



**GOSHEN REDEVELOPMENT COMMISSION
AGENDA FOR THE SPECIAL MEETING OF December 13, 2019**

The Goshen Redevelopment Commission will meet on December 13, 2019 at 2:00 p.m. in the Annex Conference Room at the Annex Building, 204 East Jefferson Street, Goshen, Indiana.

1. CALL TO ORDER/ROLL CALL

2. NEW BUSINESS

Resolution 75-2019 Approve and Authorize Execution of Agreement with Pilgram Partners, LLC for Development of Stormwater Facilities

Resolution 76-2019 Approve and Authorize Execution of Agreement with MR Realty IV, LLC for Development of Stormwater Facilities

3. OPEN FORUM

The open forum is for the general discussion of items that are not otherwise on the agenda. The public will also be given the opportunity at this time to present or comment on items that are not on the agenda.

3. ANNOUNCEMENTS

Next Regular Meeting – January 21, 2020 at 2:00 p.m.



**Department of Community Development
CITY OF GOSHEN**

204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405

Phone (574) 537-3824 • Fax (574) 533-8626 • TDD (574) 534-3185
communitydevelopment@goshencity.com • www.goshenindiana.org

Memorandum

To: Redevelopment Commission
From: Becky Hutsell
Date: December 13, 2019
RE: Request to approve agreements for the Development of Stormwater Facilities with Pilgrim Partners, LLC and MR Realty IV, LLC for the Plymouth Ave Economic Development Area

PLYMOUTH AVENUE TIF

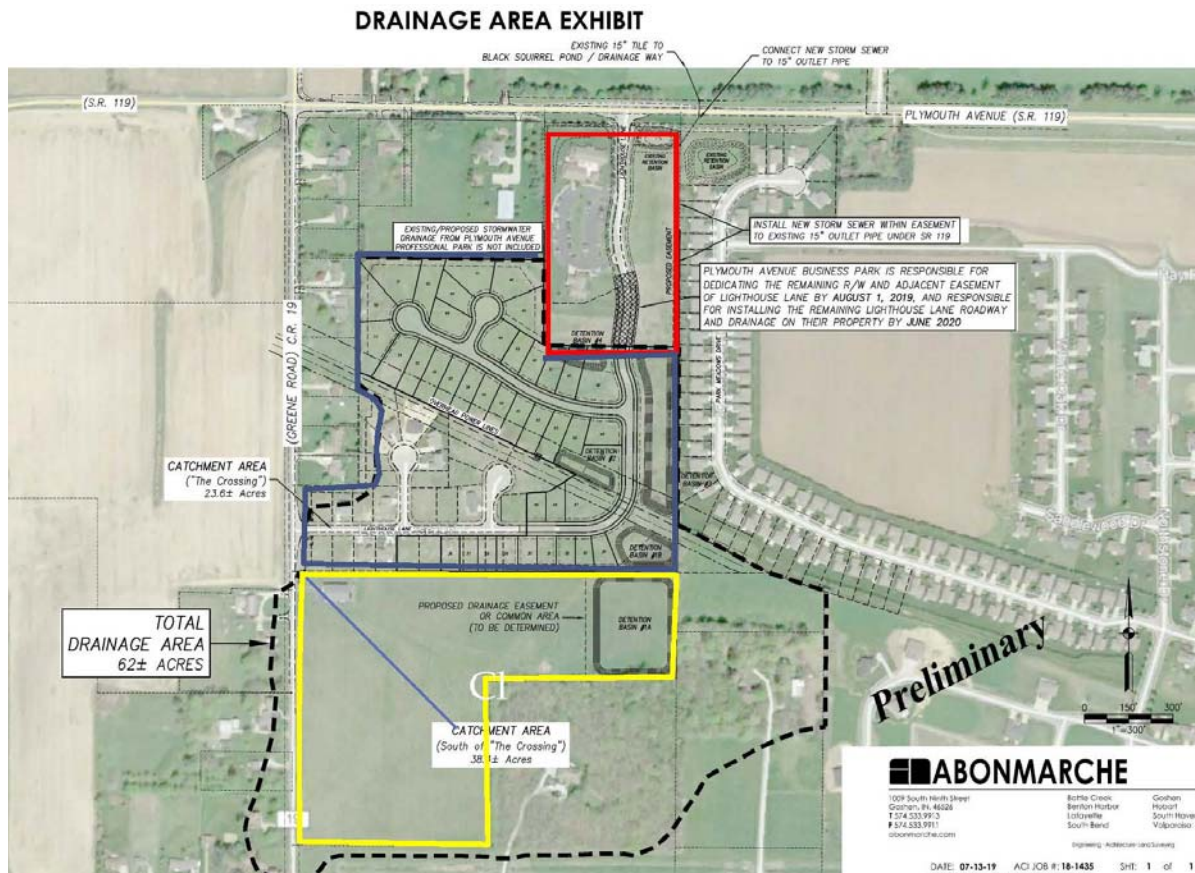
This TIF was established in 2007 and encompasses the land owned by Pilgrim Partners, LLC as shown below. The establishment of the TIF coincided with the construction of Fairhaven's offices and subsequent development of the Goshen Birthing Center. The TIF is set to expire on December 31, 2019, and at the time of maturity, it will have collected approximately \$550,000. To date, no projects have been undertaken with the available funds.



At the time that the TIF was established, the stormwater issues within this area of town were not fully understood. During Fairhaven's construction and the construction of The Crossing residential neighborhood to the south, stormwater runoff and flooding issues were realized. City Engineering conducted a drainage study in 2012 and because of the issues noted in the study, stormwater improvements were added to the TIF's approved project list in 2013.

