



Department of
Community Investment

Memorandum

August 24, 2015

TO: South Bend Redevelopment Commission
FROM: Brock Zeeb, Director of Economic Resources
SUBJECT: Renewal of Michigan St. Shop Management Agreement

Attached is an agreement between the City of South Bend and Bradley Company for Michigan St. Shops Management Services. The agreement is a renewal of terms previously approved by the Commission.

The agreement will last 1 year

Bradley Company Duties

1. Show properties
2. Develop and process leads into leases
3. Management all accounting
4. Maintain property and relationships with tenants



COMMERCIAL PROPERTY MANAGEMENT AND LEASING AGREEMENT

This Commercial Property Management And Leasing Agreement (this "Agreement") is made effective as of February 1, 2015 (the "Effective Date") by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, of 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 ("Owner") and Bradley Company, LLC, an Indiana limited liability company, of 112 West Jefferson Boulevard, Suite 300, P.O. Box 540, South Bend, Indiana 46624-0540 ("Agent") (each, a "Party," and collectively, the "Parties").

RECITALS

A. The Parties acknowledge that this Agreement is intended to replace that Commercial Property Management and Leasing Agreement entered into on or about February 1, 2009, between Owner and Agent (as assignee of Robert Bradley Associates, LLC) (the "Prior Agreement");

B. Owner exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being I.C. 36-7-14 (the "Act");

C. Pursuant to its authority under the Act, Owner owns certain real property located in South Bend, Indiana, which it leases for redevelopment purposes in accordance with the Act;

D. Owner desires to obtain, and Agent desires to provide, certain management and leasing services in connection with the Properties (as defined below); and

E. Agent has familiarized itself with the character, location, construction, layout, plan, and operation of the Properties, including but not limited to the electrical, heating, plumbing, air conditioning, and ventilation systems and all other mechanical equipment, and Agent has the professional expertise required to provide the services requested by Owner.

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

1. **PROPERTIES.** The terms and conditions of this Agreement apply to the following Properties: 117 East Wayne Street – Wayne Street Garage Retail (the "Wayne Street Garage Shops"); 118-131 South Michigan Street – Leighton Plaza Garage Retail/Michigan Street Shops (the "Leighton Plaza Garage Shops"); and 130 South Main Street – Leighton Plaza Courtyard (the "Leighton Plaza Courtyard") (collectively, the "Properties").

2. **APPOINTMENT AND ACCEPTANCE.** Subject to the terms and conditions stated in this Agreement, Owner appoints Agent to serve as Owner's agent in the management and leasing of the Properties. Agent accepts the appointment and acknowledges the fiduciary relationship of trust and confidence created by this Agreement and that Agent owes Owner the duties of loyalty, care, and skill required by Indiana real estate licensing law in furthering the interests of Owner in connection with the Properties and this Agreement. No provision of this

Agreement will be construed to grant to Agent the consent of Owner as to any proposed dual-agency or limited-agency arrangement. In the event Agent desires to enter into such an arrangement with Owner and a prospective lessee, Agent will submit to the Contract Administrator identified in Section 18 a written request for Owner's consent, and Agent will likewise seek the prospective lessee's informed consent as to the proposed arrangement.

3. TERM AND TERMINATION.

(a) The Prior Agreement shall be deemed terminated effective January 31, 2015, and the Parties will have no further obligations under the Prior Agreement. This Agreement exclusively will govern the relationship between the Parties effective as of the Effective Date.

(b) The initial term of this Agreement will commence on the Effective Date and conclude on July 15, 2016. This Agreement will automatically renew for an additional term of one (1) year beginning on July 16, 2016 (the "Initial Renewal Date") and will automatically renew likewise on each succeeding anniversary of the Initial Renewal Date, unless either Party hereto shall provide the other with written notice of its intent not to renew this Agreement a minimum of sixty (60) days prior to the Initial Renewal Date or any anniversary of the Initial Renewal Date.

(c) Upon the occurrence of a default, as defined in Section 17 of this Agreement, the non-defaulting Party may, upon the written notice required by Section 17 to the defaulting Party, terminate this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, the Parties agree that Owner shall have an absolute right to terminate this Agreement, with respect to any part (or all, as applicable) of the Properties that Owner sells or otherwise transfers to a third party.

(e) Upon expiration or termination of this Agreement, Agent will immediately (a) deliver to Owner all data, documents, files, and work papers of any kind or description possessed by Agent in connection with its management and leasing of the Properties, and (b) upon Owner's request, deliver written notice to any third party identified by Owner indicating that Agent's agency has terminated and, if so instructed by Owner, identifying a replacement agent for the Properties.

