Inks  
Donald E. Inks, Secretary

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

On this 30<sup>TH</sup> day of APRIL, 2015, before me, a notary public for said State and County, personally appeared Marcia I. Jones and Donald E. Inks, the President and Secretary of the South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment, who acknowledged the execution of the foregoing instrument on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Notarial Seal]



Lory L. Timmer  
(Signature) Notary Public

Lory L. Timmer  
(Printed Name)

My Commission Expires:    County of Residence:

September 23, 2017    St. Joseph

I affirm, under the penalties of perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. April Sparks Pyatt

This instrument was prepared by, and after recording, return to: April Sparks Pyatt, ICE MILLER LLP, One American Square, Suite 2900, Indianapolis, IN 46282.

Exhibit A

**Description of Garage**

A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF SOUTH BEND, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT NUMBER 2 OF THE PLAT OF "EDDY STREET COMMONS MAJOR SUBDIVISION (SECTION ONE)" RECORDED AS DOCUMENT # 0828220 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY INDIANA, SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF ANGELA BOULEVARD THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR THE NEXT THREE (3) COURSES, N. 88°23'08" E., 8.58 FEET, AND N. 65°41'36" E., 36.85 FEET, AND S. 89°21'11" E., 242.69 FEET; THENCE S. 00°34'09" W., 237.32 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE S. 89°58'57" E., 290.53 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 200.00 FEET, AND HAVING AN ARC DISTANCE OF 5.03 FEET, TO THE END OF A CHORD BEARING S. 01°22'00" W., AND HAVING A DISTANCE OF 5.03 FEET, THENCE S. 00°38'39" W., 24.20 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1000.00 FEET, AND HAVING AN ARC DISTANCE OF 62.63 FEET, TO THE END OF A CHORD BEARING S. 01°08'50" E., AND HAVING A DISTANCE OF 62.62 FEET, THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1000.00 FEET, AND HAVING AN ARC DISTANCE OF 16.44 FEET, TO THE END OF A CHORD BEARING S. 02°28'14" E., AND HAVING A DISTANCE OF 16.44 FEET, THENCE N.89°58'57" W., 69.99 FEET; THENCE S. 00°01'01" W., 140.67 FEET; THENCE N. 89°58'57" W., 355.42 FEET; THENCE N. 00°01'03" E., 248.92 FEET; THENCE S. 89°58'57" E., 133.28 FEET; TO THE POINT OF BEGINNING.