In 2018, the Redevelopment Commission entered into an agreement with the Barak Group for stormwater improvements for this area. The agreement committed the available TIF funding for the project. Barak Group acquired The Crossing subdivision from the bank after the previous developer defaulted on the property. Because of the identified drainage issues, full development of their project is not possible until a stormwater remedy is put into place.

Per the agreement, Barak Group has been working with Abonmarche Consulting to develop a conceptual plan to address the stormwater problems generated from approximately 62 acres of drainage basin. In order for the plan to work, stormwater facilities are needed for Barak’s property as well as the Pilgrim Partners property to the north and the undeveloped land owned by MR Realty to the south and all three areas will need to be tied together with piping to properly function. For the past several months, we’ve been working with both of the adjacent property owners to put together agreements regarding their contributions to the overall plan. The conceptual plan for the proposed improvements is as follows:



SUMMARY OF THE AGREEMENT TERMS WITH PILGRIM PARTNERS, LLC

1. City shall pay for the engineering, application fees and recording costs incurred to obtain secondary subdivision (final plat) approval and a replat of the Plymouth Avenue Professional Park, if necessary, that incorporates and includes the stormwater facilities required by the stormwater retention/detention plan developed by Abonmarche and dated July 13, 2019.
2. Pilgrim Partners shall grant to the City a utility easement twenty feet (20’) in width, running north and south along the east boundary of the Plymouth Avenue TIF that would allow the City to install a tile to carry stormwater from the development parcels to the south to an existing stormwater tile running along Plymouth Avenue (SR 119).

3. City shall allow Pilgrim Partners to connect an overflow pipe from the stormwater detention facility that serves their current development to the stormwater tile the City shall install on its easement along the east boundary of the Plymouth Avenue TIF. City shall install the connection as part of the overall project and regrade the slopes the existing pond on Pilgrim Partners' property at that time to allow for improved maintenance of the pond but capacity of the pond shall not decrease.
4. City shall remove existing landscaping along the east boundary line of the Pilgrim Partners property to allow for the construction of the stormwater infrastructure. Once installed, the City shall purchase and install a six (6) foot vinyl privacy fence along the property line to satisfy the buffer requirements established by the Goshen Zoning Ordinance due to the proximity of a residential development to the east.

SUMMARY OF THE AGREEMENT TERMS WITH MR REALTY IV, LLC

1. MR Realty IV shall allow the City to construct a stormwater detention basin facility on the northeast portion of the MR Realty IV Real Property as depicted.
2. The size of the stormwater detention basin facility planned for the MR Realty IV Real Property is designed to accommodate future villas, duplexes or single family residential development, and any other type of development on the MR Realty IV Real Property may require additional stormwater detention facilities on their property.
3. The City shall supply and erect a vinyl-coated chain link fence around the perimeter of the stormwater detention basic facility.
4. The City shall maintain the stormwater detention basin facility on the northeast portion of the MR Realty IV Real Property with mowing two or three times per year once the basin is established, and the City's obligation to maintain such facility shall continue until such time as construction of any structure commences on any portion of the MR Realty IV Real Property, at which time the City shall no longer have an obligation to maintain the stormwater detention basin facility.
5. MR Realty IV shall grant to the City access across the MR Realty IV Real Property for purposes of construction and maintenance of the stormwater detention facility the City shall construct.
6. MR Realty IV shall grant to the City an easement for stormwater purposes over that portion of the MR Realty IV Real Property for the construction of the stormwater detention basin facility, make the stormwater detention basin facility of a plat, or record an appropriate instrument to preserve sufficient real property to support the stormwater detention basin facility.
7. All soil excavated to construct the stormwater detention facility on MR Realty IV's land shall remain on-site for their future use.

PROJECT TIMELINE

Once all parties have executed the necessary agreements, Barak Group will give Abonmarche notice to proceed for the full project design. After design is complete and all approvals are in place, the City will bid the project and oversee the construction contract and manage the project. The desired timeline is as follows:

- 12/13/2019 Agreements for the Development of Stormwater Facilities to be approved by the Goshen Redevelopment Commission with both MR Realty IV and Pilgrim Partners
- 3/04/2020 Project plans to be submitted to the City of Goshen for Tech Review
- 4/10/2020 Construction Plans and Specifications to be released for bidding
- 5/04/2020 Bids Due & Opened by the City of Goshen Board of Public Works & Safety
- 5/12/2020 Bid to be awarded by the Goshen Redevelopment Commission
- 5/18/2020 Notice to Proceed to be given to Contractor
- 10/30/2020 Project to be completed

We are requesting that the Commission approved the Agreements for Development of Stormwater Facilities with Pilgrim Partners, LLC and MR Realty IV, LLC to allow for this project to continue forward. The Commission's contribution to the project will be limited to the funding available in the Plymouth Ave TIF and the Barak Group is responsible for funding any cost above what we have available.

