

**SHARED, PERPETUAL, NON-EXCLUSIVE INGRESS, EGRESS AND UTILITY
EASEMENT AGREEMENT**

THIS SHARED, PERPETUAL, NON-EXCLUSIVE INGRESS, EGRESS AND UTILITY EASEMENT AGREEMENT (this “Agreement”) is made and entered into effective as of 12:02 a.m. on this ___ day of _____, 2019, by and among the City of South Bend, Indiana, by and through its Board of Public Works, Board of Park Commissioners, and Redevelopment Commission (collectively the “City”), FREG Stephenson Mill Associates, LLC, a Colorado limited liability company (“FREG”), and Wharf Partners, LLC, an Indiana limited liability company (“Wharf Partners”), upon the following terms and conditions:

RECITALS

A. The City owns real property in South Bend, Indiana known as Lot 1 of the Seitz Park Minor Subdivision, a portion of which is an access road as described in **Exhibit A**, attached hereto. The access road shall be referred to as the “Easement Parcel”. Wharf Partners owns real property in South Bend, Indiana, adjacent to the Easement Parcel, known as Lots 1-3 of the Cascade Minor Subdivision (the “Wharf Partners Parcels”). FREG owns real property in South Bend, Indiana, adjacent to the Easement Parcel, known as Lot 1 of the Opelika Minor Subdivision and Lot 2 of the Seitz Park Minor Subdivision (the “FREG Parcels”). As used herein, the Access Easement Parcel, the Wharf Partners Parcels and the FREG Parcels are sometimes collectively referred to herein as the “Real Property”; and

B. The parties hereto desire to enter this Agreement and all present and future owners and occupants of the Real Property shall be and hereby are subject to this Agreement, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration and of the covenants herein contained, the parties hereby covenants and agrees, that the Real Property and all present and future owners and occupants of the Real Property shall be and hereby are subject to the easements hereinafter set forth in this Agreement, the terms of which remain in full force and effect, so that said Real Property shall be maintained, kept, sold and used in full compliance with and subject to the Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

1. Grant of Access Easement to FREG and Wharf Partners. The City hereby grants to FREG, its successors and assigns, and to Wharf Partners, its successors and assigns, (a) a shared, perpetual and non-exclusive access easement over, across and through the Easement Parcel to allow vehicular and pedestrian ingress and egress to and from the FREG Parcels and the Wharf Partners Parcels. FREG and Wharf Partners and their respective employees, agents, contractors, visitors, and tenants shall have use of, and access to, the Easement Parcel 24 hours per day, 7 days per week, subject to Section 3 below. The parties agree neither FREG nor Wharf Partners will have any right under this Agreement to install improvements of any kind on the Easement Parcel.
2. Grant of Existing Utility Easements. **Exhibit B** attached hereto depicts the location of the municipal water, sanitary sewer and electrical easements on the Real Property that run to the benefit of the City as of the Effective Date. Notwithstanding the foregoing, if a shared utility line that existed as of the Effective Date but failed to be depicted on the Seitz Park Minor Subdivision is later discovered, then the owner of the parcel upon which such shared utility line exists grants to other party then using such shared utility line, a perpetual and non-exclusive easement for continued use (but not expansion of) such shared utility line.
3. Maintenance; Restoration. The City will, at its sole expense, maintain and repair in good order and condition the Easement Parcel consistent with other public rights-of-ways in the general surrounding area. The foregoing shall include, but not be limited to, (a) timely removal of snow from the Easement Parcel in accordance with the City's schedule therefor and (b) paving, repaving and resurfacing the drive areas of the Easement Parcel, as and when needed consistent with other public rights-of-ways in the general surrounding area. In the event FREG or Wharf Partners damage any part of the Easement Parcel or the public right-of-way along Colfax Avenue, FREG or Wharf Partners, as applicable, shall promptly restore such areas to substantially the same condition that existed immediately prior to such damage. For purposes of this provision, normal wear and tear shall not be considered "damage" to the Easement Parcel.
4. Clear Path of Travel. The City and its agents and employees will place no permanent structures in, on, or over the Easement Parcel that will obstruct or interfere with the FREG's or Wharf Partners' use of the Easement Parcel without FREG's and Wharf Partners' prior consent.
5. Ownership. The City represents and warrants that it is lawfully seized of the Easement Parcel, that it has full right and power to grant the easements contained herein, and that the Easement Parcel is free from all encumbrances, except any matters of record.
6. Indemnification. Each party shall indemnify and hold the other party, its departments, boards, officers, members, agents, directors, managers and employees harmless from and against any and all claims resulting from (a) damage to any property upon its parcel or injury to any person upon its parcel caused by the sole negligence or gross negligence of such party as applicable and (b) the introduction of hazardous materials to the Easement Parcel by such party. Notwithstanding the

foregoing or anything in this Agreement to the contrary, the City does not waive any governmental immunity or liability limitations available to it under Indiana law.