4. AGENT'S AUTHORITY; LIMITATIONS; EMERGENCY REPAIRS; FIDELITY INSURANCE.

(a) Agent will act at all times for Owner's best interests and in accordance with its fiduciary duties to Owner. Agent agrees that during the entire term of this Agreement Agent will carry, at Agent's sole cost and expense, fidelity insurance coverage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) and that Agent will provide Owner with a copy of Agent's certificate evidencing said fidelity insurance coverage promptly upon the execution of this Agreement by Agent.

(b) Owner grants Agent, for purposes of carrying out its duties hereunder and engaging vendors to provide necessary services to the Properties, limited authority to act and execute contracts on behalf of, and in the name of, Owner, provided that no such contract may exceed a cost of Three Thousand Dollars (\$3,000.00) or a term of one (1) year. Expenses incurred under a contract entered into by Agent on behalf of Owner pursuant to the foregoing sentence will be paid out of the Operating Account as Property Expenses.

(c) Agent has no authority under this Agreement to bind Owner to any contract exceeding the limitations stated in Section 4(b) of this Agreement. Agent may seek authorization to enter into a contract exceeding the limitations stated in Section 4(b) of this Agreement by submitting to the Contract Administrator identified in Section 18 of this Agreement a written request for authorization. Agent may not enter into any such contract before receiving Owner's consent.

(d) Agent will have no ownership interest of any kind in the Properties, and Agent will not be responsible for the Properties' compliance with the requirements of applicable law, provided, however, that Agent has a duty promptly to notify Owner of any condition or defect in the Properties of which Agent is aware that requires any action to preserve and protect the Properties or to promote and protect the health and safety of any occupant of the Properties.

(e) Agent has no authority or power under this Agreement to make any structural changes in the Properties or to make any major alterations or additions in or to the Properties or equipment therein, unless Agent has first obtained Owner's written consent and instructions concerning the same. Notwithstanding the foregoing sentence, Agent may make emergency repairs to the Properties without first obtaining Owner's consent and instructions in the event such repairs are necessary because of imminent danger to life or property, or to avoid suspension of any necessary service to the Properties, and such repairs must be commenced before Owner is able to provide its consent and instructions.

5. RESPONSIBILITIES OF OWNER. Owner will cooperate with Agent and its personnel to the extent necessary to allow Agent to expeditiously, efficiently, and economically perform its responsibilities under this Agreement. Owner will designate a Contact Person(s) who shall be authorized to speak on behalf of Owner in communications with Agent on any matter relating to this Agreement. Any action taken by Agent at the direction of or pursuant to authorization from a Contact Person shall be considered an Owner-authorized action. Owner agrees that, during the term of this Agreement and for a period of one (1) year after its expiration or termination for any reason, it will not interfere with or attempt to impair the relationship between Agent and any of its employees, nor will Owner directly or indirectly solicit, entice, hire or otherwise induce or cause an employee of Agent to terminate or change such employee's relationship with his employer or attempt to do any such things without prior written consent of Agent.

6. LEASING. Agent will serve as Owner's exclusive leasing agent and will offer for lease the commercial space and other facilities and concessions in the Properties in accordance with the following provisions:

- (a) Agent will follow the Owner's instructions concerning solicitation and selection of tenants, so long as such instructions are lawful.
- (b) Agent is prohibited from discriminating against any prospective tenant because of the race, color, religion, sex, familial status, handicap, age, or national origin of the prospective tenant.
- (c) Agent will show the premises to prospective tenants.
- (d) Agent will solicit, receive and process applications for leases and will develop and maintain a current list of prospective tenants.
- (e) Agent will collect security deposits in accordance with the terms of each tenant's lease and the requirements of applicable law. Agent will deliver each security deposit to Owner (or place the same in an account maintained by Agent for the benefit of Owner) upon receipt. Within fifteen (15) days after a tenant has moved out of leased premises, or at such other time requested by Owner, Agent shall provide Owner with a detailed report of Agent's inspection of the premises, along with a recommendation as to the retention or release of the security deposit applicable to the premises. Agent will keep a list of said security deposits, which Agent will account for in each monthly financial report required under Section 13(c) of this Agreement.
- (f) Agent will keep a copy of each certificate of insurance carried by each tenant leasing premises in the Properties in addition to copies of all other documents a tenant is required to submit under the terms of its lease.
- (g) In advance of issuing any letter of intent or entering into any agreement regarding a potential tenancy, Agent will prepare and submit to Owner an analysis of each lease, including an analysis of Owner's return on investment and benefit to Owner after Agent's commission.
- (h) Owner authorizes Agent to place and remove "For Lease" or "Available" on the Properties. Agent is authorized to advertise the Properties on the internet and in print or other media, as Agent deems advisable, and to take and use photographs and video of the Properties.