Development of Stormwater Facilities and Extension of Lighthouse Lane (247 LF) to the Crossing Subdivision

Preliminary Construction Cost Estimate

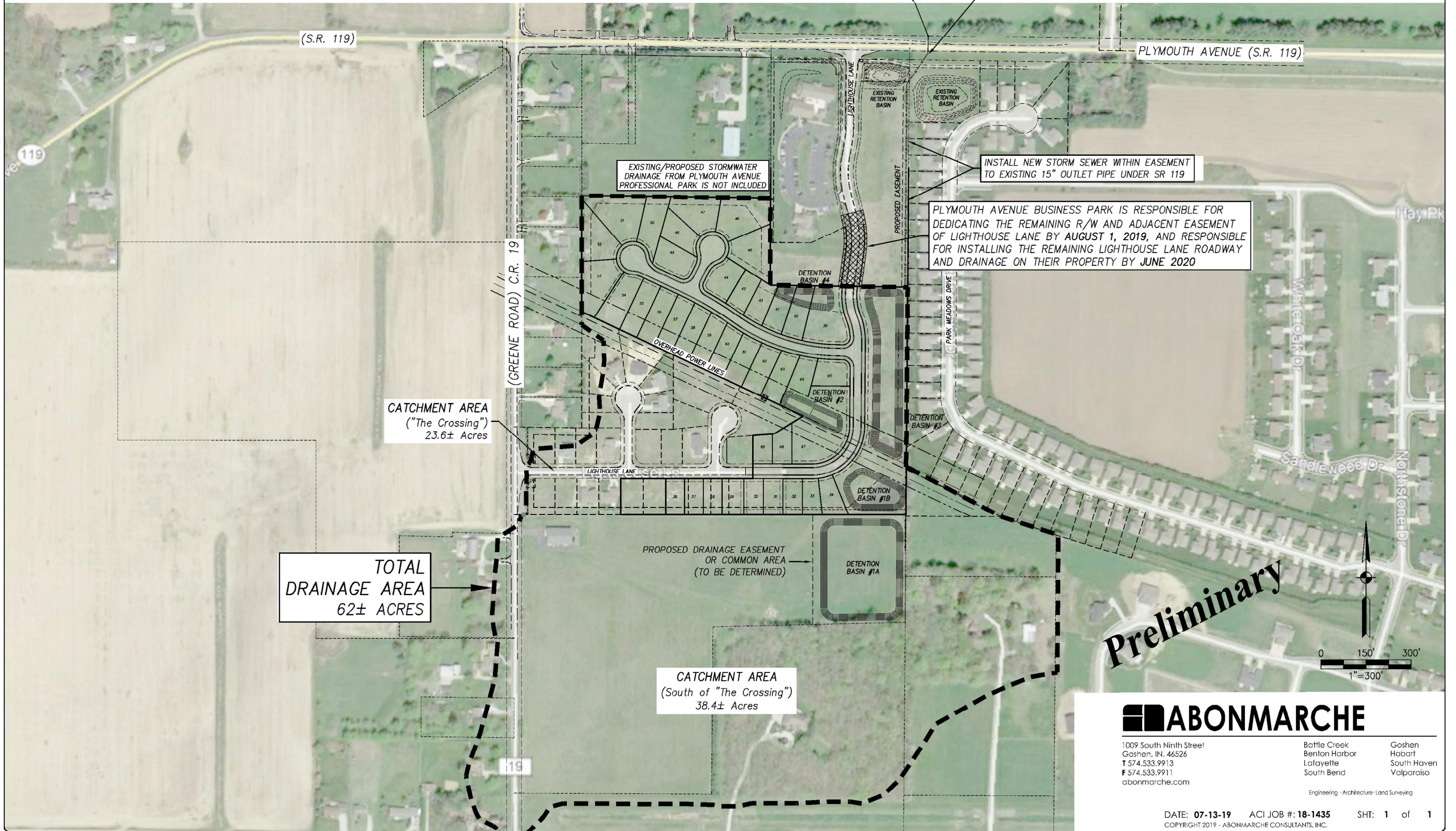
December 10, 2019

<i>Description</i>	<i>Estimated</i>		<i>Unit Price</i>	<i>Estimated Cost</i>
	<i>Quantity</i>	<i>Unit</i>		
1 Construction Notice Board	1	LS	\$1,000.00	\$1,000
2 Construction Engineering	1	LS	1.5%	\$9,512
3 Mobilization and Demobilization (5% max)	1	LS	5.0%	\$31,705
4 Maintenance of Traffic	1	LS	\$2,500.00	\$2,500
5 Existing Basin Maintenance (Pilgrim Partners)	1	LS	\$10,000.00	\$10,000
6 Clearing	1	LS	\$7,500.00	\$7,500
7A Tree Removal, 6"	12	EA	\$200.00	\$2,400
7B Tree Removal, 8"	12	EA	\$300.00	\$3,600
7C Tree Removal, 10"	2	EA	\$400.00	\$800
7D Tree Removal, 12"	2	EA	\$500.00	\$1,000
8 Curb and Gutter, Remove	240	LFT	\$10.00	\$2,400
9A Common Excavation, Roadway	500	CYD	\$25.00	\$12,500
9B Common Excavation, Detention Basin (South Property)	21,600	CYD	\$12.00	\$259,200
10A Strip Topsoil, Roadway	250	CYD	\$12.00	\$3,000
10B Strip Topsoil, Detention Basin	4,000	CYD	\$12.00	\$48,000
11A "B" Borrow, Roadway	500	CYD	\$20.00	\$10,000
11B "B" Borrow, Pipe Backfill	945	CYD	\$20.00	\$18,900
12A Temporary Erosion Control	1	LS	\$10,000.00	\$10,000
12B Erosion Control Blankets	700	SYD	\$5.00	\$3,500
13 Compacted Aggregate for Base, No. 53 (6")	310	TONS	\$30.00	\$9,300
14A HMA Surface, 9.5 mm, Type B (1 1/2")	55	TONS	\$100.00	\$5,500
14B HMA Intermediate, 19.0 mm, Type B (2")	73	TONS	\$85.00	\$6,205
14C HMA Base, 25.0 mm, Type B (3")	110	TONS	\$75.00	\$8,250
14D Asphalt for Tack Coat	1	TON	\$250.00	\$250
15 Concrete Curb and Gutter	500	LFT	\$20.00	\$10,000
16 Concrete Sidewalk, 4" thick	160	SYD	\$50.00	\$8,000
17A Storm Sewer Pipe, Circular, 15"	800	LFT	\$55.00	\$44,000
17B Storm Sewer Pipe, Circular, 24"	150	LFT	\$85.00	\$12,750
18 Storm Sewer Manhole, 48"	3	EA	\$4,500.00	\$13,500
19A Pipe End Section, 15"	1	EA	\$1,500.00	\$1,500
19B Pipe End Section, 24"	4	EA	\$1,500.00	\$6,000
20 Geotextile Fabric	65	SYD	\$10.00	\$650
21 Riprap, Revetment, Class 1	65	SYD	\$90.00	\$5,850
22 Mulched Seeding, Type U	4,300	SYD	\$3.00	\$12,900
23 Fence, Privacy, Vinyl, 6' high	660	LFT	\$70.00	\$46,200
24 Fence, Chain Link, Vinyl Coated, 6' high	1,370	LFT	\$35.00	\$47,950
			Subtotal:	\$676,320
			Contingency (10%)	\$67,632
			ESTIMATED TOTAL	\$743,952

