

3 **A Resolution Approving \$500,000 of LIT Funds for**  
4 **Reimbursement of Public Infrastructure**  
5 **Constructed as Part of Posterity Heights Phase 1**

6 **WHEREAS**, on June 26, 2017, the City of Fort Wayne Community  
7 Development Division (CDD) and BWI Development and Management, Inc.  
8 (BWI), developer of the Posterity Heights Phase 1 project, entered into a  
9 Letter of Support (attached), whereby CDD committed \$250,000 in Federal  
10 HOME funds and a not-to-exceed amount of \$750,000 for the public  
11 improvements in and serving the project; and  
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13  
14 **WHEREAS**, on January 8, 2018, the Fort Wayne Redevelopment  
15 Commission passed Resolution 2018-02, approving the expenditure of  
16 \$250,000 from the Redevelopment Commission Capital Fund for public  
17 improvements in and serving Posterity Heights Phase 1; and  
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19  
20 **WHEREAS**, CDD and the Fort Wayne Redevelopment Commission  
21 prepared a Public Infrastructure Reimbursement Agreement, attached hereto  
22 as Exhibit A, outlining the requirements for reimbursement for expenses  
23 incurred by BWI for construction of public improvements.  
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26 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**  
27 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**  
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**SECTION 1.** That the Common Council of the City of Fort Wayne, Indiana, approves the commitment of \$500,000 of LIT funds to be paid to reimburse BWI for construction of public improvements according to procedures outlined in the Public Infrastructure Reimbursement Agreement.

**SECTION 2.** Incremental tax revenue from the Posterity Heights Urban Renewal Project Area shall be used to fully reimburse the \$250,000 from the Redevelopment Capital Fund, and shall then be used to reimburse the \$500,000 from LIT funds.

**SECTION 3.** That this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney



**COMMUNITY DEVELOPMENT**

Thomas C. Henry, Mayor

City of Fort Wayne  
**Community** Development  
200 East Berry Street, Suite 320  
Fort Wayne IN 46802  
260.427.1127 • 311

[www.fwcommunitydevelopment.org](http://www.fwcommunitydevelopment.org)

February 8, 2018

**MEMO**

**To:** City of Fort Wayne Common Council  
**From:** Greg Leatherman, Community Development Division Director  
**Re:** Posterity Heights Phase 1 Infrastructure Reimbursement

The Community Development Division requests that the Common Council consider and approve expenditures of up to \$500,000 in LIT funds reimbursing the developer for construction of public infrastructure supporting Posterity Heights Phase 1.

The Posterity Heights Phase 1 will be an energy-efficient affordable housing development that sits on the 28-acre site of the former McMillen Apartment Complex at 4209 Plaza Drive. This first phase of the development includes 44 two- and three-bedroom apartments designed for single parents enrolled in one of the local universities. The one-of-a-kind development combines energy-efficient housing with an electric car sharing program for residents.

Incremental tax revenue from the Posterity Heights Urban Renewal Area shall be used to fully reimburse \$250,000 pledged from the Redevelopment Commission Capital Fund, and shall then be used to reimburse the \$500,000 from LIT funds.

**EFFECT OF PASSAGE.** The costs for construction of public infrastructure will be reimbursed using \$500,000 in LIT dollars and \$250,000 from the Fort Wayne Redevelopment Commission's Capital Fund.

**EFFECT OF NON-PASSAGE.** Alternate funding would need to be found for the public infrastructure improvements that are required to support redevelopment of the property and construction of Posterity Heights Phase 1.

*An Equal Opportunity Employer*



## PUBLIC INFRASTRUCTURE REIMBURSEMENT AGREEMENT

### Posterity Heights Phase 1 McKinnie-Plaza-Werling-Queen Streets

Cross reference to Document 2017043544

This Public Infrastructure Reimbursement Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **Building and Impacting Communities, Inc.** ("Developer"), the **City of Fort Wayne Community Development Division** ("CDD"), and the **City of Fort Wayne Redevelopment Commission** ("Commission"), for the following and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to wit:

1. Posterity Scholar House, LP, owns 4.184 acres of real estate in two tracts in Allen County, Indiana, recorded in the Office of the Recorder of Allen County, Indiana, at the cross reference document listed above ("Real Estate").
2. The Real Estate is located in the Posterity Heights Redevelopment Project Area and Urban Renewal Project Area ("URA"), said URA having been established by the Commission on December 11, 2017 pursuant to Indiana Code ("IC") 36-7-14 et seq., for, among other purposes, the funding of local public improvements in and serving the URA.
3. CDD and Developer entered into a letter of support dated June 26, 2017 ("Letter of Support"), attached hereto as Exhibit A and incorporated herein, for a proposed development on the Real Estate, designated by Developer as "Posterity Heights Phase 1," at an estimated site development cost of 14.4 million dollars ("Project"), and reimbursement to Developer of certain Project expenses.
4. Developer will design and will enter into signed agreements with and obtain permits as required from the appropriate City of Fort Wayne Public Works and City Utilities departments ("City"), and other agencies as required by regulations and statutes, to construct the public improvements identified in the attached Exhibit B, on the Real Estate and on adjoining public rights-of-way and adjoining City of Ft. Wayne real estate, for use by Developer and the public ("Phase 1 Public Improvements"). It is understood and agreed that the types, sizes and quantities of the public improvements in Exhibit B may be adjusted to complete the Project as contemplated by the approved Project design plans.
5. As work on the Phase 1 Public Improvements progresses, Developer will present paid receipts for direct costs of said work, to include design engineering, labor, materials and construction supervision, to CDD and Commission. Following CDD and Commission's review and approval of the paid receipts, not to be unduly delayed or withheld, CDD will, subject to the terms of the Letter of Support and this Agreement, reimburse Developer for the direct and actual costs of the Phase 1 Public Improvements, in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) ("CDD Reimbursement").

6. Following final inspection by the appropriate City departments, and acceptance of the Phase 1 Public Improvements into the City's public infrastructure ownership, operation and maintenance systems, Developer will present paid receipts to CDD and Commission for design engineering, labor, materials and construction supervision for the Phase 1 Public Improvements not previously reimbursed by CDD. Following CDD's and Commission's review and approval of the paid receipts, not to be unduly delayed or withheld, Commission will, subject to the terms of the Letter of Support and this Agreement, reimburse Developer for the direct and actual costs of the Phase 1 Public Improvements that exceed the CDD Reimbursement amount, up to but not exceeding an additional Two Hundred Fifty Thousand Dollars (\$250,000.00) ("Commission Reimbursement").
7. The total of the CDD Reimbursement and Commission Reimbursement shall not exceed the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00), and shall be used only for reimbursement of the Phase 1 Public Improvements.
8. The Commission's Capital Fund shall be reimbursed from the first \$250,000 in tax increment financing realized from the Posterity Heights Urban Renewal Project Area, after which any additional tax increment realized from the Posterity Heights Urban Renewal Project Area shall go to reimburse the CDD's CEDIT funds in an amount up to \$500,000.
9. The terms and provisions of this Agreement shall be binding upon CDD, Commission and Developer and their respective successors and assigns. No assignment of this Agreement or any portion thereof by Developer shall occur without the prior written consent of CDD and Commission.
10. This Agreement may only be amended by written consent signed by CDD, Commission and Developer.
11. Developer's right to reimbursement hereunder may be assigned to a third party upon a written request by Developer, and upon written consent of CDD and Commission of such assignment, not to be unduly delayed or withheld, and CDD or Commission, as the case may be, will acknowledge such assignment and make all payments directly to said assignee until notified otherwise.
12. Any notice, statement, or other communication to be delivered pursuant to this Agreement shall be sent to the recipient at the following address unless notified otherwise pursuant hereto:

To Developer:            Building and Impacting Communities, Inc.  
                                  5902 East 34<sup>th</sup> Street  
                                  Indianapolis, Indiana 46218

To Commission:        Fort Wayne Redevelopment Commission  
                                  Attn: Executive Director  
                                  200 East Berry Street, Suite 320  
                                  Fort Wayne, Indiana 46802

To CDD:                    City of Fort Wayne Community Development Division  
                                  Attn: Director  
                                  200 East Berry Street, Suite 320  
                                  Fort Wayne, Indiana 46802

13. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

[Remainder of page left blank; signature pages follow]



**City of Fort Wayne Redevelopment Commission**  
"Commission" herein

By: \_\_\_\_\_  
Christopher Guerin, President

**ACKNOWLEDGEMENT**

**STATE OF INDIANA )**  
**) SS**  
**COUNTY OF ALLEN )**

**BEFORE ME**, a Notary Public in and for said State and County, personally appeared Christopher Guerin and acknowledged the execution of the foregoing Agreement as a voluntary act and deed for the uses and purposes therein contained.

