

Department of
Community Investment

ITEM: 5.A.(1)

Memorandum

Tuesday, October 27, 2015

TO: Redevelopment Commission
FROM: Brock Zeeb, Director of Economic Resources
SUBJECT: Sale of property (Mil Site) 604 Scott St.

On March 27, 2012 the Commission approved MOU 1 with Union Station Technologies Center (USTC) outlining phase 1 development of the Renaissance District. One component of this MOU was to sell the Millennium site (commonly known as 604 Scott St.) for future development needed for the site.

Upon completion of remediation of the Studebaker 84 complex, USTC plans to reorganize the building's layout, and the Millennium site will provide for construction staging, better long term traffic flow for the facility and put the property back on the tax roles. Attached are 4 documents: Site Purchase Agreement, Environmental Indemnity Agreement, and two easement documents.

Site Purchase Agreement: sale price of \$42,500 for the property, site investment credits toward the purchase price and split cost of a new legal description necessary to close on the property (Not to exceed \$1,500 *for new legal description*).

EIA: provides 5 year indemnity with the Commission's environmental consultant (Weaver Consultants) providing assistance in negotiations with Indiana Brownfields for comfort letter on the site.

An Easement Documents: attached is a map that outlines the site use easements. The easement document require legal description updates since the vacation of United Drive. This cost will be split between USTC and the Commission to be paid at closing. (Separate from the legal description above not to exceed \$1,500).

Staff requests separate approval of each agreement in preparation for a closing on the Millennium parcel.



AGREEMENT FOR SALE OF LAND FOR PRIVATE DEVELOPMENT

This Agreement for Sale of Land for Private Development ("Agreement") is entered into as of the ___ day of _____, 2015 (the "Effective Date") by and between the South Bend Redevelopment Commission (referred to herein as the "Commission" or "Seller") and Millennium Parcel, LLC, an Indiana limited liability company (referred to herein as "Buyer").

WHEREAS, Seller owns certain property located at 604 South Scott Street, in South Bend, Indiana, as described below and more particularly described in Exhibit A and further described below (the "Real Estate"); and

WHEREAS, upon and subject to the terms and conditions hereof, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Real Estate.

NOW, THEREFORE, for and in good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Real Estate. Seller, by Limited Warranty Deed, at Closing (as defined herein), shall sell and convey to Buyer, and Buyer shall purchase from Seller, for the Purchase Price (as defined herein), and upon and subject to the terms and conditions hereof, all rights, title and interest to the Real Estate, including all rights, privileges, interests, tenements, hereditaments, easements, and appurtenances in any way belonging or appertaining to such real estate, including Seller's rights, privileges and interests in and to adjoining streets, alleys, rights-of-way and any adjacent strips of real estate, and all buildings, improvements, parking lots, plumbing and all other fixtures thereto either permanently installed or which belong to or are used in connection with such real estate.

2. Purchase Price. In consideration of the sale and conveyance of the Real Estate by Seller to Buyer, Buyer agrees to pay to Seller a purchase price for the Real Estate in the amount of \$42,500.00 (the "Purchase Price").

3. Taxes, Assessments and Security Costs. At closing, Buyer shall receive a credit on the Purchase Price for the agreed upon costs associated with securing the Real Estate and the surrounding area, up to \$42,500. Seller will bear no liability for real property taxes on the Real Estate for any period of time either before or after the Closing Date.

4. Title to the Real Estate. Seller hereby represents and warrants that it is the owner of the Real Estate and that it is not aware of any easement or encumbrances other than those of record. As further evidence of title to the Real Estate, Seller shall obtain at its expense, which expense will not exceed One Thousand Dollars (\$1,000.00), and deliver to Buyer a commitment (the "Commitment") for an owner's policy of title insurance in the current ALTA Owner's Policy form (the "Owners Policy"), issued by a title insurance company reasonably acceptable to Seller ("Title Company") at Closing, in which Title Company shall agree to insure good, merchantable

and marketable title to the fee simple estate in the Real Estate in Buyer, subject to certain permitted exceptions (collectively, the “Permitted Exceptions”), including the following:

- (a) applicable zoning or use laws and regulations;
- (b) the restrictions set forth in the terms and provisions of and easement contained in the Warranty Deed from The New York Central Railroad Company to Standard Oil Company, dated March 29, 1947 and recorded May 22, 1947 in Deed Record 421, page 279 in the Office of the Recorder of St. Joseph County, Indiana;
- (c) the restrictions and terms of the Notice of Supplemental Final Order and Judgment in an instrument dated April 24, 2008 and recorded January 20, 2009 in Instrument No. 0901619 in the Office of the Recorder of Saint Joseph County, Indiana;
- (d) the environmental restrictive covenants contained in the form of Environmental Restrictive Covenant attached hereto as Exhibit B and incorporated herein, which Buyer shall execute and record immediately after Closing;
- (e) the utility easements reserved in Ordinance No. 10157-12 of the South Bend Common Council dated April 25, 2012; and
- (f) the Access And Utility Easement And Parking License Agreement by and between the City of South Bend Building Corporation and Millennium Parcel LLC, in the form attached hereto as Exhibit D, to be dated as of the Closing Date and recorded promptly thereafter in the Office of the Recorder for St. Joseph County, Indiana.

The Title Company shall issue the Owners Policy for the amount of \$42,500.00, upon execution and delivery of a Limited Warranty Deed thereto from Seller to Buyer. Within 10 days after receipt of the Commitment, Buyer shall give Seller notice of any exceptions enumerated in the Commitment other than the Standard Exceptions which are unsatisfactory to Buyer (the "Unsatisfactory Exceptions"). Any exceptions to title set forth in the Commitment and not objected to by Buyer shall be deemed “Permitted Exceptions” hereunder. Seller shall, at its sole cost and expense, shall cause any other exceptions (the “Unsatisfactory Exceptions”) to be released prior to Closing. Seller agrees to use its best efforts and reasonable diligence to cure the any Unsatisfactory Exceptions within 90 days. If the Unsatisfactory Exceptions are not satisfied within the time period, Buyer may either terminate this Agreement or waive any Unsatisfactory Exceptions and close the transaction. Buyer shall obtain at his own cost a Mortgagee Policy from Title Company if required by Buyer’s lender.

5. Environmental Concerns. The parties will, concurrent with the execution of this Contract, enter into an Environmental Indemnification Agreement, attached hereto as Exhibit C, and incorporated herein by this reference. The parties agree that the City will incur no further expenses in connection with the Phase I Environmental Site Assessment related to the Real Estate.