7. COLLECTION OF RENT AND OTHER RECEIPTS; OPERATING ACCOUNT.

(a) Agent will make good faith efforts to collect rents, charges, and other amounts due from tenants promptly when such amounts become due.

(b) Agent shall deposit all amounts collected from tenants in a separate account with a bank or other financial institution whose deposits are insured by an agency of the United States Government (the "Operating Account"). The Operating Account shall be maintained by Agent on behalf of Owner, and Owner's funds shall not be commingled with funds of Agent.

(c) In the event the balance of the Operating Account exceeds Ten Thousand Dollars (\$10,000.00) for any period of ten (10) consecutive days, Agent will disburse to Owner from the Operating Account the amount necessary to reduce the balance of the Operating Account to Ten Thousand Dollars (\$10,000.00).

(d) Agent will provide to the Contract Administrator identified in Section 18 of this Agreement copies of all bank statements for the Operating Account within ten (10) business days of receipt by Agent.

8. PAYMENT OF PROPERTY EXPENSES.

(a) Agent may withdraw funds from the Operating Account for the following purposes only: (i) to transfer funds to Owner in accordance with Section 7(c), (ii) to pay Property Expenses, and (iii) to pay other expenses approved in advance in writing by Owner pursuant to Section 4(c) of this Agreement. "Property Expense" means the expenses for the following and any other expense expressly so designated in this Agreement:

- i. Subject to the limitations stated in Section 4(b) of this Agreement, expenses incurred in the management and maintenance of the Properties, specifically including any amounts owed third party vendors engaged to provide services to the Properties and the costs of all supplies, equipment, tools, appliances, materials, and services necessary for proper maintenance;
- ii. Subject to the limitations stated in Section 4(b) of this Agreement, expenses related to utility or communication services provided to the Properties;
- iii. All compensation owed Agent hereunder, specifically including Management Fees, Maintenance Fees, and Commissions;
- iv. Phone calls, faxes, and photocopies made by Agent's employees in connection with Agent's services to Owner under this Agreement;
- v. Handling, shipping, mailing, and reproduction of written or graphical materials related to the Properties;
- vi. Mileage when traveling in connection with the Properties; and
- vii. Fees charged by third parties for rental lock boxes and wire transfers.

(b) On an ongoing basis, Agent shall pay out of the Operating Account all expenses due and payable as Property Expenses. If there exists any actual or anticipated shortfall in the Operating Account such that regular payment of Property Expenses is or will be impossible, Agent will promptly notify Owner of such circumstances and will exercise its best efforts to assist Owner in arranging for prompt and timely payment of any outstanding Property Expenses by alternative means, provided, however, that Agent will not be required to expend or advance its own funds for the payment of Property Expenses or for any other purpose on Owner's behalf. Owner expressly acknowledges it has a duty to keep the Operating Account properly funded so that Agent may make both customary and emergency expenditures for the Property, provided, however, that Agent agrees to notify the Contract Administrator identified in Section 18 of this

Agreement in writing at any time the current balance of the Operating Account is less than Five Thousand Dollars (\$5,000.00) so that Owner may increase said balance, if the Owner deems and increase to be appropriate and necessary.

9. TENANT RELATIONS; ENFORCEMENT OF LEASES.

(a) Agent will maintain good faith communications with the tenants of the Properties to the end that problems affecting the Properties and tenants may be avoided or solved on a mutually satisfactory basis.

(b) Agent will make good faith efforts to secure full compliance by each tenant with the terms of his, her, or its lease and will emphasize voluntary compliance so that involuntary termination of tenancies may be avoided whenever possible consistent with sound management. If Agent determines that any action, including any legal proceeding, is proper or necessary to enforce the terms of a tenant's lease, Agent will promptly inform Owner of the same. Agent will carry out only such enforcement actions as instructed by Owner. Notwithstanding Section 4(b) of this Agreement, Agent may incur only such costs and/or attorneys' fees authorized in advance by Owner in connection with such actions, which will be paid by Agent out of the Operating Account as Property Expenses, unless separately paid by Owner.