**WITNESS** my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

Resident of \_\_\_\_\_ County

\_\_\_\_\_  
Printed Name

[Signatures continue on following page]

**City of Fort Wayne Community Development Division**  
"CDD" herein

By: \_\_\_\_\_  
Greg Leatherman, Director

**ACKNOWLEDGEMENT**

**STATE OF INDIANA )**  
**) SS**  
**COUNTY OF ALLEN )**

**BEFORE ME**, a Notary Public in and for said State and County, personally appeared Greg Leatherman and acknowledged the execution of the foregoing Agreement as a voluntary act and deed for the uses and purposes therein contained.

**WITNESS** my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

Resident of \_\_\_\_\_ County

\_\_\_\_\_  
Printed Name

*I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Craig Berndt.*

*This instrument prepared by Craig Berndt, Community Development Administrator, Department of Redevelopment, 200 East Berry Street, Suite 320, Fort Wayne, Indiana 46802.*

EXHIBIT A  
PAGE 1 OF 5

June 26, 2017

**VIA OVERNIGHT MAIL AND EMAIL**

BWI Development and Management, Inc.  
Attention: Gary Hobbs  
5902 E. 34th Street  
Indianapolis, Indiana 46218

**RE: *Posterity Heights – Phase I***

Dear Gary:

On behalf of the City of Fort Wayne, Community Development Department (the "City"), we are pleased to inform you that Building and Impacting Communities Inc.'s request for financial support with respect to Posterity Heights – Phase I (the "Project") has been conditionally approved, subject to the following terms and conditions:

- Recipient:** BWI Development and Management, Inc. (the "Developer")
- Amount of Support:** Not less than \$1,000,000.00 ("Support").
- Project Description:** The Project, commonly known as *Posterity Scholar House*, shall consist of forty-four (44) dwelling units, contained within two (2) stand-alone buildings. The Developer will, subject to compliance with applicable laws, target low-income, single parents whom are pursuing a college degree or other form of higher education. The Project will incorporate a net-zero energy solution leveraging a 500KW solar array. Residents of the Project shall have access to at least five (5) electric vehicles, for use in connection with the Developer's "car-sharing" program. For avoidance of doubt, the Project, for purposes of this letter, shall consist of Phase I of the larger Posterity Heights development. The Support herein may not be used for future phases of the Posterity Heights development, without the City's informed consent.
- Economic Incentives:** Support for the Project is anticipated to be provided through one or more of the following economic development incentives:
1. Subject to further proceedings required by law, the City will assist the Developer with the application and request to the

Common Council of the City of Fort Wayne ("City Council") to adopt the necessary resolutions to allow a property tax deduction for the Project in accordance with an agreed upon abatement schedule.

- 2. Subject to proceedings required by law, and by the City's Redevelopment Commission and any other local government agency or body, the City will request the Redevelopment Commission and City Council to adopt the necessary resolutions to allow tax increment funds to be used in support of the Project. Such support would be made available to the Project from tax increment generated by the Project at a future date in a manner and at a time to be mutually agreed upon by the Developer, the City and the Redevelopment Commission, all in compliance with applicable law.

As of the date hereof, the City, by itself or through the Redevelopment Commission, is contemplating the offering of Support in the sum of up to, but not exceeding, \$750,000.00 ("Public Improvement Funds") to reimburse the Developer for actual costs incurred by the Developer in connection with the installation of certain public improvements related to and benefitting the Project. In such case, and subject to applicable law, the City reserves the right to be reimbursed by tax increment funds up to the amount of Public Improvement Funds contributed to the Project before any tax increment funds would be used to reimburse the Developer for any additional expenses it may incur with respect to public improvements.

- 3. The City will contribute HOME Investment Partnerships Program funds ("HOME Funds"), in the form of a grant to the Developer, up to the sum of \$250,000.00, subject to (a) the terms of a Written Agreement prepared by the City's legal counsel, (b) compliance with any affordability requirements, (c) a release of funds from the Department of Housing and Urban Development ("HUD"), and (d) all applicable regulations.
- 4. The City will provide such other support as may be available to the Project in amounts and at times mutually agreed to by the Developer and the City, in an amount sufficient to fund any remaining gap that may still exist between the aggregate amount of the City's Support arising pursuant to items 1, 2 and 3 above, and \$1,000,000.00.

