



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: September 29 2016
FROM: Brian Pawlowski, Interim Executive Director
SUBJECT: Development Agreement (Armory LLC)

This Development Agreement (Agreement) is for the former Newman Center, which has been vacant for approximately two years and programming phased out for the last five.

Redevelopment plans for this site are for a multi-purpose facility, including a commercial kitchen and a winery with tasting room. This project will convert the majority of the building into a regional culinary event center, including meeting space and a commercial kitchen for use by food entrepreneurs, with a commissary kitchen for food truck operators, caterers, and others preparing food products in bulk for distribution. Another part of the building will be utilized as a winery and tasting room.

Highlights of the Agreement are:

- Purchase price of \$1
- 10 day due diligence period
- Close within 20 days after the due diligence period
- Buyer pays all closing costs
- Private investment of \$1,300,000
- Local public improvements of \$586,000 (infrastructure & asbestos abatement)
- Project completion within 24 months

Staff requests approval of this Agreement.

INTERNAL USE ONLY: Project Code: _____

Total Amount new/change (inc/dec) in budget: _____; broken down by:
Acct # various

Going to BPW for Contracting? Is this item ready to encumber now?

Existing PO# _____ Inc/Dec \$ _____



DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of September 29, 2016 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Armory LLC, an Indiana limited liability company with its registered address at PO Box 1236, South Bend, IN 46624 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

RECITALS

A. The Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the “Act”).

B. The Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent.

C. In furtherance of its purposes under the Act, the Commission owns certain real property, with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto, located within the corporate boundaries of the City of South Bend, Indiana (the “City”) and within the River East Development Area (the “Area”), which is more particularly described in attached **Exhibit A** (the “Property”).

D. Pursuant to the Act, the Commission adopted Resolution No. 3340 on June 30, 2016, whereby the Commission established an offering price of One Hundred Fourteen Thousand Dollars (\$114,000.00) for the Property.

E. Pursuant to the Act, on June 30, 2016, the Commission authorized the publication, on July 8, 2016, and July 15, 2016, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before July 28, 2016 at 9:00 a.m.

F. As of July 28, 2016 at 9:00 a.m., the Commission received no bids for the Property, and, therefore, having satisfied the conditions stated in Section 22 of the Act, the Commission now desires to sell the Property to the Developer on the terms stated in this Agreement.

G. The Developer desires to acquire the Property from the Commission and to construct, renovate, or otherwise rehabilitate certain elements of the Property (the “Project”) in accordance with the project plan attached hereto as **Exhibit B** (the “Project Plan”).

H. The Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project.

I. The Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents.

J. The Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in **Exhibit C** (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.2 Funding Amount. “Funding Amount” means an amount not to exceed Five Hundred Eighty Six Thousand Dollars (\$586,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.3 Private Investment. “Private Investment” means an amount no less than One Million Three Hundred Thousand Dollars (\$1,300,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project.

SECTION 2. INTERPRETATION, TERMS, AND RECITALS.

2.1 Interpretation.

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 3. PURCHASE AND SALE OF PROPERTY; ACCESS.

3.1 **Purchase and Sale; Purchase Price.** The Commission agrees to sell the Property to the Developer, and the Developer agrees to purchase the Property from the Commission, subject to the terms and conditions of this Agreement. The purchase price for the Property shall be One Dollar (\$1.00) (the “Purchase Price”), payable by the Developer to the Commission in cash at the closing described in Section 3.4 below (the “Closing,” the date of which is the “Closing Date”).

3.2 **Due Diligence.** The Developer’s obligation to complete the purchase of the Property is conditioned upon the Developer’s examination, in the Developer’s discretion and at the Developer’s sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable (the Developer’s “Due Diligence”). The Developer will have a period of ten (10) days following the Effective Date of this Agreement to complete its examination of the Property (the “Due Diligence Period”). Upon the Developer’s request, the Commission will provide the Developer a copy of all known environmental inspection, engineering, title, and survey reports and documents in the Commission’s possession relating to the Property. In the event the Closing does not occur, the Developer will immediately return all such reports and documents to the Commission with or without a written request by the Commission. If at any time within the Due Diligence Period the Developer determines, in its sole discretion, not to proceed with the purchase of the Property, the Developer may terminate this Agreement by written notice to the Commission.

3.3 **“As-Is” Transaction.** The Developer agrees to purchase the Property “as-is, where-is” and without any representations or warranties by the Commission as to the condition of the Property or its fitness for any particular use or purpose. The Commission offers no such representation or warranty as to condition or fitness, and nothing in this Agreement will be construed to constitute such a representation or warranty as to condition or fitness. The Developer’s acceptance of the Property from the Commission at Closing will be subject to all matters and encumbrances of record.

