ITEM: 5.A.(2)

Department of
Community Investment

Memorandum
August 13, 2015

TO: South Bend Redevelopment Commission

FROM: David Relos, Economic Resources

SUBJECT: Release of Right of Entry and Release of Temporary Easement Agreement

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On August 13, 2015, the Commission approved a Release of Right of Entry and Temporary Easement Agreement (Agreement). When this Agreement was presented to the Recorder's Office for recording, we were informed they could not record it because it was releasing two separate items, and we would need to do a release for each item. So the items can be recorded, they are now two separate Releases.

As a summary, in August 2006, Waggoner Farms Development granted a Right of Entry and Temporary Easements to the Board of Public Works and Redevelopment Commission. These were granted for the construction of Dylan Drive and a temporary retention basin within Portage Prairie, now known as Ameriplex at Interstate 80/90.

With the recent new development at Ameriplex, these items are showing up on title work, and since they are no longer needed by either the Board of Public Works or the Commission, these Releases will release both items.

The Board of Public Works is expected to approve the Release of Right of Entry on Tuesday, August 25.

Staff requests approval of this Release of Right of Entry and Release of Temporary Easement Agreement.

227 W. JEFFERSON BLVD. SOUTH BEND, IN 46601 | P: 574-235-9371 | FAX: 574-235-9021 | SOUTHBENDIN.GOV

RELEASE OF RIGHT OF ENTRY

WHEREAS, on August 1, 2006, Waggoner Farms Development, L.P. and Waggoner's Dairy Farms, Inc. (the "Grantors") granted a right of entry to the City of South Bend, Indiana, and the South Bend Redevelopment Commission (collectively, the "Grantees") as recorded in the Office of the Recorder of St. Joseph County on August 14, 2006, as Instrument No. 0634981 (the "Right of Entry") to construct improvements to the Grantors' property now known as Dylan Drive and its associated bike path and landscape strip and a separate storm water drainage facility west of and adjacent to Dylan Drive.

WHEREAS, the Right of Entry granted rights for entry to the property described in **Exhibit A** during the construction of the roadway and infrastructure, landscaping and bike path and a temporary storm water drainage facility; and

WHEREAS, the Grantors have granted by deed of dedication the right of way for Dylan Drive and infrastructure; and

WHEREAS, the City of South Bend has completed Dylan Drive and infrastructure, bike path and landscape strip, fulfilling the Right of Entry agreement; and

WHEREAS, the City of South Bend in cooperation with Holladay Properties and other successors and assigns of the Grantors has completed drainage improvements that make use of the temporary storm water facility unnecessary; and

NOW, THEREFORE, the Grantees hereby release the easement granted in the Right of Entry with the intent that it be forever extinguished.

IN WITNESS WHEREOF, the City of South Bend, by and through its Board of Public Works, and the South Bend Redevelopment Commission have signed this Release Of Right Of Entry to be effective this ___ day of _____, 20__.

CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS

_____
Gary Gilot, Member

_____
David Relos, Member

_____
Elizabeth Maradik, Member

_____
Brian Pawlowski, Member

_____
James Mueller, Member

ATTEST:

_____
Linda M. Martin, Clerk

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

Before me, the undersigned, a Notary Public in and for said County and State, this ____ day of _____, 2015, personally appeared _____, personally known to me as the _____ of the South Bend Board of Public Works, and acknowledged the execution of the foregoing Release Of Right Of Entry for and on behalf of the South Bend Board of Public Works.

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

(SEAL)

_____
_____, Notary Public
Resident of _____County, _____

My commission expires:

_____

SOUTH BEND REDEVELOPMENT COMMISSION, for and on behalf of the City of South Bend, Indiana, Department of Redevelopment

By: _____
Marcia I. Jones, President

ATTEST:

_____
Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public in and for said County and State, this ____ day of _____, 2015, personally appeared Marcia I. Jones and Donald E. Inks, personally known to me as the President and Secretary, respectively, of the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment, and acknowledged the execution of the foregoing Release Of Right Of Entry for and on behalf of the South Bend Redevelopment Commission.

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

(SEAL)

_____
_____, Notary Public
Resident of _____County, _____

My commission expires:

_____

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

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Exhibit A

LEGAL DESCRIPTION — DYLAN DRIVE EXTENSION

A PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 2 EAST, GERMAN TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER, SAID CORNER BEING MARKED BY A HARRISON MONUMENT; THENCE SOUTH 89 DEGREES 55 MINUTES 03 SECONDS EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17, SAID LINE AS BEING THE CENTERLINE OF ADAMS ROAD, A DISTANCE OF 607.05 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 56 SECONDS WEST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 55 MINUTES 03 SECONDS EAST, A DISTANCE OF 243.34 FEET; THENCE SOUTH 79 DEGREES 39 MINUTES 44 SECONDS WEST, A DISTANCE 83.89 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 41.00 FEET, BEING SUBTENDED BY A CHORD BEARING SOUTH 45 DEGREES 15 MINUTES 26 SECONDS WEST HAVING A DISTANCE OF 46.33 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 49.24 FEET TO THE POINT OF CURVATURE OF A REVERSE CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 735.00 FEET, BEING SUBTENDED BY A CHORD BEARING SOUTH 21 DEGREES 31 MINUTES 14 SECONDS WEST HAVING A DISTANCE OF 271.61 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 273.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 05 SECONDS WEST, A DISTANCE OF 140.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 665.00 FEET, BEING SUBTENDED BY A CHORD BEARING SOUTH 15 DEGREES 57 MINUTES 15 SECONDS WEST HAVING A DISTANCE OF 371.37 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 376.37 FEET; THENCE SOUTH 00 DEGREES 15 MINUTES 35 SECONDS EAST, A DISTANCE OF 1864.70 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17, SAID LINE ALSO BEING THE NORTH LINE OF THE U.S. 31 INDUSTRIAL PARK SUBDIVISION; THENCE NORTH 89 DEGREES 57 MINUTES 13 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 70.00 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 35 SECONDS WEST, A DISTANCE OF 1864.33 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 735.00 FEET, BEING SUBTENDED BY A CHORD BEARING NORTH 15 DEGREES 57 MINUTES 15 SECONDS EAST HAVING A DISTANCE OF 410.46 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 415.99 FEET; THENCE NORTH 32 DEGREES 10 MINUTES 05 SECONDS EAST, A DISTANCE OF 140.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 665.00 FEET, BEING SUBTENDED BY A CHORD BEARING NORTH 22 DEGREES 51 MINUTES 38 SECONDS EAST HAVING A DISTANCE OF 215.11 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 216.06 FEET TO THE POINT OF CURVATURE OF A COMPOUND CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 41.00 FEET, BEING SUBTENDED BY A CHORD BEARING NORTH 38 DEGREES 01 MINUTES 37 SECONDS WEST HAVING A DISTANCE OF 64.24 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 73.82 FEET; THENCE NORTH 89 DEGREES 36 MINUTES 24 SECONDS WEST; A DISTANCE 13.02 FEET TO AN EASTERLY RIGHT-OF-WAY SHOWN ON INDOT PLANS FOR PROJECT ST-F-720(25), DATED 1969 (U.S. 20/31 BYPASS); THENCE NORTH 00 DEGREES 04 MINUTES 56 SECONDS EAST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 14.52 FEET TO THE POINT OF BEGINNING; SAID DESCRIBED TRACT CONTAINING 4.408 ACRES, MORE OR LESS.

SUBJECT TO ALL EASEMENTS, COVENANTS, RESTRICTIONS, AND RIGHT-OF-WAY OF RECORD.

RELEASE OF TEMPORARY EASEMENT AGREEMENT

WHEREAS, on August 1, 2006, Waggoner Farms Development, L.P. and Waggoner's Dairy Farms, Inc. (the "Grantors") granted a temporary construction easement to the City of South Bend, Department of Redevelopment (the "Grantee"), as recorded in the Office of the Recorder of St. Joseph County on August 14, 2006, as Instrument No. 0634982 (the "Temporary Easement Agreement") to construct improvements to the Grantors' property now known as Dylan Drive and its associated bike path and landscape strip and a separate storm water drainage facility west of and adjacent to Dylan Drive.

WHEREAS, the Temporary Easement Agreement granted rights for entry to the property described in **Exhibit A** during the construction of the roadway and infrastructure, landscaping and bike path and a temporary storm water drainage facility; and

WHEREAS, the Grantors have granted by deed of dedication the right of way for Dylan Drive and infrastructure; and

WHEREAS, the City of South Bend has completed Dylan Drive and infrastructure, bike path and landscape strip; and

WHEREAS, the City of South Bend in cooperation with Holladay Properties and other successors and assigns of the Grantors has completed drainage improvements that make use of the temporary storm water facility unnecessary; and

NOW, THEREFORE, the Grantee hereby releases the easement granted in the Temporary Easement Agreement, with the intent that it be forever extinguished.

IN WITNESS WHEREOF, the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission has signed this Release Of Temporary Easement Agreement to be effective this ___ day of _____, 20__.

SOUTH BEND REDEVELOPMENT COMMISSION, for and on behalf of the City of South Bend, Indiana, Department of Redevelopment

By: _____
Marcia I. Jones, President

ATTEST:

_____
Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public in and for said County and State, this ____ day of _____, 2015, personally appeared Marcia I. Jones and Donald E. Inks, personally known to me as the President and Secretary, respectively, of the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment, and acknowledged the execution of the foregoing Release Of Temporary Easement Agreement for and on behalf of the South Bend Redevelopment Commission.

