

10

AFFIDAVIT OF LEASE

BE IT ACKNOWLEDGED, that MITCHELL W. BARLOGA, II the undersigned affiant, being of legal age, and of sound mind, does hereby depose and say under oath as follows:

1. That he was personally present at the execution of the attached 9 page lease, "LAKE COUNTY WORLD WAR II MEMORIAL SITE LEASE" dated the 30th day of July, 2003, and that the attached document is an accurate copy of the original.
2. That the three persons signing for the CITY OF CROWN POINT, INDIANA on Page 9 are in the Order as they appear in the document, James D. Metros President, Board of Public Works; John C. Mullins Member, Board of Public Works; Robert M. Corbin, Member, Board of Public Works.
3. That the Affiant is personally acquainted with each of the individuals and was present when each of them signed the document.

The undersigned hereby affirms that the foregoing is true upon his personal knowledge and information.

Witness my hand under penalty of perjury this 28th day of March 2006.

[Handwritten signature of Mitchell W. Barloga, II]

MITCHELL W. BARLOGA, II -- Affiant

509 N. WEST ST.
CROWN POINT, IN 46307
(Address)

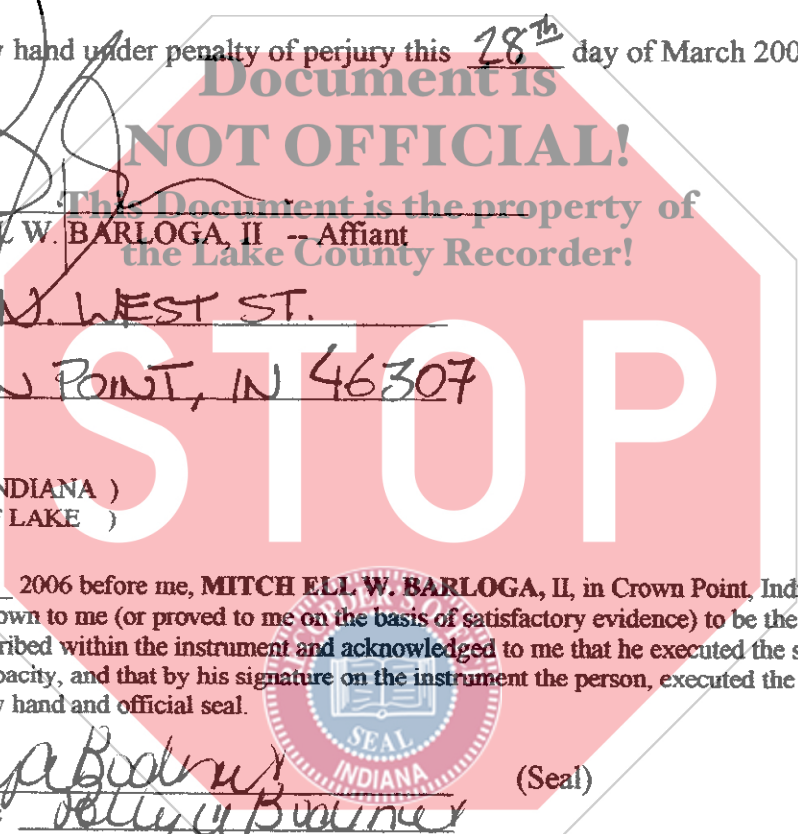
STATE OF INDIANA)
COUNTY OF LAKE)

On March 28 2006 before me, MITCHELL W. BARLOGA, II, in Crown Point, Indiana, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed within the instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, executed the instrument. WITNESS my hand and official seal.

[Handwritten signature of Kelly A. Browning]
Notary Public Kelly A. Browning (Seal)
(Print)

My Commission expires: Aug 25, 2006

Resident of Lake County, State of Indiana.