6. Closing Date and Costs. The Closing shall take place no later than November 20, 2015 (the "Closing Date"), unless otherwise extended by mutual written agreement of Seller and Buyer. The Closing shall take place at the offices of Title Company, or at such date, time and place as may be agreed upon by the parties hereto. Costs of recording the Limited Warranty Deed and other instruments of conveyance shall be borne by Buyer and any other Closing Costs not provided for elsewhere in this Agreement shall be split equally between Seller and Buyer.

7. Possession. Seller shall deliver possession of the Real Estate to Buyer on the Closing Date.

8. Applicable Law. This Agreement is to be governed by and construed in accordance with the laws of the State of Indiana without regard to conflicts of laws principles.

9. Severability. In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other applications thereof shall not in any way be affected or impaired thereby.

10. Expenses and Brokerage Fees. Except as herein specifically provided to the contrary, each of the parties hereto shall bear their own consulting, legal and accounting expenses incurred in connection with the negotiation of this Agreement and the consummation of the transaction. Each of the parties hereto covenants that it has not employed or used any broker, finder or agent in connection with this Agreement or the transaction and that it has not taken any action or made any representations or commitment whereby the other party is or will be obligated to pay any broker's commission for bringing the parties together or bringing about this Agreement or the transaction.

11. Entire Agreement. This Agreement, along with the concurrently executed Environmental Indemnity Agreement, contains the entire Agreement between Seller and Buyer as to the Real Estate. All prior arrangements or understandings regarding the Real Estate are merged into and superseded by this Agreement.

12. Interpretation. This Agreement is the product of arm's length negotiations between the parties and shall not be construed in favor of or against either party.

13. Headings and References. The headings in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the term or provisions hereof. Exhibits that are attached hereto are incorporated herein by reference.

14. Notices. A notice, demand or other communication under the Contract 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

- i. in the case of Buyer, is addressed to or delivered personally to the Buyer as follows:

Millennium Parcel, LLC
6165 Lone Wolf Drive, Suite 100
South Bend, IN 46628
Attn: Kevin Smith

- ii. in the case of the Commission, is addressed to or delivered personally to the Commission as follows:

South Bend Redevelopment Commission
1400S County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601
Attn: Brock Zeeb

With a copy to:

Corporation Counsel
1200S 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.

15. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, any of the parties hereto may execute this Agreement by signing any such counterpart.

(remainder of page intentionally left blank)

IN WITNESS HEREOF, the parties, by their respective duly authorized officers, execute this Agreement on the date set forth below the name of each.

MILLENNIUM PARCEL, LLC

By: *Kevin M. Smith*

Its: Kevin M. Smith

Dated: _____

SOUTH BEND REDEVELOPMENT COMMISSION

By: _____

Its: _____

Dated: _____

ATTEST:

By: _____

Its: _____

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL I: Lot Numbered One (1) except the South 20 feet thereof, and Lots Numbered Two (2), Three (3) and Four (4) in Ford's Subdivision of the South part of Bank Out Lot Numbered Sixty (60) in the First Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana.

PARCEL II: A part of Bank Out Lot Numbered Sixty (60) in the City of South Bend as platted by the State Bank of Indiana, and more particularly described as follows: Beginning on the West line of Prairie Avenue as existed on December 31, 1960 and the North line of Lot Numbered 3 as shown on the recorded Plat of Ford's Subdivision of a part of Bank Out Lot Numbered 60 as recorded on August 20, 1873 in Plat Book 3, page 31, in the Office of the Recorder of St. Joseph County, Indiana; thence Westerly along the North line of Lots Numbered 3 and 4 in Ford's Subdivision a distance of 142 feet to the East line of Scott Street; thence North and along the East line of Scott Street 227 feet; thence Northeasterly at right angles to the East line of Scott Street 268 feet, more or less, to the West line of Prairie Avenue as existed on December 31, 1960; thence Southerly and along said West line 254 feet, more or less to the place of beginning.

PARCEL III: That part of Bank Out Lot Numbered Sixty (60) as platted and recorded by the State Bank of Indiana, located in the City of South Bend, which lies North of the North line of a parcel of land conveyed by The Lake Shore & Michigan Southern Railway Company to the Standard Oil Company by deed dated August 14th, 1893, recorded in Book 93, page 348 of the records of the Recorder of St. Joseph County, and which lies South of a line beginning at a point in the Easterly line of Scott Street in the said City of South Bend 16.8 feet, more or less, Southerly of the center of the track of The New York Central Railroad Company lying South of the four main tracks of said railroad company, measured along the East line of said Scott Street, said point being distant .3 feet Southerly, measured along said street line at sidewalk level, from the Southerly edge of the Southeasterly pylon of the bridge of The New York Central Railroad Company over Scott Street, said point also being 165.22 feet, more or less, North of the intersection of the East line of Scott Street with the North line of land conveyed to The Standard Oil Company by deed dated August 14th, 1893, as aforesaid, measured along the East line of said Scott Street; thence Southeasterly along a straight line forming an angle of 79°11' measured from South to East with said East line of Scott Street, a distance of 311.7 feet to a point which is 14.6 feet Southerly of said track of The New York Central Railroad Company measured at right angles to said straight line, said point being also .1 feet Northerly of the Northwesterly corner of the top of retaining wall extending Westerly from the Southwesterly pylon of the bridge of The New York Central Railroad Company over Prairie Street, said line passes through a point marked by a drill hole placed in the face of the retaining wall situated on the East side of said Scott Street at a point 3 feet above sidewalk level; thence Southerly along a straight line forming an angle of 94°50' to last described straight line, measured from West to South, a distance of 4.6 feet to a point distant 2.75 feet by rectangular measurement Southeasterly from the face of the retaining wall aforesaid; thence Easterly along a straight line parallel to said retaining wall, a distance of 31.8 feet, more or less, to a point in the Westerly line of Prairie Avenue and forming an angle of 66°30' with the said Westerly line of Prairie Avenue measured from West to South, said point in the Westerly line of Prairie Avenue being 18.9 feet, more or less, Southwesterly of the centerline of said track of The New York Central Railroad Company measured along the said Westerly line of Prairie Avenue, said point also being 112.8 feet, more or less, Northeasterly of the intersection of said Westerly line of Prairie Avenue with the Northerly line of said parcel of land conveyed to the Standard Oil Company by deed dated August 14th, 1893, as aforesaid.