Estimate Notes

1. Sanitary sewer and water main already installed in Lighthouse Lane on Pilgrim Partners property.
2. Lighthouse Lane shall utilize roadside drainage swales per original design plans.
3. Assumption - excavated material from south property to remain onsite. To Be Confirmed with Property Owner.
4. Assumption - Pilgrim Partners to dedicate remaining right-of-way of Lighthouse Lane and all necessary easements.
5. Street lighting is not included.

DRAINAGE AREA EXHIBIT



EXISTING 15" TILE TO BLACK SQUIRREL POND / DRAINAGE WAY

CONNECT NEW STORM SEWER TO 15" OUTLET PIPE

EXISTING/PROPOSED STORMWATER DRAINAGE FROM PLYMOUTH AVENUE PROFESSIONAL PARK IS NOT INCLUDED

INSTALL NEW STORM SEWER WITHIN EASEMENT TO EXISTING 15" OUTLET PIPE UNDER SR 119

PLYMOUTH AVENUE BUSINESS PARK IS RESPONSIBLE FOR DEDICATING THE REMAINING R/W AND ADJACENT EASEMENT OF LIGHTHOUSE LANE BY AUGUST 1, 2019, AND RESPONSIBLE FOR INSTALLING THE REMAINING LIGHTHOUSE LANE ROADWAY AND DRAINAGE ON THEIR PROPERTY BY JUNE 2020

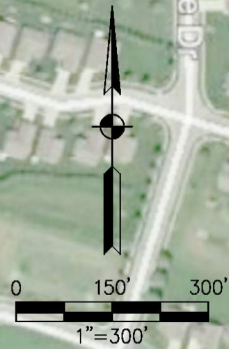
CATCHMENT AREA ("The Crossing") 23.6± Acres

TOTAL DRAINAGE AREA 62± ACRES

PROPOSED DRAINAGE EASEMENT OR COMMON AREA (TO BE DETERMINED)

CATCHMENT AREA (South of "The Crossing") 38.4± Acres

Preliminary



ABONMARCHE

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Goshen, IN, 46526
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F 574.533.9911
abonmarche.com

Battle Creek
Benton Harbor
Lafayette
South Bend

Goshen
Hobart
South Haven
Valparaiso

Engineering · Architecture · Land Surveying

O:\Projects\2018\18-1435 Barak Group-The Crossing Subdivision\CAD\Civil\Drawings\Drainage Report\18-1435 Drainage Watershed Map - Revised 07-10-19.dwg, Exhibit, 7/10/2019 7:46:21 AM, kgoak, 1:1

RESOLUTION 75-2019

**Approve and Authorize Execution of Agreement with Pilgram Partners, LLC
For Development of Stormwater Facilities**

WHEREAS it has been determined by a drainage study that stormwater improvements are needed in the Plymouth Avenue Economic Development Area.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Redevelopment Commission approves the terms and conditions of the Agreement with Pilgram Partners, LLC for the Development of Stormwater Facilities attached to and made a part of this resolution.

BE IT FURTHER RESOLVED that Mark Brinson, Community Development Director is authorized to execute the Agreement with Pilgram Partners, LLC on behalf of the City of Goshen and Goshen Redevelopment Commission.

PASSED and ADOPTED on December 13, 2019

Thomas W. Stump, President

Andrea Johnson, Secretary

**AGREEMENT FOR THE DEVELOPMENT
OF STORMWATER FACILITIES**

THIS AGREEMENT, is made and entered into this ____ day of December, 2019, by and between City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Redevelopment Commission and the Goshen Board of Public Works and Safety, hereinafter referred to as "City," and Pilgrim Partners, LLC, an Indiana limited liability company, hereinafter referred to as "Pilgrim Partners."