2006 025726

2006 MAR 29 PM 2:54

MICHAEL A. BROWNING
RECORDER

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

30-
XP
CS

LAKE COUNTY WORLD WAR II MEMORIAL SITE LEASE

THIS LEASE, entered into this 30th day of July, 2003 by and between the CITY OF CROWN POINT, INDIANA, hereinafter referred to as "Lessor", and the "FRIENDS OF THE VETERANS MEMORIAL PARKWAY, INC." referred to as "Lessee",

That the Lessor and the Lessee, in consideration of their mutual undertakings, agree as follows:

1. **PREMISES:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described premises which are hereinafter referred to as "Leased Premises" located at 1060 East South Street (113TH AVE.), Crown Point, Lake County, Indiana, more particularly described, as follows:

Part of the East Half of the Northwest Quarter of Section 9, Township 34, Range 8 West of the Second Principal Meridian, in the City of Crown Point, Lake County, Indiana, being more particularly described as follows: Commencing at the Southeast corner of said East Half of the Northwest Quarter, thence North 89°58'38" West, along South line of East Half of the Northwest Quarter, a distance of 470.97 feet to the True Point of Beginning hereof; thence continuing North 89°58'38" West, along said South line, 55.65 feet to a point on the Northeasterly line of the abandoned 100 foot wide R/W of the Conrail Railroad (formerly P.C.C. & St. Louis RR); thence North 38°54'14" West, along said Northeasterly R/W line, 756.72 feet to a point of curve in said R/W line; thence Northwesterly, along a curve concave to the Southwest and having a radius of 9872.00 feet, and arc length of 95.54 feet; thence North 50°32'30" East, 292.00 feet; thence South 25°10'31" East, 50.00 feet; thence South 33°33'30" East, 50.00 feet, thence South 37°55'55" East, 393.52 feet to a point of curve; thence Southerly, along a curve concave to the West and having a radius of 200.00 feet, and arc length of 113.10 feet to a point of tangent; thence South 05°31'50" East, 349.18 feet to the Point of Beginning. Said Parcel contains 4.62 Acres, more or less.

2. **TERM OF LEASE.** The term of the Lease shall be for Ninety-nine (99) years commencing on 30th day of July, 2003, and shall terminate on the 29th day of July, 2102, which term shall hereinafter be referred to as "Initial Term". The Lessor agrees to put the Lessee in possession of said property on the date of the commencement of the Lease.

3. **OPTION TO RENEW.** Lessor grants to Lessee, subject to the conditions set forth below, the right and option to renew this Lease for a period of Fifty (50) years, at the same rental as provided below, and otherwise subject to and on all of the terms and conditions herein contained, except that there shall be no further option to renew this Lease. This option shall automatically be exercised unless Lessee, as least sixty (60) days prior to the expiration of the term hereof, gives to Lessor a written notice of its intention not to renew the Lease, but Lessee shall in no event be entitled

to renew the term hereof unless Lessee shall have timely performed all of its obligations hereunder, and shall not be in default in the performance of any thereof, on the date of the expiration of the initial term hereof.

4. RENT. For the term of this Lease, Lessee shall pay to Lessor, the aggregate rental of Ninety-nine Dollars (\$99.00) payable in advance in yearly installments of One Dollar (\$1.00) per year, with the first payment being due and payable on the 1st day of September, 2003. Subsequent installments shall be paid on the same day of each year thereafter during the initial term of the Lease and any renewals.

5. ADDITIONAL CONSIDERATION. As additional rent for the land, the Lessee shall keep secure and pay the following:

A. The Lessee shall keep the Leased Premises insured to its full replacement value against fire and with extended coverage. Lessee shall also procure and maintain insurance against liability from personal injury, death and property damage, and worker's compensation. The Lessee shall maintain the liability coverages in the amount for the other city properties. The Lessee shall pay all insurance premiums as they become due and payable. The Lessee shall provide the Lessor with proof of insurance and payment of premiums upon request from the Lessor.

B. The property is presently non-taxable. In the event the property should become subject to real estate taxes, the Lessee shall notify Lessor of such determination, and the reasons therefore, and Lessor shall have the option of canceling the lease or paying said real estate taxes during the term of the lease.