10. UTILITIES AND SERVICE. Agent will arrange for all services to the Properties including but not limited to water, electricity, gas, sewage, trash removal, vermin extermination, the plowing of snow and the treatment of ice, landscaping, sweeping, litter control and all related services. Agent is authorized to enter into contracts necessary to secure such utilities and services, at all times subject to the then-applicable budget approved by Owner in accordance with Section 12 of this Agreement (notwithstanding Agent's right to make emergency expenditures to prevent injury to person or damage to the Properties). All expenses incurred for such utilities and services will be paid by Agent out of the Operating Account as Property Expenses, unless separately paid by Owner.

11. ON-SITE PERSONNEL. All on-site personnel, if any, will be employees of Agent, who will hire, pay, supervise and discharge them. Neither Agent nor any of its employees will be deemed to be an employee, partner, or co-venturer of Owner.

12. BUDGETS. The fiscal year for purposes of this Agreement will be from November 1 through October 31. Agent will prepare a recommended annual operating budget for each fiscal year that will begin during the term of this Agreement and submit the same to Owner on or before October 1 of the previous fiscal year. On or before November 1 of the new fiscal year, Owner will review, revise as necessary, and approve the annual operating budget for the Properties. Agent is authorized to expend funds held in the Operating Account to pay Property Expenses up to the maximum limit for each category established in the annual operating budget approved by Owner. Any request for a modification of the approved annual operating budget will be made by Agent to Owner as soon as possible, and Owner may approve or deny such request in its sole discretion.

13. FINANCIAL RECORDS AND REPORTS. Agent will have the following responsibilities with respect to financial records and reports relating to the Properties:

(a) Agent will establish and maintain a comprehensive system of records, books, and accounts in a manner satisfactory to Owner and subject to applicable state law. All records, books, and accounts will be subject to examination at reasonable hours by Owner.

(b) With respect to each fiscal year ending during the term of this Agreement, Agent will cause compiled annual financial reports concerning the Properties to be prepared and submitted to Owner within sixty (60) days after the end of the fiscal year.

(c) By the twentieth (20th) day of each month, Agent will furnish Owner with a statement of receipts and disbursements during the previous month, a schedule of accounts receivable and payable, and reconciled bank statements for the Operating Account and security deposit account as of the end of the previous month. Each report will contain a discussion of pertinent activity and any significant variances from the annual operating budget and the need for Owner's consideration of a revision of budgeted expenses.

14. INSURANCE. At Owner's option, Owner may instruct Agent to cause certain kinds and amounts of insurance covering the Properties to be placed and maintained in effect. Any premiums for such insurance maintained by Agent on behalf of Owner will be paid by Agent as Property Expenses, unless separately paid by Owner. Agent will investigate and report in writing to the Contractor Administrator and the South Bend Legal Department, as identified in Section 18 of this Agreement, concerning all accidents, claims, and potential claims for damages relating to the Properties and will cooperate with Owner and/or Owner's insurer(s) in connection therewith.

15. INDEMNIFICATION. Owner agrees to assume all liability for and expressly indemnify and hold Agent harmless from any and all claims, losses, actions, demands, liabilities, damages, judgments, fines, penalties, forfeitures, settlements, expenses, attorney's fees and costs, arising out of any injury, death, loss, property damage, damage to the environment, and instance of non-compliance with any federal, state or local law, regulation or order (collectively "Claims") sustained or alleged to have been sustained in connection with or in any way related to (a) the Property, or (b) Agent's actions or omissions, or the actions or omissions of Agent's employees, contractors, agents, servants and subcontractors with respect to the Property or on behalf of Owner. Owner's assumption and indemnification obligations stated in this Section 15 (a) include a duty to pay all costs incurred by Agent in connection with defending and satisfying Claims, including, without limitation, attorney's fees for counsel employed to represent either Party; (b) extend to Agent's employees, independent contractors and agents and their costs for attorney's fees; (c) apply to Claims by a party and all third parties; and (d) shall survive for one (1) year after any expiration date and/or termination of this Agreement. However, Owner's assumption and indemnification obligations stated in this Section 15 shall not extend to Claims arising out of Agent's willful misconduct or gross negligence. Agent shall not be required to defend or to employ counsel to represent Owner in the defense of any Claim.

16. AGENT'S COMPENSATION. Agent will be compensated for services rendered to Owner under this Agreement in accordance with this Section 16.