WHEREAS Barak Group, LLC continues the development of approximately twenty-four (24) acres of real property generally located south of Plymouth Avenue (State Road 119) and east of County Road 19, more particularly described as follows:

A part of the southwest quarter of section 17, township 36 north, range 6 east, Elkhart township, Elkhart county, Indiana, being more particularly described as follows:

Commencing at a county monument marking the southwest corner of the southwest quarter of said section 17; thence on an assumed bearing of north 00 degrees 00 minutes 51 seconds east along the west line of the southwest quarter of said section 17 and the centerline of county road number 19. A distance of 1072.49 feet to a mag nail marking the point of beginning of this description; thence continuing north 00 degrees 00 minutes 51 seconds east along the west line of the southwest quarter of said section 17 and the centerline of county road number 19, a distance of 292.55 feet to the southwest corner of the plat of hay's farm subdivision, a subdivision in Elkhart township, said plat being recorded in the office of the recorder of Elkhart county in plat book 16, page 8; thence south 89 degrees 09 minutes 09 seconds east along the south line of lot number one (1) as said lot is known and designated on the plat of said hay's farm subdivision and the extension thereof, a distance of 225.00 feet to the southeast corner of said lot number one (1); thence north 00 degrees 00 minutes 51 seconds east along east line of lot number one (1) through lot number seven (7), inclusive, as the said lots are known and designated on the plat of said hay's farm subdivision, a distance of 773.40 feet to a rebar marking the southwest corner of a parcel of land conveyed to Larry W. Shirk and Esther Mae Shirk as described and recorded in the office of the recorder of Elkhart County in instrument number 98 021249; thence south 89 degrees 06 minutes 27 seconds east along the south line of said shirk parcel, a distance of 628.57 feet to a rebar marking the southeast corner of said shirk parcel; thence south 00 degrees 13 minutes 00 seconds west along the west line of a parcel of land conveyed to DJ Construction Co., Inc. as described and recorded in the office of the recorder of Elkhart County in instrument number 2006 32973; thence south 00 degrees 13 minutes 00 seconds west along the west line of said DJ Construction Co., Inc. Parcel, a distance of 288.46 feet to a

rebar marking the southwest corner of said DJ Construction Co., Inc. Parcel; thence south 89 degrees 06 minutes 27 seconds east along the south line of said DJ Construction Co., Inc. Parcel, a distance of 458.18 feet to a rebar on the west line of the plat of the Villas of Park Meadows at Clover Trails, section 2, a subdivision in Elkhart township, said plat being recorded in the office of the recorder of Elkhart County in plat book 31, page 35; thence south 00 degrees 27 minutes 00 seconds west along the west line of the plat of said the Villas of Park Meadows at Clover Trails, section 2, a distance of 757.68 feet to a rebar; thence north 89 degrees 56 minutes 53 seconds west, a distance of 1304.81 feet to the point of beginning of this description containing 24.700 of an acre, more or less, being subject to all easements, restrictions and public rights of way of record.

The described real estate shall hereinafter be referred to as the "Barak Real Property."

WHEREAS the City established the Plymouth Avenue Economic Development Area consisting of eight (8) acres of real property in Elkhart Township, generally located south of Plymouth Avenue, east of County Road 19 (Greene Road), west of Indiana Avenue, and north of County Road 36, being more particularly described as follows:

A part of the Southwest Quarter (SW $\frac{1}{4}$) of Section Seventeen (17), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana, more particularly described as follows:

Commencing at the northwest corner of said Quarter Section, thence South 89 degrees 06 minutes 44 seconds East, along the north line of said Southwest Quarter and the center of State Road 119, a distance of 855.37 feet, to the northeast corner of a parcel of land conveyed to Larry W. and Esther Mae Shirk as described and recorded in the office of the Recorder of Elkhart County in Instrument Number 98 021249; thence South 00 degrees 13 minutes 16 seconds West along the east line of said Shirk property, a distance of 40.00 feet to the point of beginning of this description; thence South 89 degrees 06 minutes 44 seconds East (parallel to the north line of the Southwest Quarter of said Section 17), a distance of 461.06 feet (said point being offset 40.00 feet from the north line of the Southwest Quarter of said Section 17 and 40.00 feet from the northwest corner of a parcel of land conveyed to Steven M. Hay as described and recorded in the office of the Recorder of Elkhart County in Instrument Number 98 005069); thence South 00 degrees 27 minutes 00 seconds West along the west line of said Hay parcel, a distance of 758.34 feet; thence North 89 degrees 06 minutes 11 seconds West, a distance of 458.03 feet; thence North 00 degrees 13 minutes 16 seconds East, a distance of 288.46 feet to the southeast corner of said Shirk property; thence continuing along the same bearing North 00 degrees 13 minutes 16 seconds East along the east line of said Shirk property, a distance of 469.84 feet to the point of beginning of this description containing 8.00 acres, more or less.

The described real estate shall hereinafter be referred to as the "Plymouth Avenue TIF."

WHEREAS, Pilgrim Partners owns all real property located in the Plymouth Ave TIF that has not already been dedicated to the City of Goshen for Lighthouse Lane;

WHEREAS the City entered into an Agreement for the Development of Stormwater Facilities with Barak Group, LLC, a copy of which was recorded with the Elkhart County Recorder as Instrument Number 2018-19334, which agreement obligates the Barak Group, LLC to develop a stormwater retention/detention plan for the Barak Real Property, and obligates Barak Group, LLC and the City to each undertake certain obligations relative to stormwater affecting to the Plymouth Avenue TIF real property;

WHEREAS the stormwater plan being developed by Barak Group LLC is expected to include requirements for the modification of existing stormwater facilities that are located within the Plymouth Avenue Economic Development Area, and/or for additional stormwater facilities within the Plymouth Avenue Economic Development Area;

WHEREAS Plymouth Avenue TIF funds shall be utilized to make improvements and/or additions to stormwater facilities within the Plymouth Avenue Economic Development Area as described below, which will help alleviate water retention/detention issues within the Plymouth Avenue Economic Development Area, and for the extension of Lighthouse Lane.