C. The Lessee, at its sole expense, shall keep the premises clean, sightly and in a healthful condition. The Lessee shall further make all repairs which are necessary to maintain the premises in good repair and condition and including, but not limited to, all electrical, gas, water, plumbing equipment, heating and air conditioning equipment; all structural portions of the premises, including (without limitation), foundations, walls, floors, stairways, roof, including interior and exterior portions thereof not caused by the negligence of the Lessee.

D. The Lessee shall provide gas, electric, water and heat to the leased premises. The Lessee shall maintain sufficient heat in the building (if one is constructed), to protect the building. The Lessee shall pay all the costs of the public utilities.

6. USE OF THE PREMISES. The Lessee shall not use the Leased Premises for any other purpose than as a World War II Memorial for the use and enjoyment of the public unless the Lessee first obtains the Lessor's prior written approval. Any and all fees to be charged the public by Lessee for use or enjoyment of the premises shall be subject to final and prior approval by the Board of Works and Public Safety prior to implementation of any such charge or fee.

7. CONSTRUCTION OF NEW MEMORIAL. The construction of the World War II Memorial will be subject to the following:

A. *Plans & Specifications.* Lessee shall, at Lessee's sole expense, cause a World War II Memorial to be erected on the premises, and other facilities and improvements not inconsistent with the limitations of use found in this Lease. Such plans and specifications shall be prepared by architects and engineers approved in advance by Lessor, and shall be submitted to Lessor for Lessor's written reasonable approval or for any revisions required by Lessor. In the event of disapproval, Lessor shall give to Lessee an itemized statement thereof within sixty (60) days after the same are submitted to Lessor. After the final approval of the plans and specifications for the memorial, Lessee shall, at Lessee's sole expense, commence and shall thereafter diligently prosecute to complete the construction of the World War II Memorial in accordance with such approved plans and specifications. All contract documents for the construction of the memorial and related improvements, for architects, engineers, contractors, sub-contractors and materialmen, shall be of a "no lien" variety in a form approved by Lessor in advance of signature. All wages to be paid by contractors, sub-contractors, and materialmen related to the work shall conform with "prevailing wage" standards of the U.S. Department of Labor for the area including Crown Point, Indiana.

B. *Alterations, improvements & changes permitted.* Lessee shall have the right from time to time to make alterations to the memorial which may from time to time be on the premises without consent of the Lessor; provided, however, that said alterations and improvements do not lessen the value of the premises. Lessee shall have the right to make such alterations, improvements, and changes to the memorial which may from time to time be on the premises as Lessee may deem necessary, or to replace major structural elements of the memorial with new ones, provided that prior to making any structural alterations, improvements, or changes, or to replacing any major structural elements of the memorial, Lessee shall obtain Lessor's written approval of plans and specifications therefor, which consent shall not be unreasonably withheld, shall engage architects and engineers acceptable to Lessor, and shall otherwise conform to the applicable requirements of sub-paragraph "A" above. Lessee will in no event make any alterations, improvement, or other changes of any kind to the memorial on the premises that will decrease the value of the property, or that will adversely affect the structural integrity of the memorial.

C. *Disposition of new improvements.* Any new structure constructed by Lessee on the premises, and all alterations, improvements, changes, or additions made in or to such premises shall be the property of the Lessee until the expiration of the term of the Lease, at which time it shall become the property of the Lessor.

8. REPAIRS AND DESTRUCTION OF IMPROVEMENTS

A. *Maintenance of improvements.* Lessee shall, throughout the term of this lease, at its own cost, and without any expense to Lessee, keep and maintain the premises, including all improvements of every kind which may be a part thereof, and all appurtenances thereto, including sidewalks adjacent thereto, in good, sanitary and neat order, condition and repair, and except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description, whatsoever, to the demised premises or improvements thereon. Lessee shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting

the demised premises, the improvements thereon, or any activity or condition on or in such premises.