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

(SEAL)

_____
_____, Notary Public
Resident of _____County, _____

My commission expires:

_____

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

4000.0000067 36900584.003

Exhibit A

PARCEL 1 – TEMPORARY CONSTRUCTION EASEMENT – UTILITIES AND NON-VEHICULAR PATH

A PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 2 EAST, GERMAN TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER, SAID CORNER BEING MARKED BY A HARRISON MONUMENT; THENCE SOUTH 89 DEGREES 55 MINUTES 03 SECONDS EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 607.05 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89 DEGREES 55 MINUTES 03 SECONDS EAST, A DISTANCE OF 243.34 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 57 SECONDS WEST, A DISTANCE OF 20.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF ADAMS ROAD; THENCE SOUTH 79 DEGREES 39 MINUTES 44 SECONDS WEST, A DISTANCE OF 54.59 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 790.00 FEET, BEING SUBTENDED BY A CHORD LENGTH OF 339.82 FEET BEARING SOUTH 19 DEGREES 44 MINUTES 54 SECONDS WEST; THENCE ALONG SAID CURVE, A DISTANCE OF 342.49 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 05 SECONDS WEST, A DISTANCE OF 140.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 610.00 FEET, BEING SUBTENDED BY A CHORD LENGTH OF 340.65 FEET, BEARING SOUTH 15 DEGREES 57 MINUTES 15 SECONDS WEST; THENCE ALONG SAID CURVE, A DISTANCE OF 345.24 FEET; THENCE SOUTH 00 DEGREES 15 MINUTES 35 SECONDS EAST, A DISTANCE OF 1864.99 FEET TO THE SOUTH LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 89 DEGREES 57 MINUTES 13 SECONDS WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 185.00 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 35 SECONDS WEST, A DISTANCE OF 1864.01 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 795.00 FEET, BEING SUBTENDED BY A CHORD LENGTH OF 443.97 FEET, BEARING NORTH 15 DEGREES 57 MINUTES 15 SECONDS EAST; THENCE ALONG SAID CURVE, A DISTANCE OF 449.95 FEET; THENCE NORTH 32 DEGREES 10 MINUTES 05 SECONDS EAST, A DISTANCE OF 140.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 605.00 FEET, BEING SUBTENDED BY A CHORD LENGTH OF 139.19 FEET, BEARING NORTH 25 DEGREES 33 MINUTES 45 SECONDS EAST; THENCE ALONG SAID CURVE, A DISTANCE OF 139.50 FEET TO THE SOUTH LINE OF RIGHT OF WAY TAKING FOR US 31 BYPASS (ST. JOSEPH VALLEY PARKWAY); THENCE NORTH 86 DEGREES 17 MINUTES 21 SECONDS EAST, ALONG SAID RIGHT OF WAY, A DISTANCE OF 21.61 FEET; THENCE NORTH

00 DEGREES 04 MINUTES 56 SECONDS EAST, ALONG SAID RIGHT OF WAY, A DISTANCE OF 124.51 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 2 EAST, GERMAN TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER, SAID CORNER BEING MARKED BY A HARRISON MONUMENT; THENCE SOUTH 89 DEGREES 55 MINUTES 03 SECONDS EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17, A DISTANCE OF 607.05 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 56 SECONDS WEST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 55 MINUTES 03 SECONDS WEST, A DISTANCE OF 243.34 FEET; THENCE SOUTH 79 DEGREES 39 MINUTES 44 SECONDS WEST, A DISTANCE 83.89 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 41.00 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 45 DEGREES 16 MINUTES 01 SECONDS WEST HAVING A DISTANCE OF 46.32 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 49.23 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 735.00 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 21 DEGREES 31 MINUTES 14 SECONDS WEST HAVING A DISTANCE OF 271.61 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 273.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 05 SECONDS WEST, A DISTANCE OF 140.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 665.00 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 15 DEGREES 57 MINUTES 15 SECONDS WEST HAVING A DISTANCE OF 371.37 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 376.37 FEET; THENCE SOUTH 00 DEGREES 15 MINUTES 35 SECONDS EAST, A DISTANCE OF 1,864.70 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17; THENCE NORTH 89 DEGREES 57 MINUTES 13 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 70.00 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 35 SECONDS WEST, A DISTANCE OF 1,864.33 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 735.00 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 15 DEGREES 57 MINUTES 15 SECONDS EAST HAVING A DISTANCE OF 410.46 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 415.99 FEET; THENCE NORTH 32 DEGREES 10 MINUTES 05 SECONDS EAST, A DISTANCE OF 140.63 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 665.00 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 22 DEGREES 51 MINUTES 38 SECONDS EAST HAVING A DISTANCE OF 215.11 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 216.06 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 41.00 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 38 DEGREES 01 MINUTES 37 SECONDS EAST HAVING A DISTANCE OF 64.24 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 73.82 FEET; THENCE NORTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE 13.02 FEET TO AN