Parcel IV: The West Half of vacated United Drive (Prairie Avenue) lying East and adjacent to the above parcel.

EXHIBIT B

ENVIRONMENTAL RESTRICTIVE COVENANT

(See attached)

EXHIBIT C
ENVIRONMENTAL INDEMNIFICATION AGREEMENT
(See attached)

ENVIRONMENTAL AGREEMENT REGARDING MILLENNIUM SITE

THIS ENVIRONMENTAL AGREEMENT REGARDING MILLENNIUM SITE (the "Agreement") is made and entered into by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (referred to herein as the "Commission"), and Millennium Parcel, LLC ("Millennium Parcel"). The Commission and Millennium Parcel are referred to collectively herein as the "Parties."

WHEREAS, Millennium Parcel is a party to a certain Agreement for Sale of Land for Private Development (the "Purchase Agreement") for the purchase by Millennium Parcel of certain property located at 604 South Scott Street, in South Bend, Indiana, as more particularly described in **Exhibit A** attached hereto (the "Property") from the Commission; and

WHEREAS, the Commission has furnished to Millennium Parcel certain environmental reports and correspondence from the Indiana Department of Environmental Management ("IDEM") and Environmental Protection Agency ("EPA") (the "Environmental Reports") documenting the environmental investigations and response actions at the Property; and

WHEREAS, the Environmental Reports indicate that certain Hazardous Materials (as defined below) were present at or under the Property, in certain instances in excess of the IDEM's commercial / industrial screening levels, but these Hazardous Materials have since been remediated, including soil excavation work that was carried out by IDEM between March 22, 2012 and May 17, 2012, as described in the June 5, 2012 ERS Report (included in Exhibit B); and

WHEREAS, an IDEM representative indicated in an June 15, 2012 e-mail to a representative of the Indiana Finance Authority ("IFA") (included in Exhibit B) that there are no completed exposure pathways at the Property and that the Property poses no threat under IDEM's guidance; and

WHEREAS, Millennium Parcel received a Comfort Letter from the Indiana Finance Authority's Brownfields Program on January 29, 2015 detailing the agency's understanding of preexisting contamination at the Property and outlining the continuing obligations Millennium Parcel must satisfy to maintain its liability protections under Indiana law (a "Comfort Letter"); and

WHEREAS, the Commission has performed additional investigation at the Property to address certain issues raised in the January 29, 2015 Comfort Letter; and

WHEREAS, Millennium Parcel will seek and is expected to receive an updated Comfort Letter from the Indiana Finance Authority's Brownfields Program that incorporates the results of this additional investigation work by the Commission (the "Final Comfort Letter"); and

WHEREAS, the Commission and Millennium Parcel wish to clarify their rights and responsibilities regarding existing and potential future environmental contamination at the Property.

NOW, THEREFORE, for and in good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Existing Environmental Conditions. The Parties acknowledge that there were certain Hazardous Materials on, at, or under the Property and there may be residual amounts of these substances remaining at the Property, ("Existing Environmental Conditions").

2. Hazardous Materials Defined. As used herein, "Hazardous Materials" shall refer to:

- (a) Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended from time to time, and regulations promulgated thereunder;
- (b) Any "hazardous substance" as defined by CERCLA, as amended from time to time, and regulations promulgated thereunder;
- (c) Any oil, hydrocarbon, petroleum, and related compounds;
- (d) Any substance that is a pollutant or contaminant or is toxic, ignitable, reactive, or corrosive that is regulated by the City of South Bend, St. Joseph County, the State of Indiana, or the United States of America;
- (e) Any dry cleaning, laundry or similar cleaning chemicals, solvents, fluids or compounds;
- (f) Any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to the applicable state, federal or local governmental law, including asbestos and polychlorinated biphenyls; and
- (g) Any other matter or material that is a pollutant or contaminant as determined by any government authority applicable to the Property.

3. The Commission's Indemnification. Subject to the terms of this Agreement, the Commission agrees to defend, release, indemnify and hold harmless Millennium Parcel and its, subsidiaries, members, directors, officers, agents, employees, and any assignees approved under Paragraph 14 against and with respect to any and all damages, claims, losses, liabilities and expenses, including without limitation legal fees and environmental consulting or sampling fees or expenses which may be imposed upon, incurred by or asserted against Millennium Parcel by IDEM, the EPA, any other governmental agency, or any unrelated third-party arising out of, in connection with or relating to the Existing Environmental Conditions, or any other Hazardous Materials, known or unknown, that contaminated the Property on or before the date of this Agreement.

4. Millennium Parcel's Indemnification. Subject to the terms of this Agreement, Millennium Parcel agrees to defend, release, indemnify and hold harmless the Commission and any subdivision or agency thereof, including any public officials, directors, officers, agents, employees, and any assignees under Paragraph 14 of this Agreement, against and with respect to any and all damages, claims, losses, liabilities and expenses, including without limitation legal fees and environmental consulting or sampling fees or expenses which may be imposed upon, incurred by or asserted against the Commission by IDEM, EPA, any other governmental agency, or any unrelated third-party arising solely out of, in connection with or relating to (i) any release of Hazardous Materials at the Property ("Environmental Conditions") not existing on the date of this Agreement, but rather occurring after the date of this Agreement, or (ii) any exacerbation by Millennium Parcel or its subsidiaries, members, directors, officers, agents, employees, contractors, invitees, and any assignees under Paragraph 14 of any Existing Environmental Condition covered by the Commission's Indemnification under Paragraph 3.

5. Claims. Each indemnified party (the "Indemnitee") shall give the indemnifying party (the "Indemnitor") prompt written notice of any claim asserted against one or more of the indemnified persons or entities under Paragraph 3 and 4, including, but not limited to, any notice of claim, demand, action, controversy or suit which may give rise to a claim of indemnification under this Agreement. If the claim is covered by Paragraphs 3 or 4, the Indemnitor shall undertake the defense of such claim, demand, action, controversy or suit by counsel of its choosing (reasonably satisfactory to the Indemnitee) at its sole cost and expense. The Indemnitee shall give the Indemnitor and its counsel reasonable assistance and cooperation with respect to such defense. The Indemnitor shall not be obligated to pay any legal or defense costs for claims not covered its respective indemnity under Paragraph 3 and 4 of this Agreement.

If investigative or remedial work is required to resolve any claim covered by Paragraphs 3 or 4, the Indemnitor shall have the right to select the environmental consultant and shall pay for such work at its sole cost and expense. The Indemnitor shall not be obligated to pay any costs for investigative or remedial work not covered by its respective indemnity.