B. *Damage to and destruction of improvements.* The damage, destruction, or partial destruction of any improvement which is a part of the premises shall not release Lessee from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such improvement, Lessee shall as its own expense, with reasonable promptness, repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Without limiting such obligations of Lessee, it is agreed that the proceeds of any insurance covering such damage or destruction shall be made available to Lessee for such repair or replacement.

9. **MECHANICS LIENS.** Lessee shall not permit any statement of intention to hold a mechanic's lien to be filed against the Leased Premises or any part thereof nor against any interest or estate therein by reason of labor, services or materials claimed to have performed or furnished to or for Lessee. If such statement of intention to hold a mechanic's lien shall be filed, the Lessor at his option may compel the prosecution of an action for the foreclosure of such mechanic's liens by the lienor. If any such statement of intention to hold a mechanic's lien shall be filed and an action commenced to foreclose the lien, the Lessee upon demand by the Lessor, shall cause the lien to be released by the filing of a written undertaking with a surety approved by the court and obtaining an order from the court releasing the property from such lien.

Nothing in this Lease shall be deemed or construed to constitute a consent to or request to any party for the performance of any labor or services or the furnishing of any materials for the improvement, alteration or repairing of the Leased Premises, nor as giving Lessee the right or authority to contract for, authorize or permit the performance of any labor or services or the furnishings of any material that would permit the attaching of a valid mechanic's lien.

10. **INDEMNIFICATION AND RELEASE.** Lessor shall not be responsible or liable for any damages or claims for injury to persons or property from any cause relating to the occupancy of the premises by the Lessee. Lessee shall defend and indemnify Lessor from all liability, loss or other damages or claims for obligations resulting from any injuries or losses of this nature, including all attorney fees and court costs incurred by the Lessor in defending any such claims. Regardless of whether or not separate, several, joint or concurrent liability may be imposed upon Lessor, Lessee shall indemnify and hold harmless Lessor from and against all damages, claims and liability arising from or connected with Lessee's control or use of the Leased Premises, including without limitation, any damage or injury to person or property. This indemnification shall not include any matter for which the Lessor is effectively protected against by insurance. If Lessor shall, without fault, become a party to litigation commenced by or against Lessee, then Lessee shall indemnify and hold Lessor harmless. The indemnification provided by this section shall include Lessor's legal costs and fees in connection with any such claim, action or proceeding.

11. **ASSIGNMENT AND SUBLETTING.** Lessee may not assign this Lease nor sublet said premises in any manner whatsoever without the prior approval of the Board of Works and Public Safety.

12. **SUBORDINATION.** This Lease and all rights of the Lessee hereunder shall be subject and subordinate to the lien of any and all mortgages and contracts for sale of real estate that may now or hereafter affect the Leased Premises, or any part thereof, and to any and all renewals, modifications, or extensions of any such mortgages or contracts for sale of real estate. The Lessee shall upon demand, execute, acknowledge, deliver to the Lessor, without expense to the Lessor, any and all instruments that may be necessary or proper to subordinate this Lease and all rights therein to the lien of any such mortgage or mortgages and contracts for sale of real estate and each renewal, modification or extension, and if Lessee shall fail at any time to execute, acknowledge, and deliver the same, the Lessee hereby irrevocably makes, constitutes, and appoints Lessor, or their successors and assigns, their attorney in fact for that purpose.

13. **EVENTS OF DEFAULT.** Any of the following shall be deemed an Event of Default:

A. The failure to pay any installment of rent when the same becomes due and the failure continues for ten (10) days.

B. Lessee's failure to perform or observe any other covenant, term or condition of this Lease to be performed or observed by Lessee and if curable, the failure continues for fifteen (15) days after notice thereof is given to Lessee.

