



Department of  
**Community Investment**

**ITEM: 2.A.(1)**

## Memorandum

Friday, February 26, 2016

TO: Redevelopment Commission  
FROM: Aaron Kobb *AK*  
SUBJECT: Third Amendment to Environmental Agreement Regarding Ivy Tower Building

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On October 22, 2012, in connection with the acquisition and redevelopment of the Ivy Tower Building, the South Bend Redevelopment Commission and Board of Public Works entered into an Environmental Agreement Regarding Ivy Tower Building with Union Station Properties, L.P. There have since been two amendments to add related parties to the agreement. In order to satisfy financing requirements, the third amendment before you today would serve to add RDistrict One LLC and RDistrict One Master Tenant LLC as parties to the Agreement. This Third Amendment does not change, modify, amend or revise the terms and conditions of the Environmental Agreement.

Staff is requesting the approval and execution of the enclosed amendment.



**THIRD AMENDMENT TO ENVIRONMENTAL AGREEMENT**  
**REGARDING IVY TOWER BUILDING**

THIS THIRD AMENDMENT TO ENVIRONMENTAL AGREEMENT REGARDING IVY TOWER BUILDING (“Third Amendment”) is entered into effective as of the 23<sup>rd</sup> day of February, 2016, (“Effective Date”) by and between the City of South Bend, Indiana Board of Public Works and the South Bend Redevelopment Commission (collectively, the “Board”), Union Station Properties LLC with an address at 506 West South Street, South Bend, Indiana 46601, Studebaker Building 84, LLC, with an address of 6561 Lonewolf Dr., South Bend, Indiana 46601 (“SB 84”), RDistrict One LLC, with an address of 635 S. Lafayette Boulevard, South Bend, Indiana 46601 (“RD1”), and RDistrict One Master Tenant LLC, with an address of 635 S. Lafayette Boulevard, South Bend, Indiana 46601 (“RD1 Master Tenant” and with RD1, the “RD1 Entities”, and the RD1 Entities collectively with the Board, USP (as defined below), and SB 84, the “Parties”) with reference to the following facts.

W I T N E S S E T H:

WHEREAS, SB 84 is the owner of certain real estate and improvements located at 600 United Drive and 635 South Lafayette Boulevard, in South Bend, Indiana, consisting of three (3) land parcels, as more particularly described at Exhibit A attached hereto and incorporated herein, that have been developed with larger industrial facilities located thereon (the “Property”).

WHEREAS, SB 84 proposes to transfer to RD1, its affiliate, two (2) of the three (3) parcels, as further identified at Exhibit A, to provide for the rehabilitation and redevelopment of those parcels (“RD1 Parcels”), which transfer shall be subject to a Master Lease Agreement with RD1 Master Tenant, and further subject to a Master Sublease Agreement with SB 84.

WHEREAS, in connection with the acquisition and redevelopment of the Property, Union Station Properties, L.P. and the Board entered into a certain Environmental Agreement Regarding Ivy Tower Building dated October 22, 2012, which was subsequently amended by the First Amendment to Environmental Agreement Regarding Ivy Tower Building between Union Station Properties, L.P. and the Board dated April 30, 2013 and was further amended by the Second Amendment to Environmental Agreement Regarding Ivy Tower Building between Union Station Properties, L.P., the Board, and SB 84 dated April 15, 2014 (collectively as amended, the “Environmental Agreement”).

WHEREAS, Union Station Properties, L.P. converted to Union Station Properties, LLC on August 14, 2015, the terms of which provide that title to all real and personal property and all liabilities of Union Station Properties, L.P. remain with Union Station Properties LLC. The articles of conversion for Union Station Properties LLC are attached as Exhibit B. References in this document to “USP” shall refer to Union Station Properties LLC.

WHEREAS, USP and SB 84 now desire to add the RD Entities as a party to the Environmental Agreement for all purposes, in order to facilitate the reuse and further development of the Property and the Board, in order to encourage such reuse and further development of the Property agrees to add the RD Entities as a party to the Environmental Agreement; and

WHEREAS, the Parties further desire to amend the Environmental Agreement to further clarify and define the rights and obligations of the of the Parties under the Environmental Agreement; and

WHEREAS, the Parties wish to amend the Environmental Agreement pursuant to the terms and conditions set forth in this Third Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto enter into the following Third Amendment:

Section 1. Effect of this Third Amendment. This Third Amendment shall not change, modify, amend or revise the terms, conditions and provisions of the Environmental Agreement, the terms, conditions and provisions of which are hereby incorporated herein by reference, except as expressly provided herein and agreed upon by the parties hereto. The Parties each hereby confirm and ratify, except as modified by this Third Amendment, all of the terms, conditions and provisions of the Environmental Agreement.