If the Indemnitor, within 30 days after notice of any claim covered by Paragraphs 3 or 4, fails to undertake defense, the Indemnitee shall have the right to undertake defense, including compromise or settlement thereof with counsel of their choosing, and to select an environmental consultant to perform environmental investigation and remediation work required to address such claim by an applicable government authority. The Indemnitor shall be responsible for reimbursing the Indemnitees for reasonable legal fees and Environmental Costs. The Indemnitor shall retain the right to assume such defense and environmental work, with legal counsel and an environmental contractor of its choosing. Except as provided in this Paragraph 5, the Indemnitee shall not hire any legal counsel or environmental consultant to address any claim covered by Paragraphs 3 or 4, unless it is at the Indemnitee's sole cost and expense.

6. Covenant Not to Sue. Excepting any release of Hazardous Materials at the Property or other environmental contamination occurring after the date of Closing as defined in the Purchase Agreement or any exacerbation by Millennium Parcel of the Existing Environmental Conditions, the Board hereby covenants not to sue, and releases Millennium

Parcel and its subsidiaries, members, officers, directors, attorneys, agents, employees, spouses, relatives, heirs, successors and assigns, and any of their respective affiliates, past, present and future from any claims of recovery of, contribution toward, or reimbursement of any costs, fees or expenses incurred by on behalf of the Board to investigate or remediate all Existing Environmental Conditions at the Property.

7. Expiration of Indemnity. The cross-indemnifications set forth in Paragraphs 3 and 4 above shall automatically terminate five (5) years from the date of Closing on the Property as defined in the Purchase Agreement.

8. Remediation. (a) Subject to the terms of this Environmental Agreement, the responsible Indemnitor agrees to promptly perform (or cause to be promptly performed) the environmental investigations and corrective actions necessary to complete Remediation of any Environmental Condition at the Property covered by the Indemnitor's indemnification in Paragraphs 3 or 4, to the extent required by IDEM and any other governmental authorities with jurisdiction over the Hazardous Materials and contamination at the Property. As used herein, "Remediation" means (i) performing environmental property assessment activities (which may include taking soil borings and the installation, sampling and maintaining of groundwater monitoring wells and/or other monitoring points and related activities) on the Property to complete an assessment of the Property as required by IDEM or other governmental authorities or any court of competent jurisdiction; (ii) performing corrective action to diligently remediate such Hazardous Materials consistent with the rules, regulations and requirements of IDEM or other governmental authorities.

(b) Following any Remediation performed pursuant to Paragraph 8(a), such Remediation shall be considered complete upon the issuance of a letter or similar document from IDEM or other governmental authority stating that no further action is necessary concerning the Property (a "NFA Letter"). The Parties agree that for purposes of this agreement, a NFA Letter includes but is not limited to a Comfort Letter, Site Status Letter or equivalent letter issued by the Indiana Finance Authority's Brownfields Program and/or EPA. Upon termination of the Remediation, the Indemnitor shall decommission any remaining monitoring points and other corrective action equipment and restore the surface of the Property affected by the decommissioning to substantially the same condition which existed prior to such decommissioning in accordance with the rules and regulations of IDEM or other applicable government authority. The parties agree that the Final Comfort Letter addressed to Millennium Parcel LLC shall not constitute a NFA Letter for purposes of this Agreement.

(c) During any Remediation, the Parties shall work together and take reasonable steps not to disrupt the business of Millennium Parcel.

9. Exposure Controls. Millennium Parcel acknowledges that in the Commission's performance of any remediation required under this Agreement, the Commission may propose applying corrective action standards (including, without limitation, risk-based corrective action standards) and/or the use of exposure controls, which are predicated on the assumptions that (i) the Property will be used for commercial/industrial purposes; and (ii) no water wells used to supply water for human consumption, farming or irrigation will be installed or used on the

Property. Subject to the foregoing, Millennium Parcel acknowledges and agrees to accept any such real property covenants, restrictions or environmental notices that are required or permitted by IDEM or any other applicable governmental authority as part of a particular remediation plan to address Hazardous Materials contamination (collectively, a "Restrictive Covenant"). The parties agree that such Restrictive Covenant shall be set forth in an appropriate instrument approved by IDEM or other applicable government authority to be recorded in the public records as part of any remediation plan that the Commission formally proposes to address Hazardous Materials at the Property.

10. Access. Millennium Parcel shall cooperate in allowing the Commission and its agents and contractors access to and use of the Property at all reasonable times to enable the Commission and its agents and contractors to obtain reasonable and necessary soil and groundwater data and to fully implement any remediation the Board is required to perform under this Agreement. This license to access the Property shall continue for as long as is necessary to complete the remediation. The Commission will provide Millennium Parcel with reasonable prior notice of its access to the Property. Millennium Parcel will take due care to ensure that its agents, employees, and invitees are aware of the location of the monitoring wells in order to avoid damage thereto and potential exacerbation of any Hazardous Materials.

11. Use. Millennium Parcel intends to construct a structure on the Property which may be used for industrial, commercial, or warehousing activities and which will not be inhabited by employees or other individuals on a regular basis such that IDEM would require evaluation of potential vapor intrusion risks in the structure (the "Permitted Use"). Millennium Parcel specifically agrees the Property shall not be used for residential activities or for activities inconsistent with the Permitted Use. Notwithstanding the foregoing, Millennium Parcel may lease the Property to third-parties as long as the lessee's use is consistent with the Permitted Use. In the event that Millennium Parcel constructs a structure on the Property that will be inhabited by employees or other individuals on a regular basis such that IDEM requires potential vapor intrusion risks to be evaluated and/or mitigated, the cost of these activities shall be borne solely by Millennium Parcel, it being understood that if vapor intrusion risks are evaluated and, if necessary, mitigated consistent with the rules, regulations and requirements of IDEM or other governmental authorities, such uses thereafter shall be considered Permitted Uses.

12. Sampling and Tests by Millennium Parcel. Millennium Parcel agrees that it shall not, directly or indirectly, either itself or through its agents, employees or contractors, conduct, order, or permit any sampling, tests or inspections of any kind relating to the possible presence of Hazardous Materials contamination of any soil, water, aquifer or other environmental media in, on, or under, or in the vicinity of the Property during the term of the indemnifications under paragraphs 3 and 4 unless required to do so by law. This paragraph notwithstanding, Millennium Parcel may permit inspections in an emergency, but must notify the Commission immediately after such inspection. If Millennium Parcel desires that any sampling, testing, or inspections not required by law be performed on or under the Property, Millennium Parcel shall notify the Commission in writing of such desire and the basis for its request. The Commission may thereafter, in its reasonable sole discretion, determine whether and how to (i) permit Millennium Parcel to perform such sampling, testing or inspections; or (ii) conduct any sampling, testing or

inspections, using such environmental consultants of the Commission's choice, and provide split samples for independent analysis at Millennium Parcel's expense.