C. Lessee's failure to commence construction of WWII Memorial within two (2) years of Lease approval.

D. Abandonment of the Leased Premises.

14. **LESSOR'S REMEDIES.**

Upon the occurrence of any Event of Default, Lessor may, at its option, in addition to any other remedy or right it has hereunder or by law:

(1) Re-enter the Leased Premises, without demand or notice, and resume possession by an action in law or equity or by force or otherwise and without being liable in trespass or for any damages and without terminating this Lease. Lessor may remove all persons and property from the Leased Premises and such property may be removed and stored at the cost of Lessee.

(2) Terminate this Lease at any time upon the date specified in a notice to Lessee. Lessee's liability for damages shall survive such termination. Upon termination such damages recoverable by Lessor from Lessee shall be an amount equal to "Indemnity Payments". "Indemnity Payments" means an amount equal to the rent and other payments provided for in this Lease which would have become due and owing thereunder from time to time during the Unexpired Term plus the cost and expenses paid or incurred by lessor from time to time in connection with:

a. Obtaining possession of the Leased Premises;

- b. Removal and storage of Lessee's or other occupant's property;
- c. Care, maintenance and repair of the Leased Premises while vacant;
- d. Reletting the whole or any part of the Leased Premises;
- e. Repairing, altering, renovating, partitioning, enlarging, remodeling or otherwise putting the Leased Premises, either separately or as part of the larger premises, into condition acceptable to and reasonably necessary to obtain new Lessees;
- f. Making all repairs, alterations and improvements required to be made by Lessee hereunder and of performing all covenants of the Lessee relating to the condition of the Leased Premises.

less the rent and other payments, if any, actually collected and allocable to the Leased Premises or to the portions thereof relet by Lessor.

(3) Without terminating this Lease, relet the Leased Premises without the same being deemed an acceptance of a surrender of this Lease nor a waiver of Lessor's rights or remedies and Lessor shall be entitled to Indemnity Payments, as heretofore defined, from Lessee. Any reletting by Lessor may be for a period equal to or less than, or extending beyond the remainder of the original term, or for the whole or any part of the Leased Premises, separately or with other premises or for any sum, or to any Lessee or for any use Lessor deems appropriate.

15. EFFECT OF EXERCISE OF REMEDIES OF LESSOR.

A. Upon exercise by Lessor of his right to reenter and repossess, or to remove persons and property from, the Leased Premises or upon termination of this Lease pursuant to subsection 14-A, Lessee and each person claiming by or through Lessee shall forthwith quit the Leased Premises and surrender it to Lessor, and Lessor shall be entitled to all remedies at law or in equity to effect this right. Upon reentry, Lessor shall again have possession of the Leased Premises as though this Lease had not been made.

B. Upon the date specified in Lessor's notice of intention to terminate this Lease, this Lease shall terminate, and Lessee and any person claiming by or through him shall become a tenant at sufferance.

C. Within seven (7) days of Lessee's vacation of the Leased Premises, Lessee shall remove therefrom all of his personal property. If Lessee fails to so remove said property shall be deemed as abandoned by Lessee and shall become the property of Lessor.

16. PROVISIONS APPLICABLE TO DEFAULTS AND REMEDIES.

A. Failure or omission of either party to exercise any remedy shall not constitute a waiver,

or bar or abridge exercise of a remedy upon any subsequent default.

B. Receipt of rent by Lessor with knowledge of default by Lessee shall not constitute a waiver as to such default or as to a remedy available in respect of such default.

C. No right or remedy of either party shall be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given by this Lease or now or hereafter existing at law or in equity. Termination of this Lease by Lessor shall not prohibit Lessor from recovering any monies due or to become due pursuant to the terms of this Lease.

D. In addition to any remedies given Lessor by any previous provision of this Lease, Lessor shall be entitled, to the extent permitted by law, to injunctive relief in case of any violation, or attempt or threatened violation, of any of the covenants, agreements or provisions of this Lease.

E. If Lessor, without his fault, is made a party to any litigation commenced against Lessee or because of Lessee's activities, and if Lessee, at his expense, fails to provide Lessor with legal counsel satisfactory to Lessor, Lessee shall pay all costs and reasonable attorney fees incurred or paid by Lessor in connection with such litigation.