3.4 **Closing.** Unless this Agreement is earlier terminated, the Closing will be held at the offices of Meridian Title Corporation (the “Title Company”), and the Closing Date will be a mutually agreeable date not later than twenty (20) days after the end of the Due Diligence Period. At Closing, the Developer will deliver the Purchase Price to the Commission, conditioned on the Commission’s delivery of a quit claim deed, in the form attached hereto as **Exhibit D**, and possession of the Property to the Developer. The Developer will pay all of the Title Company’s closing and/or document preparation fees, any costs associated with procuring an owner’s or lender’s policy of title insurance, and all recordation or other costs associated with the transaction contemplated in this Agreement.

3.5 **Grant of Easement.** At the Closing, the Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Property (the “Easement”) in the form attached hereto as **Exhibit E**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) inure to the benefit of the Commission and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) shall

bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works.

3.6 Taxes. The Developer, and its successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. The Commission shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in the Commission's liability therefor.

SECTION 4. DEVELOPER'S OBLIGATIONS.

4.1 Generally. The Parties acknowledge and agree that the Commission's agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications delivered to the Commission pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications delivered to the Commission pursuant to Section 4.8 of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the Commission's efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to obtain, at its sole cost, any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement by the date that is twenty-four (24) months after the Effective Date of this Agreement (the "Mandatory Project Completion Date"). Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to complete the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.6 Certificate of Completion; Reversion Upon Default. Promptly after the Developer completes the Project and has satisfied its obligations under this Agreement, the Developer may

request from the Commission a certificate acknowledging such completion and releasing the Commission's reversionary interest in the Property (the "Certificate of Completion"). The Parties agree to record the Certificate of Completion immediately upon issuance, and the Developer will pay the costs of recordation. In the event the Developer fails to perform any of its obligations under this Agreement, including the Developer's obligation to complete the Project by the Mandatory Project Completion Deadline, or satisfactorily prove such performance, then the Commission shall have the right to re-enter and take possession of the Property and to terminate and re-vest in the Commission the estate conveyed to the Developer at Closing and all of the Developer's rights and interests in the Property without offset or compensation for the value of any investments or improvements made by the Developer after the Closing Date. The Parties agree that the Commission's conveyance of the Property to the Developer at Closing will be made on the condition subsequent set forth in the foregoing sentence.

4.7 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the Commission the number of local contractors and local laborers involved in the Project, the amount of bid awards for each contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, and (iii) an itemized accounting generally identifying the Private Investment to date.

4.8 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, the Developer shall deliver a complete set thereof to the Commission.

4.9 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of construction for the Project (including legal fees, architectural and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.10 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same.

4.11 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Property during construction of the Project.

4.12 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in Exhibit E attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.13 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

SECTION 5. COMMISSION'S OBLIGATIONS.

5.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in the Agreement.

5.2 Completion of Local Public Improvements.

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit C attached hereto on a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project in accordance with Section 4.8 of this Agreement, and (b) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount.

In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 7. DEFAULT.

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor

disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of “Force Majeure”). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Local Public Improvements or the Project, except to the extent caused by the negligence of the Commission or its contractors.

SECTION 9. MISCELLANEOUS.

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

9.2 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.3 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

9.4 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.5 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.6 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.7 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: Armory LLC
PO Box 1236
South Bend, IN 46624
Attn: Brad Emberton

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Brian Pawlowski, Acting Executive Director,
South Bend Department of Community Investment

With a copy to: South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

9.8 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.9 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.10 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.11 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or

entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.12 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

9.13 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

9.14 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.15 Time. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

ARMORY LLC

Brad Emberton, Member

1800.0000005 40393285.004

EXHIBIT A

Description of Property

A part of the Southeast Fractional Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana and being all that land conveyed to State of Indiana by Trustee's Deed, Book 355, Page 242 AND a portion of that land conveyed to State Armory Board by Quit Claim Deed, Book 347, Page 533 lying outside of the boundary of the Permanent Right of Way and the Limited Access Right of Way as described in the Right of Way Grant to the Indiana State Highway Commission in Book 648 Page 147, and more particularly described as follows:

Commencing at the calculated location of the southeast corner of said Section 12, said corner being South 0 degrees 13 minutes 54 seconds East 176.56 feet from a Harrison monument found at the southwest corner of Section 7, Township 37 North, Range 3 East; thence North 0 degrees 13 minutes 54 seconds West 742.94 feet along the east line of said Section 12 to the south line of the Limited Access Right of Way described in said Right of Way Grant prolonged; thence North 89 degrees 49 minutes 57 seconds West 10.00 feet along said Limited Access Right of Way prolonged to the west boundary of Eddy Street and the point of beginning of this description; thence North 89 degrees 49 minutes 57 seconds West 216.49 feet (218.8 feet by Book 648 Page 147) along said Limited Access Right of Way to the southwest corner of said Limited Access Right of Way and the north-most point of said Permanent Right of Way, thence South 59 degrees 23 minutes 03 seconds West 50.00 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 30 degrees 37 minutes 01 seconds East 75.00 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 36 degrees 19 minutes 57 seconds East 150.70 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 26 degrees 47 minutes 57 seconds East 150.30 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 17 degrees 30 minutes 11 seconds East 59.82 feet (59.4 feet by Book 648 Page 147) along said Permanent Right of Way to the former southwesterly boundary of Eddy Street; thence North 57 degrees 43 minutes 35 seconds East 56.52 feet along the former southwesterly boundary of said Eddy Street to the west boundary of said Eddy Street (said west boundary being parallel to and 10.00 feet west of said east line of said Section 12); thence North 0 degrees 13 minutes 54 seconds West 371.80 feet along said west boundary to the point of beginning and containing 1.352 acres, more or less.

Parcel Key No. 018-6012-027001

EXHIBIT B

Project Plan

The Developer will rehabilitate and redevelop the Property into a multi-purpose facility, including a commercial kitchen and a winery with a tasting room. Specifically, the Developer agrees to complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

- A. Convert 16,200 square feet of the Property into a regional culinary event center, including meeting space and a commercial kitchen for use by food entrepreneurs and as a commissary kitchen for food truck operators, caterers, and others preparing food products in bulk for distribution.
- B. Convert 5,400 square feet of the Property into a winery and tasting room.

EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

- A. Improvements to the parking lot, sidewalks, sewer, water, utilities, and other infrastructure or building elements located on the exterior of or serving the Property, including items such as roof, masonry, exterior façade improvements, signage, landscaping, and exterior lighting that are necessary to support the redevelopment of the Property in accordance with the terms of this Agreement.
- B. Removal of asbestos contained in the structure located on the Property.

EXHIBIT D

Form of Quit Claim Deed

QUIT CLAIM DEED

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND QUIT CLAIMS to Armory LLC, an Indiana limited liability company with its registered address at PO Box 1236, South Bend, IN 46624 (the "Grantee"),

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

A part of the Southeast Fractional Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana and being all that land conveyed to State of Indiana by Trustee's Deed, Book 355, Page 242 AND a portion of that land conveyed to State Armory Board by Quit Claim Deed, Book 347, Page 533 lying outside of the boundary of the Permanent Right of Way and the Limited Access Right of Way as described in the Right of Way Grant to the Indiana State Highway Commission in Book 648 Page 147, and more particularly described as follows:

Commencing at the calculated location of the southeast corner of said Section 12, said corner being South 0 degrees 13 minutes 54 seconds East 176.56 feet from a Harrison monument found at the southwest corner of Section 7, Township 37 North, Range 3 East; thence North 0 degrees 13 minutes 54 seconds West 742.94 feet along the east line of said Section 12 to the south line of the Limited Access Right of Way described in said Right of Way Grant prolonged; thence North 89 degrees 49 minutes 57 seconds West 10.00 feet along said Limited Access Right of Way prolonged to the west boundary of Eddy Street and the point of beginning of this description; thence North 89 degrees 49 minutes 57 seconds West 216.49 feet (218.8 feet by Book 648 Page 147) along said Limited Access Right of Way to the southwest corner of said Limited Access Right of Way and the north-most point of said Permanent Right of Way, thence South 59 degrees 23 minutes 03 seconds West 50.00 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 30

degrees 37 minutes 01 seconds East 75.00 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 36 degrees 19 minutes 57 seconds East 150.70 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 26 degrees 47 minutes 57 seconds East 150.30 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 17 degrees 30 minutes 11 seconds East 59.82 feet (59.4 feet by Book 648 Page 147) along said Permanent Right of Way to the former southwesterly boundary of Eddy Street; thence North 57 degrees 43 minutes 35 seconds East 56.52 feet along the former southwesterly boundary of said Eddy Street to the west boundary of said Eddy Street (said west boundary being parallel to and 10.00 feet west of said east line of said Section 12); thence North 0 degrees 13 minutes 54 seconds West 371.80 feet along said west boundary to the point of beginning and containing 1.352 acres, more or less. [Parcel Key No. 018-6012-027001]

The Grantor hereby conveys the Property subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in Grantor's development area plan and any design review guidelines associated therewith, as the same may be amended from time to time.