NOW THEREFORE in consideration of the mutual promises, terms and conditions to be kept and performed by City and Pilgrim Partners, LLC, the parties agree as follows:

1. STORMWATER FACILITIES

- 1.1. Pilgrim Partners shall seek and obtain approval of a secondary subdivision (final plat) and replat of the Plymouth Avenue Professional Park, if necessary, that incorporates and includes stormwater facilities required by the stormwater retention/detention plan developed by Barak Group LLC and approved by the City. The City shall pay all reasonable and necessary engineering, application, and recording costs incurred by Pilgrim Partners in seeking and obtaining approval of a secondary subdivision (final plat) and replat of the Plymouth Avenue Professional Park.
- 1.2. Pilgrim Partners shall grant to the City a utility easement twenty feet (20') in width, running north and south along the east boundary of the Plymouth Avenue TIF that would allow the City to install a tile to carry stormwater from real property located south of the Plymouth Avenue TIF to an existing stormwater tile running along Plymouth Avenue (S.R. 119).
- 1.3. The City shall allow Pilgrim Partners to connect an overflow pipe from a stormwater detention facility located on Parcel Number 20-11-17-301-021.000-015 to the stormwater tile the City shall install on its easement along the east boundary of the Plymouth

Avenue TIF. City shall install the connection as part of the overall project and regrade the slopes of the existing pond on Pilgrim Partners' property at that time to allow for improved maintenance of the pond.

- 1.4. City shall remove existing landscaping along the east boundary line of the Pilgrim Partners property to allow for the construction of the stormwater infrastructure. Once the utility infrastructure is installed, the City shall purchase and install a six (6) foot vinyl privacy fence along the property line to satisfy the buffer requirements established by the Goshen Zoning Ordinance due to the proximity of a residential development to the east.

2. CONSTRUCTION OF LIGHTHOUSE LANE

- 2.1. The City shall construct, or require Barak Group, LLC to construct, all improvements necessary for the extension of Lighthouse Lane and associated utilities from the current location of Lighthouse Lane within the Plymouth Avenue TIF to the south to the northern boundary of the Barak Real Property, all at no cost to Pilgrim Partners.
- 2.2. Pilgrim Partners shall dedicate to the City, and the City shall accept from Pilgrim Partners sufficient real property for the construction of the Lighthouse Lane and utility extension.

3. TIMELINE - City and Pilgrim Partners agree to the following timeline for the stormwater facility construction:

12/13/2019	Agreements for the Development of Stormwater Facilities to be approved by the Goshen Redevelopment Commission with both MR Realty IV and Pilgrim Partners, LLC
03/04/2020	Project plans to be submitted to the City of Goshen for Tech Review
04/10/2020	Construction Plans and Specifications to be released for bidding
05/04/2020	Bids Due & Opened by the City of Goshen Board of Public Works & Safety
05/12/2020	Bid to be awarded by the Goshen Redevelopment Commission
05/18/2020	Notice to Proceed to be given to Contractor
10/30/2020	Project to be completed

The parties understand that unexpected events or circumstances may arise that cause this timeline to be revised. Both parties shall use all reasonable effort to perform each party's obligations according to such timeline. Deviations from this timeline shall not constitute a breach of this Agreement unless such deviation is caused by unreasonable delay by one party or if such deviation causes prejudice to the other party.

4. MISCELLANEOUS

- 4.1. If it becomes necessary for any party to this agreement to institute litigation in order to enforce or construe the terms and provisions of this agreement, the prevailing party

shall be entitled to recover its reasonable attorney's fees and costs incurred in such litigation from the non-prevailing party.

- 4.2. No remedy conferred upon any party in this agreement is intended to be exclusive of any other remedy provided or permitted by law, but each remedy shall be cumulative and shall be in addition to any other remedy given under the terms of this agreement or existing at law or equity. Every power or remedy provided in this agreement may be exercised concurrently or independently and as often as deemed appropriate.
- 4.3. This agreement shall be construed and enforced in accordance with the laws of the State of Indiana. The venue for any action brought by any party relating to or arising out of this agreement shall be in Elkhart County, State of Indiana.
- 4.4. This agreement contains the entire agreement between the parties respecting the matters set forth.

IN WITNESS WHEREOF, the parties have set their hands to this Agreement on the dates set forth below.

City of Goshen, Indiana

Pilgrim Partners, LLC

By: _____
Jeremy P. Stutsman, Mayor

By: _____
Fred Simon, Jr.

By: _____
Mark Brinson,
Community Development Director

Gayle Borkowski

Vernon Maes

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

Notary Public

Printed:_____

Resident of Elkhart County, Indiana

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2019.

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My Commission Expires:

Notary Public

Printed:_____

Resident of Elkhart County, Indiana

Prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Dept.,
204 East Jefferson Street, Suite 2, Goshen, Indiana 46528.

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 (Bodie J. Stegelmann).

RESOLUTION 76-2019

**Approve and Authorize Execution of Agreement with MR Realty IV, LLC
For Development of Stormwater Facilities**

WHEREAS it has been determined by a drainage study that stormwater improvements are needed for the Plymouth Avenue Economic Development Area.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Redevelopment Commission approves the terms and conditions of the Agreement with MR Realty IV, LLC for the Development of Stormwater Facilities attached to and made a part of this resolution.

BE IT FURTHER RESOLVED that Mark Brinson, Community Development Director is authorized to execute the Agreement with MR Realty IV, LLC on behalf of the City of Goshen and Goshen Redevelopment Commission.