– Section 2. Definitions. Defined terms which are used in this Third Amendment shall have the meaning as set forth in the Environmental Agreement, unless otherwise expressly specified herein or the context expressly provides otherwise.

Section 3. Addition of RD1 Entities as Parties. The Parties hereby agree that RDistrict One LLC and RDistrict One Master Tenant LLC, jointly and severally, are each added as a Party to the Environmental Agreement upon the Effective Date of this Third Amendment. The Parties agree that for purposes of the Environmental Agreement, RD1 Entities shall each be (i) jointly and severally liable for all obligations of USP and SB 84 and (ii) shall be jointly and severally entitled to all the rights and interests of USP and SB 84, as those obligations, rights and interests are set forth in the Environmental Agreement. For all purposes all references to “Union Station” in the Environmental Agreement shall, upon the Effective Date of this Third Amendment, mean USP, SB 84, and the RD1 Entities, whether such obligations, rights or interests arose prior to, or arise subsequent to, the Effective Date of this Third Amendment. With respect to the RD1 Entities only, the indemnification provided by the Board in section 3 of the Environmental Agreement will expire thirty-five years from the date of the Environmental Agreement, without regard to Union Station’s fulfillment of its obligations under the Development Agreement. The Board’s indemnification of USP and SB 84 shall continue to be subject to the full termination provision set forth in Section 6 of the Environmental Agreement.

Section 4. Miscellaneous.

(a) This Third Amendment has been executed and delivered and is intended to be performed in the State of Indiana and shall be governed, construed and enforced in all respects in accordance with the substantive laws of the State of Indiana, without regard to its conflict of law provisions.

(b) The Environmental Agreement and this Third Amendment may be amended, modified, renewed or extended only by written instrument duly executed by all of the parties hereto.

(c) The Environmental Agreement and this Third Amendment contain the entire agreement of the parties hereto with regard to this subject matter and no representations, inducements or agreements, oral or otherwise, between the parties not contained or embodied in the Environmental Agreement or this Third Amendment shall be of any force or effect.

(d) This Third Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successors, and assigns.

(e) In case any one or more of the provisions (or any portion thereof) contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Third Amendment, but this Third Amendment shall be construed as if such invalid, illegal, or unenforceable provision or provisions (or portion thereof) had never been contained herein.

(f) The recitals and headings contained in this Third Amendment have been inserted and used solely for ease of reference and shall not be considered in the interpretation or construction of this Third Amendment.

(g) Time is of the essence in the performance of all conditions hereunder of which time is a factor.

(h) This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which counterparts collectively shall constitute one and the same instrument representing this Third Amendment between the parties.


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IN WITNESS WHEREOF, the Parties have caused this Third Amendment to be effective upon the Effective Date as set forth above.

**Board:**

City of South Bend, Indiana Board of Public Works

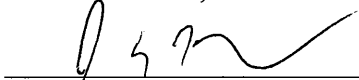
South Bend Redevelopment Commission

  
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Gary A. Gilot, President

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~~David Varner, Vice President~~  
Marcia I. Jones, President  
ATTEST:

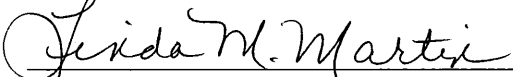
  
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David P. Relos, Member

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Donald Inks, Secretary

  
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James A. Mueller, Member

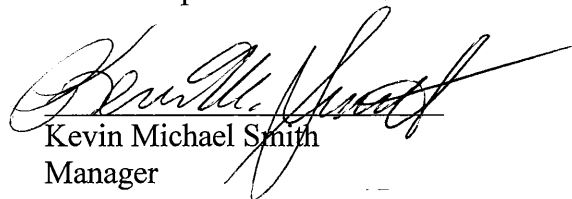
  
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Elizabeth A. Maradik, Member