13. Comfort Letter. Prior to obtaining the Property, Millennium Parcel is obtaining the Final Comfort Letter detailing Millennium Parcel's liability protection for pre-existing contamination at the Property and the continuing obligations Millennium Parcel must satisfy to maintain its BFPP liability protections under CERCLA and analogous Indiana Laws. Millennium Parcel shall be responsible for implementing the reasonable steps set forth in Comfort Letter. The parties agree that notwithstanding the Comfort Letter, the indemnifications set forth in Paragraphs 3 and 4 shall continue to apply to the Property.

14. Assignment of Agreement. This Agreement will bind all parties and their respective successors. Upon written notice to the Commission, Millennium Parcel may collaterally assign its rights under this Agreement and may assign its rights under this Agreement to any future interest holder or lessee in the property provided that:

- i. The proposed assignee assumes in writing all the obligations of Millennium Parcel under this Agreement; and
- ii. Within thirty (30) days of receiving written notice of the proposed assignment the Commission does not reasonably object to the assignment.

15. No Third Party Benefit. This Agreement is not intended to inure to the benefit of any third party, against whom the Board reserves any and all rights, claims and defenses.

16. Notices. All notices to be given under this Agreement shall be in writing and shall be deemed to have been given and served when delivered in person, by Federal Express, UPS or similar overnight carrier, or by depositing in the United States mail, postage pre-paid to the address set forth below or such other address as either party may have last specified by written notice to the other:

If to the Commission:

City of South Bend, Department of Community Investment
Attn: Scott Ford
1400 S County-City Building,
227 W. Jefferson Blvd.
South Bend, Indiana 46601

With a copy to:

Corporation Counsel
1200 S County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601

Thao T. Nguyen
Plews Shadley Racher & Braun LLP
53732 Generations Drive
South Bend, Indiana 46635-1539

If to Millennium Parcel:

Millennium Parcel, LLC
Attn: Manager
6561 Lonewolf Drive, Suite 100
South Bend, Indiana 46628

With a copy to:

Stephen A. Studer
Krieg Devault LLP
4101 Edison Lakes Parkway
Suite 100
Mishawaka, Indiana 46545

17. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original with counterparts signed by one party when combined with counterparts signed by other parties to this Agreement constituting an original contract.

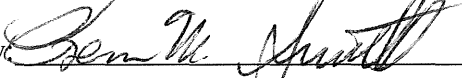
18. Paragraph Headings. This Agreement shall be construed without reference to paragraph headings which are inserted only for convenience of reference.

19. Entire Agreement. This instrument contains the entire agreement of the parties relating to environmental investigation, remediation, and indemnification for the Property and supersedes all prior oral or written understandings, agreements or contracts, formal or informal, between the parties hereto pertaining to said subject.

20. Effective Date of this Agreement. This Agreement shall take effect upon Millennium Parcel closing on the Property.

IN WITNESS WHEREOF, the undersigned executed and delivered this Environmental Agreement Regarding Millennium Site on the date set forth below the name of each.

MILLENNIUM PARCEL, LLC

By: 

Its: Ken M. Smith

Dated: _____

City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission

By: _____

Marcia I. Jones
Its President

Dated: _____

ATTEST:

By: _____

Donald E. Inks
Its Secretary

Dated: _____

EXHIBIT D

ACCESS AND UTILITY EASEMENT AND PARKING LICENSE AGREEMENT

(See attached)

ACCESS AND UTILITY EASEMENT AND PARKING LICENSE AGREEMENT

This Access and Utility Easement Agreement (this “Easement”) is made and entered into this ___ day of _____, 2015 (the “Effective Date”), by and between the City of South Bend Building Corporation (the “City”), and Millennium Parcel LLC, an Indiana limited liability company of 6561 Lone Wolf Drive, Suite 100, South Bend, Indiana 46628 (the “Company”).

Recitals

A. City owns in fee simple the real property described as easement area E in attached **Exhibit A** (the “Easement Parcel”); and

B. Company owns in fee simple the real property described in attached **Exhibit B** (the “Company Parcel”), which abuts the Easement Parcel to the west; and

C. Company desires to obtain from City an easement for access over the Easement Parcel to the Company Parcel and for access to the Company Parcel and for the installation of certain utilities; and

D. City desires to obtain from Company an easement for access over the Company Parcel; and

E. City and Company have agreed to grant to one another easements over the Easement Parcel and the Company Parcel, respectively, for the purposes and on the terms and conditions stated in this Easement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Company, agree as follows:

1. Grant of Easement to Company. City hereby grants to Company, its successors and assigns, a non-exclusive easement for the following limited purposes: (a) for vehicular ingress and egress over and across the Easement Parcel to and from the Company Parcel by Company and its agents, contractors, and employees; and (b) for Company’s installation, use, and maintenance of utility lines, pipes, duct banks, and security equipment below the grade of the surface of the Easement Parcel as such surface existed on the Effective Date of this Easement, provided that the City has first approved Company’s plans for installing any such elements, which approval the City may not unreasonably withhold and with respect to which the City will incur no costs. The parties agree that Company will have no right under this Easement to install any above-grade utility lines, pipes, duct banks, security equipment, or other property or fixtures of any kind on, across, or above the Easement Parcel.

2. Grant of Easement to City. Company hereby grants to City, its successors and assigns, a non-exclusive easement for vehicular ingress and egress, by City and its agents,

contractors, and employees, over and across the portion of the Company Parcel comprised of vacated United Drive located within forty (40) feet north of the Easement Parcel for access between the Easement Parcel and the adjacent real property that the City of South Bend may use pursuant to the terms of the Reciprocal Easement Agreement & License In Land dated August 28, 2000, recorded on September 1, 2000, as Document Number 0042016 in the Office of the Recorder of St. Joseph County, Indiana, and any subsequent amendments thereto.

3. License for Passenger Vehicle Parking. City hereby grants Company's guests, invitees, and employees a revocable license to park passenger vehicles upon the Easement Parcel in a manner that does not interfere with the City's use of the Easement Parcel. City may revoke said license at any time and in its sole discretion upon notice to Company.