PASSED and ADOPTED on December 13, 2019

Thomas W. Stump, President

Andrea Johnson, Secretary

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OF STORMWATER FACILITIES**

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WHEREAS Barak Group, LLC continues the development of approximately twenty-four (24) acres of real property generally located south of Plymouth Avenue (State Road 119) and east of County Road 19, more particularly described as follows:

A part of the southwest quarter of section 17, township 36 north, range 6 east, Elkhart township, Elkhart county, Indiana, being more particularly described as follows:

Commencing at a county monument marking the southwest corner of the southwest quarter of said section 17; thence on an assumed bearing of north 00 degrees 00 minutes 51 seconds east along the west line of the southwest quarter of said section 17 and the centerline of county road number 19. A distance of 1072.49 feet to a mag nail marking the point of beginning of this description; thence continuing north 00 degrees 00 minutes 51 seconds east along the west line of the southwest quarter of said section 17 and the centerline of county road number 19, a distance of 292.55 feet to the southwest corner of the plat of hay's farm subdivision, a subdivision in Elkhart township, said plat being recorded in the office of the recorder of Elkhart county in plat book 16, page 8; thence south 89 degrees 09 minutes 09 seconds east along the south line of lot number one (1) as said lot is known and designated on the plat of said hay's farm subdivision and the extension thereof, a distance of 225.00 feet to the southeast corner of said lot number one (1); thence north 00 degrees 00 minutes 51 seconds east along east line of lot number one (1) through lot number seven (7), inclusive, as the said lots are known and designated on the plat of said hay's farm subdivision, a distance of 773.40 feet to a rebar marking the southwest corner of a parcel of land conveyed to Larry W. Shirk and Esther Mae Shirk as described and recorded in the office of the recorder of Elkhart County in instrument number 98 021249; thence south 89 degrees 06 minutes 27 seconds east along the south line of said shirk parcel, a distance of 628.57 feet to a rebar marking the southeast corner of said shirk parcel; thence south 00 degrees 13 minutes 00 seconds west along the west line of a parcel of land conveyed to DJ Construction Co., Inc. as described and recorded in the office of the recorder of Elkhart County in instrument number 2006 32973; thence south 00 degrees 13 minutes 00 seconds west along the west line of said DJ Construction Co., Inc. Parcel, a distance of 288.46 feet to a

rebar marking the southwest corner of said DJ Construction Co., Inc. Parcel; thence south 89 degrees 06 minutes 27 seconds east along the south line of said DJ Construction Co., Inc. Parcel, a distance of 458.18 feet to a rebar on the west line of the plat of the Villas of Park Meadows at Clover Trails, section 2, a subdivision in Elkhart township, said plat being recorded in the office of the recorder of Elkhart County in plat book 31, page 35; thence south 00 degrees 27 minutes 00 seconds west along the west line of the plat of said the Villas of Park Meadows at Clover Trails, section 2, a distance of 757.68 feet to a rebar; thence north 89 degrees 56 minutes 53 seconds west, a distance of 1304.81 feet to the point of beginning of this description containing 24.700 of an acre, more or less, being subject to all easements, restrictions and public rights of way of record.

The described real estate shall hereinafter be referred to as the "Barak Real Property."

WHEREAS the City established the Plymouth Avenue Economic Development Area consisting of eight (8) acres of real property in Elkhart Township, generally located south of Plymouth Avenue, east of County Road 19 (Greene Road), west of Indiana Avenue, and north of County Road 36, being more particularly described as follows:

A part of the Southwest Quarter (SW $\frac{1}{4}$) of Section Seventeen (17), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana, more particularly described as follows:

Commencing at the northwest corner of said Quarter Section, thence South 89 degrees 06 minutes 44 seconds East, along the north line of said Southwest Quarter and the center of State Road 119, a distance of 855.37 feet, to the northeast corner of a parcel of land conveyed to Larry W. and Esther Mae Shirk as described and recorded in the office of the Recorder of Elkhart County in Instrument Number 98 021249; thence South 00 degrees 13 minutes 16 seconds West along the east line of said Shirk property, a distance of 40.00 feet to the point of beginning of this description; thence South 89 degrees 06 minutes 44 seconds East (parallel to the north line of the Southwest Quarter of said Section 17), a distance of 461.06 feet (said point being offset 40.00 feet from the north line of the Southwest Quarter of said Section 17 and 40.00 feet from the northwest corner of a parcel of land conveyed to Steven M. Hay as described and recorded in the office of the Recorder of Elkhart County in Instrument Number 98 005069); thence South 00 degrees 27 minutes 00 seconds West along the west line of said Hay parcel, a distance of 758.34 feet; thence North 89 degrees 06 minutes 11 seconds West, a distance of 458.03 feet; thence North 00 degrees 13 minutes 16 seconds East, a distance of 288.46 feet to the southeast corner of said Shirk property; thence continuing along the same bearing North 00 degrees 13 minutes 16 seconds East along the east line of said Shirk property, a distance of 469.84 feet to the point of beginning of this description containing 8.00 acres, more or less.

The described real estate shall hereinafter be referred to as the "Plymouth Avenue TIF."