Notwithstanding anything contained herein to the contrary, at least \$200,000.00 of Support will be provided on or before December 31, 2017, and the remaining \$800,000.00 of Support will be provided on or before 100% completion of the Project, which is anticipated to be September 1, 2018.

**Commitment Deadline:**

The City's commitment of Support, as set forth herein, expires on December 31, 2017 (the "Expiration Date"), should a Development Closing not occur prior to such Expiration Date. For purposes of this paragraph, a Development Closing shall mean the date in which (a) all financing required by the Developer (other than the Support) is irrevocably committed to the Project, (b) the real estate upon which the Project will be located is deeded to the Developer, (c) the City's Support has been accomplished to the reasonable satisfaction of the City and the Developer or is reasonably expected to be accomplished prior to Project completion, and (d) all other conditions precedent have been satisfied or waived by the appropriate parties.

**Other Conditions:**

Support shall be evidenced by final, definitive agreements prepared by the City's legal counsel.

Any agreements contemplating the donation of land by the City to the Project shall be amended to require the City to contribute only that amount of land which is required by the Developer for the fulfillment of the Project, as determined by the City and the Developer pursuant to their reasonable business judgment. The contribution of City-owned land to other phases of the Posterity Heights development, not within the scope of this letter, shall be the subject matter of future discussions, which the City and the Developer agree to pursue in good faith.

The Developer shall provide the City with copies of all of its organizational papers and any documentation deemed necessary by the City to properly establish the Developer's authority to effect the transactions associated with the Project.

The Developer shall provide such other documents and information as the City shall request from time to time.

**Miscellaneous:**

Please take note that the City's conditional commitment of Support is subject to change if the Project's scope of work, funding source(s) or timeline is amended in any material way.

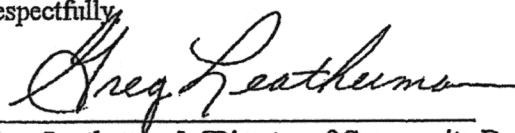
Failure to adhere to the conditions above, any applicable governmental regulations, including HOME regulations, or any other requirements set out by the City could also jeopardize the City's Support.

This conditional commitment letter shall be governed under the laws of the State of Indiana.

This conditional commitment letter supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties relative to the City's Support.

Please indicate your acceptance of the above terms and conditions by signing below. Return the original of this letter and keep a copy for your records. If acceptance has not been received by June 30, 2017, this commitment will expire and be null and void.

Respectfully,



[Greg Leatherman], [Director of Community Development]

Agreed and accepted with the intent to be legally bound:

**BWI DEVELOPMENT AND MANAGEMENT, INC.**

By:  \_\_\_\_\_

Name: Gary L. Hobbs

Title: President

Date: 6/26/17 \_\_\_\_\_

# EXHIBIT B



## Phase 1 - Public

Engineer's Opinion of Probable Cost of Construction of Public Infrastructure				
Project:	Posterity Heights - Ft. Wayne, IN			
Project No:	2016.00987		<i>REVISED</i>	
Date:	1/18/2017		<i>6/1/2017</i>	
Phase 1 - Public				
Demolition	Quantity	Unit	Unit Price	Extended Cost
Pavement Removal	4660	SYS	\$3.00	\$13,980
Sidewalk, Concrete, Remove	1600	SYS	\$12.00	\$19,200
Concrete Curb Removal	2500	LFT	\$5.00	\$12,500
Tree Removal	20	EA	\$215.00	\$4,300
Sewer Pipe Removal	1635	LFT	\$12.00	\$19,620
Sewer Structure Removal	34	EA	\$500.00	\$17,000
Sawcut	660	LFT	\$2.00	\$1,320
Miscellaneous Demolition Allowance	1	LS	\$5,000.00	\$5,000
<b>Demolition Subtotal</b>				<b>\$92,920</b>
Earthwork	Quantity	Unit	Unit Price	Extended Cost
<del>Pond Common Excavation</del>	<del>24,000</del>	<del>CY</del>	<del>\$4.50</del>	<del>\$108,000</del>
<b>Earthwork Subtotal</b>				<del><b>\$108,000</b></del>
Public Infrastructure	Quantity	Unit	Unit Price	Extended Cost
Water Main, 6" C900	500	LFT	\$60.00	\$30,000
Sanitary Main, 8 inch PVC SDR-26	375	LFT	\$40.00	\$15,000
Sanitary Manhole, 48 inch	2	EA	\$5,000.00	\$10,000
Storm Sewer, 12 inch HDPE	496	LFT	\$45.00	\$22,320
Storm Sewer, 15 inch HDPE	32	LFT	\$55.00	\$1,760
Storm Sewer, 30 inch HDPE	1,163	LFT	\$110.00	\$127,930
Type A Inlet Structure	16	EA	\$2,500.00	\$40,000
Type M Inlet Structure	2	EA	\$2,500.00	\$5,000
Type J Manhole Structure	14	EA	\$4,000.00	\$56,000
Type L Manhole Structure	1	EA	\$5,200.00	\$5,200
Add for Granular Backfill	1,450	LF	\$7.50	\$10,875
Storm End Section	2	EA	\$1,500.00	\$3,000
Outlet control structure	1	EA	\$3,000.00	\$3,000
Right-of-way Pavement	1,400	SYS	\$55.00	\$77,000
Heavy Duty Concrete Pavement	170	SYS	\$65.00	\$11,050
Concrete Curb and Gutter with underdrain	1,050	LFT	\$30.00	\$31,500
Concrete Sidewalk	5,250	SFT	\$5.50	\$28,875
ADA Curb Ramp	12	EA	\$750.00	\$9,000
Street Cuts for Proposed Utilities (McKinnie & Werling)	3	EA	\$5,000.00	\$15,000
<b>Public Infrastructure Subtotal</b>				<b>\$502,510</b>
<b>Phase 1 Public Infrastructure Total</b>				<b>\$703,430</b>
Construction Engineering (2.5%)				\$17,586
General Conditions (10%)				\$70,343
General Contractor Overhead and Profit (8%)				\$56,274
Construction Cost Contingency (10%)				\$70,343
<b>Total Phase 1 Public Cost</b>				<del><b>\$917,976</b></del>

**809,976**

**Assumptions:**

1. Streets within the development are assumed to be public and we have assumed a section per standard Ft. Wayne detail.
2. Public water main is 6" C900, looping into existing main. Linear foot price includes hydrant assemblies, tees, valves, and taps.
3. See attached exhibit for Phase 1 Limits.
4. Queen St. & Werling Dr. will require utility cuts for water & sanitary mains as part of the public improvements, which have been included in the public infrastructure estimate.

**BILL NO. R-18-02-03**

**REPORT OF COMMITTEE ON FINANCE**

**February 27, 2018**

**Jason Arp Chair**

**John Crawford Co-Chair**

**All Council Members**

A Resolution approving \$500,000 of LIT Funds for reimbursement of public infrastructure constructed as part of Posterity Heights Phase 1

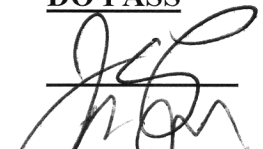
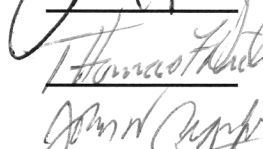
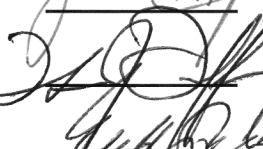
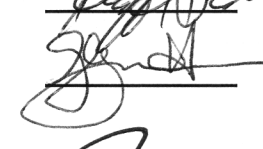
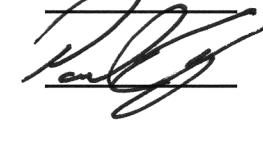


**COMMITTEE ON FINANCE HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

DO PASS

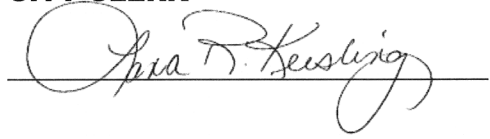
DO NOT PASS

ABSTAIN

NO REC

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	_____	_____	_____
	_____	_____	_____
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	_____	_____	_____

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Arp.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilman Arp, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: February 27, 2018

  
LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-18-02-03 on the 27th day of February, 2018

ATTEST:

  
LANA R. KEESLING  
CITY CLERK

  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th  
of February 2018, at the hour of 10:10 o'clock A.M. E.S.T.

  
LANA R. KEESLING, CITY CLERK

Approved and signed by me this 28<sup>TH</sup> day of February  
2018, at the hour of 3:00 O'clock Pm E.S.T.

  
THOMAS C. HENRY, MAYOR