(a) Agent will collect, and is entitled to, a monthly management fee (the "Management Fee") paid out of the Operating Account as a Property Expense. Such Management Fee will be payable not later than the fifth (5th) day of each month for the preceding month and will be equal to the sum of the following parts:

- i. for the Wayne Street Garage Shops, \$200.00 or 5% of Gross Revenues collected with respect to the Wayne Street Garage Shops during the preceding month, whichever is greater; plus
- ii. for the Leighton Plaza Garage Shops, \$625.00 or 5% of Gross Revenues collected with respect to the Leighton Plaza Garage Shops during the preceding month, whichever is greater; plus
- iii. for the Leighton Plaza Courtyard, \$75.00.

As used in this Section, "Gross Revenues" means the total of all base rents (excluding payments for common expenses, taxes, insurance, and the like) actually collected by Agent on behalf of Owner during the applicable period.

(b) For maintenance work completed by Agent's employees, Agent will collect, and is entitled to, maintenance fees (the "Maintenance Fees") at the hourly rates stated in Exhibit A attached hereto. Agent will submit an invoice for the Maintenance Fees on a recurring basis, which will be paid out of the Operating Account as a Property Expense, unless other arrangements are made in advance. Time spent by maintenance technicians outside the hours from 7:30 AM to 4:30 PM, Monday through Friday, will be billed at the Overtime Rates stated in Exhibit A.

(c) Agent will collect leasing commissions (the "Commissions") on the following terms:

- i. For new leases in which Agent represents both Owner and the tenant (or in which the tenant does not utilize the services of any licensed real estate broker), Agent's Commission will be equal to 8% of the gross base rent (excluding payments for common expenses, taxes, insurance, and the like) payable to Owner over the initial term of the lease.
- ii. For new leases in which the tenant is represented by a real estate broker other than Agent or any individual sales professional(s) of Agent, Agent's Commission will be equal to 10% of the gross rental income scheduled over the initial term of the lease.

- iii. For lease renewals, lease expansions, and lease extensions negotiated by Agent, Agent's Commission will be equal to 3.5% of the gross rental income collected during the term of the renewal, expansion, or extension.
- iv. Agent will collect its Commission as a Property Expense paid out of the Operating Account. One-half of the Commission will be earned upon execution of a new lease, a lease renewal, a lease expansion, or a lease extension by a tenant, and one-half of the Commission will be earned upon commencement of the same. Once earned, each portion of a Commission may be paid immediately.

In the event the Operating Account balance is insufficient to fund any fee or reimbursement owed Agent hereunder, Owner will be responsible for promptly paying such amounts directly to Agent.

17. 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 non-defaulting Party may (a) terminate this Agreement in accordance with Section 3(c), or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 17, then no default shall exist and the noticing Party shall take no further action.

18. NOTICES. 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.

Agent: Bradley Company, LLC
112 W. Jefferson Blvd., Suite 300
P.O. Box 540
South Bend, IN 46624
Attn: Corporate Counsel

Owner: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Brock Zeeb (the "Contract Administrator")

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

19. 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.

20. ASSIGNMENT. Agent may not assign its rights or obligations under this Agreement to any third party without the prior written consent of Owner; provided, however, that Agent may assign this Agreement to a purchaser of all (or substantially all) of Agent's assets upon sixty (60) days' advance written notice to Owner.

21. INTERPRETIVE PROVISIONS.

(a) This Agreement constitutes the entire agreement between Owner and Agent with respect to the management of the Properties, and no representation, promise, or inducement not stated in this Agreement will be binding upon the Parties. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by both Parties' authorized representatives.

(b) This Agreement may be executed in several counterparts, which when taken together shall constitute a complete original agreement. Facsimile signatures will be deemed original signatures.

(c) This Agreement shall be binding upon the respective successors and assigns of each Party.

(d) This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

[SIGNATURE PAGE FOLLOWS]

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

OWNER:

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

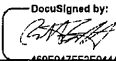
Signature

Printed Name and Title

South Bend Redevelopment Commission

AGENT:

Bradley Company, LLC, an Indiana limited liability company

By: 

Bradley J. Toothaker
Its: President & CEO

EXHIBIT A**Maintenance Rates**

<u>Service</u>	<u>Regular Rate</u>	<u>Overtime Rate*</u>
Janitorial	\$35.50	\$53.25
Weeding	\$35.50	\$53.25
Grounds trash pick up	\$35.50	\$53.25
Inspections	\$35.50	\$53.25
Carpentry	\$52.50	\$78.75
Painting	\$52.50	\$78.75
Snow Shoveling	\$35.50	\$53.25
Electrical	\$69.50	\$104.25
Plumbing	\$69.50	\$104.25

*See Section 16(b).