4. Gate. Company may erect and maintain a fence and one (1) gate within the portion of the Easement Parcel depicted in attached Exhibit C (the "Gate Area"). Before constructing any fence or gate in the Gate Area, Company will obtain City's written consent and approval of plans for installing any such elements. Company's right to construct and use such elements in the Gate Area is conditioned upon City's ability to open, close, and otherwise use the gate for ingress and egress of City's vehicles at all times without assistance from Company. By way of illustration and not limitation, Company could satisfy the access requirement stated in the foregoing sentence by providing to City a key, code, or other device to open the gate and by programming the gate to close and lock automatically without any further act by City.

5. Maintenance; Restoration. City will, at its sole expense, maintain and repair the Easement Parcel so that it will at all times remain in as good a condition as exists upon the Effective Date of this Easement. In the event Company disturbs or damages any part of the Easement Parcel in the course of installing elements permitted under Sections 1 and 3 of this Easement, Company will promptly restore the Easement Parcel to substantially the same condition that existed immediately prior to such installation.

6. Clear Path of Travel. City and City's agents and employees will place no permanent structures in, on, or over the Easement Parcel that will obstruct or interfere with the Company's use of the Easement without Company's prior consent.

7. City's Representations. City represents and warrants that it is lawfully seized of the Easement Parcel, that it has full right and power to grant the Easement, and that the Easement Parcel is free from all encumbrances, except any matters of record.

8. City's Indemnification. City shall indemnify and hold Company harmless from and against claims resulting from City's use of the Easement Parcel, or resulting from the negligent or intentional acts of City, its tenants, agents, contractors, employees, licensees and invitees.

9. Company's Indemnification; Insurance. Company shall indemnify and hold City harmless from and against claims resulting from damage to any property upon the Easement Parcel or injury to any person upon the Easement Parcel, caused by Company or Company's tenants, agents, contractors, employees, licensees or invitees during the exercise of its rights pursuant to this Easement. In addition, Company will maintain commercial general liability insurance coverage in the minimum amount of at least \$5,000,000 per occurrence and will designate the City

of South Bend as an additional insured under any such policy of insurance. Immediately upon the execution of this Easement, Company will produce to City a certificate of insurance evidencing the same.

10. Enforcement. Each party shall have the right to enforce the terms and conditions of this Easement pursuant to the rights and remedies available under applicable law.

11. Reservation of Rights. City reserves the free use of the Easement Parcel in any manner not inconsistent with the terms of this Easement but may not assign, grant, or convey other rights in or to the Easement Parcel to any person or entity at any time without the written consent of Company.

12. Reservation of Existing Utilities and Easements. City reserves its rights to access, maintain, repair, and otherwise manage the existing sewer and other utilities lying beneath or across the Easement Parcel, as expressly contemplated in Ordinance No. 10157-12 of the South Bend Common Council dated April 25, 2012. Company acknowledges and it agrees that Company will be entitled to no compensation in the event City temporarily obstructs or otherwise uses the Easement Parcel in connection with necessary maintenance or repairs to said facilities.

13. Covenant Running with the Land. Except for the license granted in Section 2, City and Company intend that each of the rights and obligations set forth herein shall run with the land and create equitable servitudes burdening the Easement Parcel and benefitting the Company Parcel, shall bind every person having any fee, leasehold or other interest therein and shall inure to the burden or benefit of the respective parties and their successors, assigns, heirs and personal representatives.

14. Cross References. The last deed of record to the real estate of which the Easement Parcel is a part is Document Number _____ in the Office of the Recorder for St. Joseph County, Indiana. The last deed of record to the real estate of which the Company Parcel is a part is Document Number _____ in the Office of the Recorder for St. Joseph County, Indiana.

15. Recording. This Easement, as well as any instrument releasing or terminating the Easement, shall be duly recorded in the Office of the Recorder of St. Joseph County, Indiana, and all recording fees will be paid by Company.

16. Governing Law. This Easement shall be governed and construed in accordance with the laws of the State of Indiana.

* * * * *

IN TESTIMONY WHEREOF, the City has signed this Access And Utility Easement Agreement to be effective as of the Effective Date.

CITY OF SOUTH BEND BUILDING CORPORATION

_____, President

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

Before me, a Notary Public in and for said County and State, personally appeared _____, as _____ of the City of South Bend Building Corporation and acknowledged the execution on behalf of said corporation, having been authorized to, the of the foregoing Access And Utility Easement Agreement for the uses and purposes therein contained.

WITNESS my hand and seal this ____ day of ____, 2015.

My Commission Expires:

Notary Public

(Printed Name)

Resident of _____ County, Indiana

EXHIBIT A

Description of Easement Parcel

EXHIBIT B

Description of Company Parcel

ACCESS AND UTILITY EASEMENT AND PARKING LICENSE AGREEMENT

This Access and Utility Easement Agreement (this “Easement”) is made and entered into this ___ day of _____, 2015 (the “Effective Date”), by and between the City of South Bend Building Corporation (the “City”), and Studebaker Building 84 LLC, an Indiana limited liability company of 6561 Lone Wolf Drive, Suite 100, South Bend, Indiana 46628 (the “Company”).

Recitals

A. City owns in fee simple the real property described as easement area E in attached **Exhibit A** (the “Easement Parcel”); and

B. Company owns in fee simple the real property described in attached **Exhibit B** (the “Company Parcel”), which abuts the Easement Parcel to the north and extends to Lafayette Street; and

C. Company desires to obtain from City an easement for access over the Easement Parcel to the Company Parcel and for access to the Company Parcel and for the installation of certain utilities; and

D. City desires to obtain from Company an easement for access over the Company Parcel; and

E. City and Company have agreed to grant to one another easements over the Easement Parcel and the Company Parcel, respectively, for the purposes and on the terms and conditions stated in this Easement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Company, agree as follows:

1. Grant of Easement to Company. City hereby grants to Company, its successors and assigns, a non-exclusive easement for the following limited purposes: (a) for vehicular ingress and egress over and across the Easement Parcel to and from the Company Parcel by Company and its agents, contractors, and employees; and (b) for Company’s installation, use, and maintenance of utility lines, pipes, duct banks, and security equipment below the grade of the surface of the Easement Parcel as such surface existed on the Effective Date of this Easement, provided that the City has first approved Company’s plans for installing any such elements, which approval the City may not unreasonably withhold and with respect to which the City will incur no costs. The parties agree that Company will have no right under this Easement to install any above-grade utility lines, pipes, duct banks, security equipment, or other property or fixtures of any kind on, across, or above the Easement Parcel.