The Grantor conveys the Property to the Grantee pursuant to the terms of that certain Development Agreement dated September 29, 2016, by and between the Grantor and the Grantee (the "Agreement"). Capitalized terms not otherwise defined in this deed will have the meanings stated in the Agreement. Pursuant to Section 4.6 of the Agreement, the Grantor conveys the Property to the Grantee by this deed subject to a certain condition subsequent. In the event the Grantee fails to perform any of its obligations, or satisfactorily prove such performance, under the Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without offset or compensation for the value of any investments improvements made by the Grantee after the delivery of this deed to the Grantee. The recordation of a Certificate of Completion in accordance with Section 4.6 of the Agreement will forever release and discharge the Grantor's reversionary interest stated in the foregoing sentence.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

[Signature page follows.]

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Donald E. Inks, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Special Warranty Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2016.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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. Benjamin J. Dougherty.

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT E

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ day of _____, 2016 (the "Effective Date"), by and between Armory LLC, an Indiana limited liability company with its registered address at PO Box 1236, South Bend, IN 46624 (the "Grantor"), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the "Grantee").

WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the "Easement") on, in, over, under and across the real property described in attached Exhibit 1 (the "Property") for the construction, equipping, and delivery of certain improvements on the Property (the "Local Public Improvements"), together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated September 29, 2016 (the "Development Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee's contractors acting on Grantee's behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the "Construction Termination Date") of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

Armory LLC, an Indiana limited liability company

Brad Emberton, Member

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me known to be the _____ of the Grantor in the above Grant of Temporary Easement, and acknowledged the execution of the same as the Grantor's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2016.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

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. Benjamin J. Dougherty.

EXHIBIT 1

Description of Property

A part of the Southeast Fractional Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana and being all that land conveyed to State of Indiana by Trustee's Deed, Book 355, Page 242 AND a portion of that land conveyed to State Armory Board by Quit Claim Deed, Book 347, Page 533 lying outside of the boundary of the Permanent Right of Way and the Limited Access Right of Way as described in the Right of Way Grant to the Indiana State Highway Commission in Book 648 Page 147, and more particularly described as follows:

Commencing at the calculated location of the southeast corner of said Section 12, said corner being South 0 degrees 13 minutes 54 seconds East 176.56 feet from a Harrison monument found at the southwest corner of Section 7, Township 37 North, Range 3 East; thence North 0 degrees 13 minutes 54 seconds West 742.94 feet along the east line of said Section 12 to the south line of the Limited Access Right of Way described in said Right of Way Grant prolonged; thence North 89 degrees 49 minutes 57 seconds West 10.00 feet along said Limited Access Right of Way prolonged to the west boundary of Eddy Street and the point of beginning of this description; thence North 89 degrees 49 minutes 57 seconds West 216.49 feet (218.8 feet by Book 648 Page 147) along said Limited Access Right of Way to the southwest corner of said Limited Access Right of Way and the north-most point of said Permanent Right of Way, thence South 59 degrees 23 minutes 03 seconds West 50.00 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 30 degrees 37 minutes 01 seconds East 75.00 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 36 degrees 19 minutes 57 seconds East 150.70 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 26 degrees 47 minutes 57 seconds East 150.30 feet (distance quoted from Book 648 Page 147) along said Permanent Right of Way; thence South 17 degrees 30 minutes 11 seconds East 59.82 feet (59.4 feet by Book 648 Page 147) along said Permanent Right of Way to the former southwesterly boundary of Eddy Street; thence North 57 degrees 43 minutes 35 seconds East 56.52 feet along the former southwesterly boundary of said Eddy Street to the west boundary of said Eddy Street (said west boundary being parallel to and 10.00 feet west of said east line of said Section 12); thence North 0 degrees 13 minutes 54 seconds West 371.80 feet along said west boundary to the point of beginning and containing 1.352 acres, more or less.

Parcel Key No. 018-6012-027001

EXHIBIT F

Minimum Insurance Amounts

- A. Worker's Compensation
 - 1. State Statutory
 - 2. Applicable Federal Statutory
 - 3. Employer's Liability \$100,000.00

- B. Comprehensive General Liability
 - 1. Bodily Injury
 - a. \$5,000,000.00 Each Occurrence
 - b. \$5,000,000.00 Annual Aggregate Products and Completed Operation

 - 2. Property Damage
 - a. \$5,000,000.00 Each Occurrence
 - b. \$5,000,000.00 Annual Aggregate

- C. Comprehensive Automobile Liability
 - 1. Bodily Injury
 - a. \$500,000.00 Each Person
 - b. \$500,000.00 Each Accident

 - 2. Property Damage
 - a. \$500,000.00 Each Occurrence