7. Reservation of Rights. Each party reserves for itself the free use of the its parcel in any manner not inconsistent with the terms of this Agreement.
8. Covenant Running with the Land. The City, FREG and Wharf Partners intend that each of the rights and obligations set forth herein shall run with the land and create equitable servitudes burdening the Real Property and benefitting the Real Property, 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.
9. Recording. This Agreement shall be duly recorded in the Office of the Recorder of St. Joseph County, Indiana, and all recording fees will be paid by University.
10. Governing Law. This Easement shall be governed and construed in accordance with the laws of the State of Indiana without reference to its conflict of laws principles.
11. Cooperation. Each party shall, at no additional cost to the other parties, cooperate with the other and its authorized representatives with regard to any reasonable requests made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement and to provide any and all additional documentation deemed necessary to effectuate the transaction contemplated by this Agreement. Each party further agrees that the term “cooperate,” as used in this Agreement, includes agreeing to execute or re-execute any documents that the parties reasonably deem necessary or desirable to carry out the intent of this Agreement. All parties recognize the duty of each party to act in good faith and with fair dealings when effectuating the intent of this Agreement.

(signature pages follow)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

WHARF PARTNERS, LLC,
an Indiana limited liability company

By: _____

Its: _____

Date Signed: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Wharf Partners, LLC, an Indiana limited liability company, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such officer or other representative.

WITNESS my hand and Notarial Seal this ___ day _____, 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

FREG STEPHENSON MILL ASSOCIATES, LLC,
 a Colorado limited liability company

By: Forum Management, Inc.,
 a Colorado corporation, its Manager

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Forum Management, Inc., a Colorado corporation, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such officer or other representative.

WITNESS my hand and Notarial Seal this ____ day _____, 2019.

 Notary Public

 Notary Public (Printed)

My Commission Expires:

My County of Residence:

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**

Gary Gilot, President

Therese J. Dorau, Member

Elizabeth Maradik, Member

Genevieve Miller, Member

Laura O’Sullivan, Member

Attest: _____
Linda Martin, Clerk

Date Signed: _____

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

Before me, a Notary Public in and for said County and State, personally appeared Gary Gilot, Therese Dorau, Elizabeth Maradik, Genevieve Miller, Laura O’Sullivan, and Linda Martin, President, Members, and Clerk, respectively, of the South Bend Board of Public Works, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such representatives.

WITNESS my hand and Notarial Seal this ___ day _____, 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

**SOUTH BEND
BOARD OF PARK COMMISSIONERS**

Mark Neal, President

Consuella Hopkins, Vice President

Dan Farrell, Member

Aimee Bucellato, Member

ATTEST:

Eva Ennis

Date Signed: _____

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

Before me, a Notary Public in and for said County and State, personally appeared Mark Neal, Consuella Hopkins, Dan Farrell, Aimee Bucellato, and Eva Ennis, President, Vice President, Members, and Clerk, respectively, of the South Bend Board of Park Commissioners, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such representatives.

WITNESS my hand and Notarial Seal this ___ day _____, 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Marcia I. Jones, President

ATTEST:

Quentin Phillips, Secretary

Date Signed: _____

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

Before me, a Notary Public in and for said County and State, personally appeared Marcia I. Jones and Quentin Phillips, President and Secretary, respectively, of the South Bend Redevelopment Commission, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such representatives.

WITNESS my hand and Notarial Seal this ___ day _____, 2019.

Notary Public

Notary Public (Printed)

My Commission Expires:

My County of Residence:

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. Sandra L. Kennedy

Prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601

EXHIBIT A

A PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, CITY OF SOUTH BEND, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT # 3 IN THE PLAT OF "CASCADE MINOR SUBDIVISION" AS RECORDED AS DOCUMENT NUMBER 1808428 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE; THENCE SOUTH 89°54'00" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE, A DISTANCE OF 19.00 FEET; THENCE SOUTH 00°56'55" EAST, A DISTANCE OF 123.85 FEET; THENCE NORTH 89°03'05" EAST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 00°56'55" EAST, A DISTANCE OF 213.21 FEET; THENCE SOUTH 89°55'28" WEST, A DISTANCE OF 24.00 FEET; THENCE NORTH 00°56'55" EAST; A DISTANCE OF 336.94 FEET TO THE POINT OF BEGINNING.
CONTAINING 0.17 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHTS-OF-WAY, EASEMENTS, AND RESTRICTIONS OF RECORD.

EXHIBIT B