2. Grant of Easement to City. Company hereby grants to City, its successors and assigns, a non-exclusive easement for vehicular ingress and egress, by City and its agents, contractors, and employees, over and across the portion of the Company Parcel comprised of vacated United Drive located within forty (40) feet north of the Easement Parcel for access between the Easement Parcel and the portions of the Company Parcel that the City of South Bend may use pursuant to the terms of the Reciprocal Easement Agreement & License In Land dated August 28, 2000, recorded on September 1, 2000, as Document Number 0042016 in the Office of the Recorder of St. Joseph County, Indiana, and any subsequent amendments thereto.

3. License for Passenger Vehicle Parking. City hereby grants Company's guests, invitees, and employees a revocable license to park passenger vehicles upon the Easement Parcel in a manner that does not interfere with the City's use of the Easement Parcel. City may revoke said license at any time and in its sole discretion upon notice to Company.

4. Reserved.

5. Maintenance; Restoration. City will, at its sole expense, maintain and repair the Easement Parcel so that it will at all times remain in as good a condition as exists upon the Effective Date of this Easement. In the event Company disturbs or damages any part of the Easement Parcel in the course of installing elements permitted under Sections 1 and 3 of this Easement, Company will promptly restore the Easement Parcel to substantially the same condition that existed immediately prior to such installation.

6. Clear Path of Travel. City and City's agents and employees will place no permanent structures in, on, or over the Easement Parcel that will obstruct or interfere with the Company's use of the Easement without Company's prior consent.

7. City's Representations. City represents and warrants that it is lawfully seized of the Easement Parcel, that it has full right and power to grant the Easement, and that the Easement Parcel is free from all encumbrances, except any matters of record.

8. City's Indemnification. City shall indemnify and hold Company harmless from and against claims resulting from City's use of the Easement Parcel, or resulting from the negligent or intentional acts of City, its tenants, agents, contractors, employees, licensees and invitees.

9. Company's Indemnification; Insurance. Company shall indemnify and hold City harmless from and against claims resulting from damage to any property upon the Easement Parcel or injury to any person upon the Easement Parcel, caused by Company or Company's tenants, agents, contractors, employees, licensees or invitees during the exercise of its rights pursuant to this Easement. In addition, Company will maintain commercial general liability insurance coverage in the minimum amount of at least \$5,000,000 per occurrence and will designate the City of South Bend as an additional insured under any such policy of insurance. Immediately upon the execution of this Easement, Company will produce to City a certificate of insurance evidencing the same.

10. Enforcement. Each party shall have the right to enforce the terms and conditions of this Easement pursuant to the rights and remedies available under applicable law.

11. Reservation of Rights. City reserves the free use of the Easement Parcel in any manner not inconsistent with the terms of this Easement but may not assign, grant, or convey other rights in or to the Easement Parcel to any person or entity at any time without the written consent of Company.

12. Reservation of Existing Utilities and Easements. City reserves its rights to access, maintain, repair, and otherwise manage the existing sewer and other utilities lying beneath or across the Easement Parcel, as expressly contemplated in Ordinance No. 10157-12 of the South Bend Common Council dated April 25, 2012. Company acknowledges and it agrees that Company will be entitled to no compensation in the event City temporarily obstructs or otherwise uses the Easement Parcel in connection with necessary maintenance or repairs to said facilities.

13. Covenant Running with the Land. Except for the license granted in Section 2, City and Company intend that each of the rights and obligations set forth herein shall run with the land and create equitable servitudes burdening the Easement Parcel and benefitting the Company Parcel, shall bind every person having any fee, leasehold or other interest therein and shall inure to the burden or benefit of the respective parties and their successors, assigns, heirs and personal representatives.

14. Cross References. The last deed of record to the real estate of which the Easement Parcel is a part is Document Number _____ in the Office of the Recorder for St. Joseph County, Indiana. The last deed of record to the real estate of which the Company Parcel is a part is Document Number _____ in the Office of the Recorder for St. Joseph County, Indiana.

15. Recording. This Easement, as well as any instrument releasing or terminating the Easement, shall be duly recorded in the Office of the Recorder of St. Joseph County, Indiana, and all recording fees will be paid by Company.

16. Governing Law. This Easement shall be governed and construed in accordance with the laws of the State of Indiana.

* * * * *

IN TESTIMONY WHEREOF, the City has signed this Access And Utility Easement Agreement to be effective as of the Effective Date.

CITY OF SOUTH BEND BUILDING CORPORATION

_____, President

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

Before me, a Notary Public in and for said County and State, personally appeared _____, as _____ of the City of South Bend Building Corporation and acknowledged the execution on behalf of said corporation, having been authorized to, the of the foregoing Access And Utility Easement Agreement for the uses and purposes therein contained.

WITNESS my hand and seal this ____ day of ____, 2015.

My Commission Expires:

Notary Public

(Printed Name)

Resident of _____ County, Indiana

IN TESTIMONY WHEREOF, Company has signed this Access And Utility Easement Agreement to be effective as of the Effective Date.

STUDEBAKER BUILDING 84 LLC,
an Indiana limited liability company

By: *Kevin M. Smith*

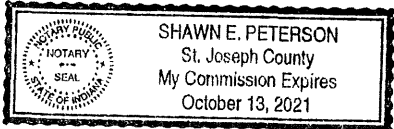
Printed: Kevin M. Smith

Its: sole manager & member

STATE OF Indiana)
) SS:
COUNTY OF St. Joseph)

Before me, a Notary Public in and for said County and State personally appeared Kevin M. Smith as sole member & sole manager for Studebaker Building 84 LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Access And Utility Easement Agreement for and on behalf of said company, having been authorized to do so.

WITNESS my hand and seal this ____ day of ____, 2015.



My commission expires:

Shawn E. Peterson
Notary Public
Resident of _____ County

Printed Name of Notary

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.

4000.0000037 59681012.003

EXHIBIT A

Description of Easement Parcel

EXHIBIT B

Description of Company Parcel

**FIRST AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT
& LICENSE IN LAND**

This First Amendment to Reciprocal Easement Agreement & License In Land (this “Amendment”) is made as of this ____ day of _____, 2015, by and between the City of South Bend Building Corporation (the “City”), the successor-in-interest of the City of South Bend, Indiana, and Studebaker Building 84 LLC (“Ivy Tower”), successor-in-interest to Ivy Tower Corporation.