WHEREAS, Pilgrim Partners owns all real property located in the Plymouth Ave TIF that has not already been dedicated to the City of Goshen for Lighthouse Lane;

WHEREAS the City entered into an Agreement for the Development of Stormwater Facilities with Barak Group, LLC, a copy of which was recorded with the Elkhart County Recorder as Instrument Number 2018-19334, which agreement obligates the Barak Group, LLC to develop a stormwater retention/detention plan for the Barak Real Property, and obligates Barak Group, LLC and the City to each undertake certain obligations relative to stormwater affecting to the Plymouth Avenue TIF real property;

WHEREAS the stormwater plan being developed by Barak Group LLC is expected to include requirements for the modification of existing stormwater facilities that are located within the Plymouth Avenue Economic Development Area, and/or for additional stormwater facilities within the Plymouth Avenue Economic Development Area;

WHEREAS MR Realty IV owns real property directly south of the Barak Real Property [*legal description*] (Parcel Number 20-11-17-351-007.000-014), hereinafter referred to as "MR Realty IV Real Property," that MR Realty IV plans to develop into a residential subdivision to include villas, duplexes or single family dwellings;

WHEREAS the stormwater plan being developed by Barak Group LLC is expected to include requirements for a stormwater detention facility located on the MR Realty IV Real Property;

WHEREAS Plymouth Avenue TIF funds shall be utilized to make improvements and/or additions to stormwater facilities on the MR Realty IV Real Property as described below, which will help alleviate water retention/detention issues within the Plymouth Avenue Economic Development Area.

NOW THEREFORE in consideration of the mutual promises, terms and conditions to be kept and performed by City and MR Realty IV, LLC, the parties agree as follows:

1. STORMWATER FACILITIES

- 1.1. MR Realty IV shall allow the City to construct a stormwater detention basin facility on the northeast portion of the MR Realty IV Real Property as depicted on the Drainage Area Exhibit attached hereto and made a part hereof.
- 1.2. The size of the stormwater detention basin facility planned for the MR Realty IV Real Property is designed to accommodate future villas, duplexes or single family residential development on the MR Realty IV Real Property, and any other type of development on

the MR Realty IV Real Property may require additional stormwater detention facilities on the MR Realty IV Real Property.

- 1.3. The City shall supply and erect a vinyl-coated chain link fence around the perimeter of the stormwater detention basic facility.
- 1.4. The City shall maintain the stormwater detention basin facility on the northeast portion of the MR Realty IV Real Property with mowing two or three times per year once such is constructed, and the City's obligation to maintain such facility shall continue until such time as construction of any structure commences on any portion of the MR Realty IV Real Property, at which time the City shall no longer have an obligation to maintain the stormwater detention basin facility.
- 1.5. MR Realty IV shall grant to the City access across the MR Realty IV Real Property for purposes of construction and maintenance of the stormwater detention facility the City shall construct.
- 1.6. MR Realty IV shall grant to the City an easement for stormwater purposes over that portion of the MR Realty IV Real Property for the construction of the stormwater detention basin facility, make the stormwater detention basin facility of a plat, or record an appropriate instrument to preserve sufficient real property to support the stormwater detention basin facility.
- 1.7. All soil excavated to construct the stormwater detention facility on MR Realty IV's land shall remain on-site for their future use.

2. TIMELINE - City and MR Realty IV agree to the following timeline for the stormwater facility construction:

12/13/2019	Agreements for the Development of Stormwater Facilities to be approved by the Goshen Redevelopment Commission with both MR Realty IV and Pilgrim Partners, LLC
03/04/2020	Project plans to be submitted to the City of Goshen for Tech Review
04/10/2020	Construction Plans and Specifications to be released for bidding
05/04/2020	Bids Due & Opened by the City of Goshen Board of Public Works & Safety
05/12/2020	Bid to be awarded by the Goshen Redevelopment Commission
05/18/2020	Notice to Proceed to be given to Contractor
10/30/2020	Project to be completed

The parties understand that unexpected events or circumstances may arise that cause this timeline to be revised. Both parties shall use all reasonable effort to perform each party's obligations according to such timeline. Deviations from this timeline shall not constitute a breach of this Agreement unless such deviation is caused by unreasonable delay by one party or if such deviation causes prejudice to the other party.

3. MISCELLANEOUS

- 3.1. If it becomes necessary for any party to this agreement to institute litigation in order to enforce or construe the terms and provisions of this agreement, the prevailing party shall be entitled to recover its reasonable attorney’s fees and costs incurred in such litigation from the non-prevailing party.
- 3.2. No remedy conferred upon any party in this agreement is intended to be exclusive of any other remedy provided or permitted by law, but each remedy shall be cumulative and shall be in addition to any other remedy given under the terms of this agreement or existing at law or equity. Every power or remedy provided in this agreement may be exercised concurrently or independently and as often as deemed appropriate.
- 3.3. This agreement shall be construed and enforced in accordance with the laws of the State of Indiana. The venue for any action brought by any party relating to or arising out this this agreement shall be in Elkhart County, State of Indiana.
- 3.4. This agreement contains the entire agreement between the parties respecting the matters set forth.

IN WITNESS WHEREOF, the parties have set their hands to this Agreement on the dates set forth below.

City of Goshen, Indiana

MR Realty IV, LLC

By: _____
Jeremy P. Stutsman, Mayor

By: _____
Richard D. Finnigan

By: _____
Mark Brinson,
Community Development Director

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

Notary Public

Printed: _____

Resident of Elkhart County, Indiana

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Richard D. Finnigan, member of MR Realty IV, LLC, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

Notary Public

Printed: _____

Resident of _____ County, Indiana

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Richard D. Finnigan, member of MR Realty IV, LLC, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

Notary Public
Printed: _____
Resident of _____ County, Indiana

Prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Dept.,
204 East Jefferson Street, Suite 2, Goshen, Indiana 46528.

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 (Bodie J. Stegelmann).