F. Each party shall be entitled to enforce any of his rights or exercise any of his remedies without relief from valuation and appraisal laws.

17. **ATTORNEY'S FEES.** If, on account of any breach or default by Lessor or Lessee of their obligations to any of the parties hereto, under the terms, conditions and covenants of this Lease, it shall become necessary for any of the parties hereto to employ an attorney to enforce or defend any of its rights or remedies hereunder, and should such party prevail, said party shall be entitled to reasonable attorneys' fees incurred including the cost of notice.

18. **NOTICE OF DEFAULT.** Except for the payment of rent, the Lessor covenants that there shall be a condition precedent to any action by him under the paragraph above, namely; that the Lessee shall first have been given written notice, provided for in the paragraph above specifically stating the claimed breach of this Lease, and the period during which the Lessee shall have the right to cure such breach without penalty; and that said notice, in writing, shall specifically set forth the breach of the Lease which is claimed of the Lessee.

19. **RIGHTS OF ENJOYMENT.** Lessor covenants and agrees that if the Lessee shall pay and otherwise perform and do all of the things and matters herein provided for to be done by Lessee that the Lessee shall peaceably and quietly have, hold, possess, use, occupy and enjoy the said demised premises during the term of the Lease.

20. **RIGHT TO INSPECT.** Lessor or Lessor's agent may enter the demised premises during all reasonable business hours to inspect the same, but no such entry shall unreasonably interfere with the conduct of the Lessee's business on the demised premises.

21. **SURRENDER OF PROPERTY.** Lessee covenants that it will surrender the possession of and the keys to the demised premises upon the expiration of this Lease for any reason, in as good a condition and repair as the same shall be at the commencement of this term, excepting nevertheless, loss by fire, or other casualty, and ordinary wear, tear and decay.

22. **CONFLICT OF LAWS.** This agreement shall be construed in accordance with the laws of the State of Indiana, providing that nothing contained herein shall be interpreted in such a manner as shall render it illegal under the laws of the State of Indiana.

23. **WAIVER.** The waiver by Lessor or Lessee of any breach of any term, covenants or conditions shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Lessor or Lessee, unless such waiver be in writing by Lessor or Lessee.

24. **TIME OF THE ESSENCE.** Time is of the essence in all provisions of this Lease.

25. **GENERAL AGREEMENT OF THE PARTIES.**

A. This Lease shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the parties. This provision, however, shall not be construed to permit the assignment of this Lease except as may be permitted hereby. When applicable, use of the singular form of any word shall mean or apply to the plural and the neuter form shall mean or apply to the feminine or masculine.

B. The captions and article numbers appearing in this Lease are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of such provisions. Any notices to be given hereunder, unless provided for otherwise, shall be deemed sufficiently given when in writing and (a) actually served on the party to be notified or (b) placed in an envelope directed to the party to be notified at the following addresses and deposited in the United States mail by certified or registered mail, postage prepaid:

1. If to the Lessor at 101 North East Street, Crown Point, Indiana, 46307
2. If to the Lessee at P.O. Box 357, Crown Point, Indiana 46308

Such addresses may be changed by either party by written advice as to the new address given as above provided. If there is more than one Lessee, their obligation shall be joint and several.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the 30th day of July, 2003, and if this Lease is executed in counterparts, each shall be deemed an original.

LESSOR: CITY OF CROWN POINT, INDIANA

James D. Minton
President, Board of Public Works

John C. Muller
Member, Board of Public Works

Al M. Cat
Member, Board of Public Works

Document is

LESSEE:

NOT OFFICIAL!

(Printed name)

Mitchell W. Barloga, II

This Document is the property of
the Lake County Recorder!

Title: President, Friends of the Veterans
Memorial Parkway, Inc.

STOP

ATTEST:

Janis Flutka
Janis Flutka, Clerk-Treasurer