WITNESSETH:

WHEREAS, Ivy Tower Corporation and the City of South Bend entered into a Reciprocal Easement Agreement & License In Land dated August 28, 2000, and recorded on September 1, 2000, as Document No. 0042016 in the Office of the St. Joseph County, Indiana Recorder (the “Easement Agreement”) to provide certain rights and responsibilities related to the Ivy Tower Parcel and the City Parcel as such terms are defined in the Easement Agreement; and

WHEREAS, the parties desire to amend the Easement Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, Ivy Tower and the City agree as follows:

1. Paragraph 5 of the Easement Agreement is amended by inserting the following immediately after the second sentence of Paragraph 5(a): “Notwithstanding the foregoing sentence, Ivy Tower may also use Easement Area C-1 for the installation, use, and maintenance of utility lines, pipes, duct banks, and security equipment below the grade of the surface of Easement Area C-1 as such surface existed on September __, 2015, provided that the City has first approved the plans for installing any such elements, which approval the City may grant or withhold as determined in its sole discretion. The parties agree that Ivy Tower will have no right under this agreement to install any above-grade utility lines, pipes, duct banks, security equipment, or other property or fixtures of any kind on, across, or above Easement Area C-1.”

2. Paragraph 5 of the Easement Agreement is further amended by deleting subparagraph (c) in its entirety and inserting the following in its place: “(c) Ivy Tower will, at its sole expense, maintain and repair Easement Area C-1 in a condition suitable for its purposes under this agreement. In the event Ivy Tower desires to terminate any of its easement rights over Easement Area C-1, Ivy Tower will notify the City of such termination and will turn over Easement

Area C-1 to the City in good repair and condition, as such condition may be approved in the City's reasonable discretion, which approval shall be deemed provided by the City unless Ivy Tower is notified otherwise within sixty (60) days of the later of (i) the City's receipt of Ivy Tower's termination notice or (ii) the effective date of such termination. In the event Ivy Tower disturbs or damages any part of Easement Area C-1 in the course of installing elements permitted under Paragraph 5(a), Ivy Tower will promptly restore Easement Area C-1 to substantially the same condition that existed prior to such installation. The City, at its expense, will repair any damages to Easement Area C-1 caused solely by the City that interfere with Ivy Tower's use of Easement Area C-1."

3. Paragraph 6 of the Easement Agreement is amended by inserting the following immediately after the second sentence of Paragraph 6(a): "Notwithstanding the foregoing sentence, Ivy Tower may also use Easement Area C-2 for the installation, use, and maintenance of utility lines, pipes, duct banks, and security equipment below the grade of the surface of Easement Area C-2 as such surface existed on September __, 2015, provided that the City has first approved the plans for installing any such elements, which approval the City may grant or withhold as determined in its sole discretion. The parties agree that Ivy Tower will have no right under this agreement to install any above-grade utility lines, pipes, duct banks, security equipment, or other property or fixtures of any kind on, across, or above Easement Area C-2. It is provided, however, that Ivy Tower may, with the prior written consent of the City, which consent the City will grant or withhold as determined in its sole discretion, erect and maintain a fence and one (1) gate across the roadway of Easement Area C-2, provided that the City has first approved the plans for installing any such elements and will retain the ability to open the gate at any time without assistance from Ivy Tower (i.e. if the gate is secured with a keypad, the City shall be given a code for its use). If the City unlocks any such gate, the City shall use due care to insure that the gate is closed and locked when the roadway is not in use."

4. Paragraph 6 of the Easement Agreement is further amended by deleting subparagraph (c) in its entirety and inserting the following in its place: "(c) Ivy Tower will, at its sole expense, maintain and repair Easement Area C-2 in a condition suitable for its purposes under this agreement. In the event Ivy Tower desires to terminate any of its easement rights over Easement Area C-2, Ivy Tower will notify the City of such termination and will turn over Easement Area C-2 to the City in good repair and condition, as such condition may be approved in the City's reasonable discretion, which approval shall be deemed provided by the City unless Ivy Tower is notified otherwise within sixty (60) days of the later of (i) the City's receipt of Ivy Tower's termination notice or (ii) the effective date of such termination. In the event Ivy Tower disturbs or damages any part of Easement Area C-2 in the course of installing elements permitted under Paragraph 6(a), Ivy Tower will promptly restore Easement Area C-2 to substantially the same condition that existed prior to such installation. The City, at its expense, will repair any damages to Easement Area C-2 caused solely by the City that interfere with Ivy Tower's use of Easement Area C-2."

5. Other than specifically set forth in this Amendment, all other provisions of the Easement shall remain unchanged and in full force and effect.

6. This Amendment may be executed in counterparts and when so executed the multiple pages shall be deemed to constitute a complete document.

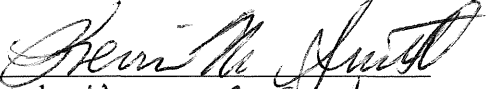
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IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first set forth above.

CITY OF SOUTH BEND BUILDING CORPORATION

By: _____
Printed: _____
Title: _____

STUDEBAKER BUILDING 84, LLC

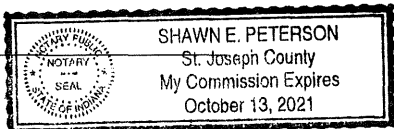
By: 
Printed: Kevin M. Smith.
Title: Sole Manager + Member

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

Before me, a Notary Public in and for said County and State, personally appeared Kevin M. Smith, in his or her capacity as the Site Manager of the City of South Bend Building Corporation, who acknowledged the execution of the foregoing Amendment for and on behalf of said entity.

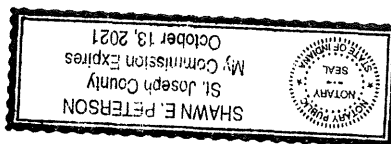
Witness my hand and Notarial Seal this _____ day of _____, 2015

My Commission expires:



Shawn E. Peterson
Notary Public
Printed: _____
Resident of _____ County

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



Before me, a Notary Public in and for said County and State, personally appeared _____, in his/her capacity as Manager of Studebaker Building 84, LLC, an Indiana limited liability company who acknowledged the execution of the foregoing Amendment for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 2015

My Commission expires:

Notary Public
Printed: _____
Resident of _____ County

This Instrument prepared by: Shawn E. Peterson, Esq., Krieg DeVault LLP, 4100 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in the current document, unless otherwise required by law: Shawn E. Peterson

4000.0000037 40308627.004