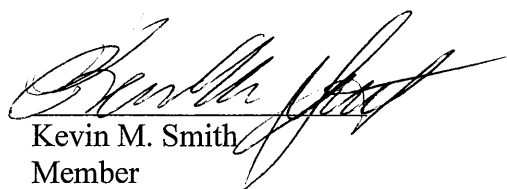
  
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Therese J. Dorati, Member

  
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Linda M. Martin, Clerk

**USP**  
Union Station Properties LLC

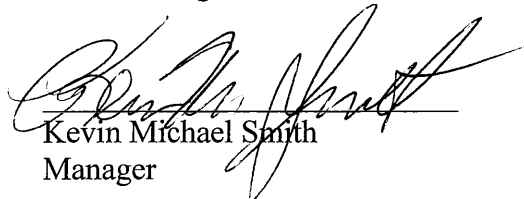
**RD1**  
RDistrict One LLC

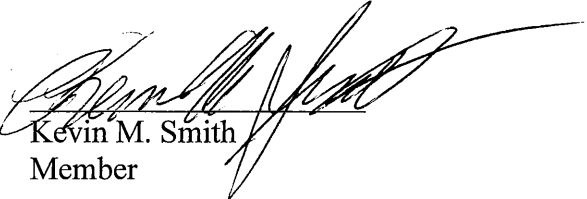
By:   
\_\_\_\_\_  
Kevin Michael Smith  
Its: Manager

By:   
\_\_\_\_\_  
Kevin M. Smith  
Member

**SB 84**  
Studebaker Building 84, LLC

**RD1 MASTER TENANT**  
RDistrict One Master Tenant LLC

By:   
\_\_\_\_\_  
Kevin Michael Smith  
Its: Manager

By:   
\_\_\_\_\_  
Kevin M. Smith  
Its: Member

## PERSONAL GUARANTY

This Personal Guaranty (this “Guaranty”) dated March 2, 2016 (the “Effective Date”), is made by Kevin Smith, an Indiana resident (the “Guarantor”), in favor of the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the “Commission”).

### RECITALS

A. On March 27, 2012, the Commission entered into a Memorandum of Understanding (“MOU #1”) with Union Station Properties, LP, an Indiana limited partnership (the “Limited Partnership”), concerning the rehabilitation of certain real property located in the City and owned by the Limited Partnership (the “Project”).

B. The Guarantor, as the general partner of the Limited Partnership, executed MOU #1 on behalf of the Limited Partnership.

C. On August 14, 2015, the Limited Partnership converted into Union Station Properties LLC, an Indiana limited liability company (the “LLC”), and the LLC thereby assumed the liabilities and obligations of the Limited Partnership, including the Limited Partnership’s liabilities and obligations under MOU #1.

D. The Guarantor is the majority member and manager of the LLC.

E. To facilitate financing related to the Project, the LLC has requested that the Commission enter into a Third Amendment To Environmental Agreement Regarding Ivy Tower Building (the “Third Amendment”).

F. To induce the Commission to enter into the Third Amendment and to assure the Commission that the Limited Partnership’s conversion into the LLC will not reduce or otherwise affect the Guarantor’s personal obligations under MOU #1, the Guarantor offers this Guaranty.

NOW, THEREFORE, the Guarantor makes this Guaranty on the following terms:

1. The Guarantor represents and warrants that (a) before the Limited Partnership’s conversion into the LLC, he was the general partner of the Limited Partnership with certain liability for the Limited Partnership’s undertakings as the general partner of the Limited Partnership, and (b) as of the Effective Date of this Guaranty, he is the majority member and manager of the LLC.

2. The Guarantor hereby unconditionally and absolutely guarantees to the Commission the full and prompt payment when due of any and all amounts payable to the Commission under MOU #1 and the satisfactory performance of all obligations under MOU #1 by the LLC (as the successor of the Limited Partnership) (collectively, the “Guaranteed Obligations”).

3. The above recitals are true and are incorporated herein.

4. This Guaranty will remain in full force and effect until all of the Guaranteed Obligations are fully paid and satisfied.

5. This Guaranty will be interpreted according to and governed by the laws of the State of Indiana.

6. This Guaranty may not be changed, waived, discharged, or terminated except by a written instrument signed by the Guarantor and the Commission.

IN WITNESS WHEREOF, the Guarantor has executed this Personal Guaranty to be effective on the Effective Date stated above.

Guarantor:

  
Kevin Smith

ACCEPTED:

South Bend Redevelopment Commission

ATTEST:

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Marcia I. Jones, President

\_\_\_\_\_  
Donald E. Inks, Secretary

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