



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Agenda

Regular Meeting, October 27, 2016, 9:30 a.m.

1. Roll Call

2. Approval of Minutes

A. Minutes of the Regular Meeting of Thursday, October 13, 2016

3. Approval of Claims

A. Claims Submitted October 27, 2016

4. Old Business

5. New Business

A. River West Development Area

1. Development Agreement, Unity Gardens
2. License Agreement, Swing Batter Swing, LLC
3. First Amendment to Real Estate Purchase Agreement, Heading for Home, LLC
4. Development Agreement, Wayne Street Associates, LLC
5. First Amendment to Real Estate Purchase Agreement, Bare Hands Brewery
6. Environmental Services Contract for Ivy Tower Facility Weaver Consultants Group

B. River East Development Area

1. Budget Request Perley Primary Center Safe Routes to School

C. Other

1. License Agreement 2016 DTSA Santa's Workshop



6. Progress Reports

- A. Tax Abatement
- B. Common Council
- C. Other

7. Next Commission Meeting:

Thursday, November 10, 2016, 9:30 a.m.

8. Adjournment

NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS
Auxiliary Aid or Other Services are Available upon Request at No Charge.
Please Give Reasonable Advance Request when Possible.



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

ITEM: 2A

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

October 13, 2016

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard

South Bend, Indiana

The meeting was called to order at 9:33 a.m.

1. ROLL CALL

Members Present: Marcia Jones, President
Dave Varner, Vice President
Don Inks, Secretary
Greg Downes, Commissioner

Members Absent: Gavin Ferlic, Commissioner
John Anella, Commissioner

Legal Counsel: Benjamin Dougherty, Esq.

Redevelopment Staff: David Relos, Associate
Mary Brazinsky, Recording Secretary

Others Present: Brian Pawlowski
Beth Leonard Inks

2. APPROVAL OF MINUTES

A. Approval of Minutes of the Regular Meeting of Thursday, September 29, 2016

Upon a motion by Secretary Inks, seconded by Commissioner Downes, the motion carried 4-0, the Commission approved the minutes of the regular meeting of Thursday, September 29, 2016.

3. APPROVAL OF CLAIMS

A. Claims Submitted October 13, 2016

Claim submitted	Explanation of Project
Redevelopment Commission Claims submitted October 13, 2016 for approval	
<u>324 RIVER WEST DEVELOPMENT AREA</u>	
Underground Pipe & Value, Inc	97,878.38 Chet Waggoner
Plews Shadley Racher & Braun	990.70 Environmental Devel Related /Sherman's Cleaners
Permadur Industries Inc.,	85,924.74 Nello Equipment
Jones Petrie Rafinski	6,285.76 Patel Plaza
Abonmarche Consultants	17,850.00 Western Ave & Olive St. Intersection Improvements
Troyer Group	19,675.00 Harrison
HRP Construction	224,311.21 Chet Waggoner
Majority Builders, Inc.	297,155.64 Marriott Hotel Site Development at HOF Ph. I
Permadur Industries Inc.,	42,962.37 Nello Equipment
Walsh & Kelly Inc.	166,220.65 Ignition Park Infrastructure Ph. 1C, Division A
DLZ	15,035.00 SB Marriott Ph. I
US Bank	197,500.00 Century Center Bond
City of SB	18,874.75 Legal Services TIF
Kolata Enterprises LLC	1,485.00 Professional Services
IDEM	300.00 Environmental Services
H.J. Umbaugh & Associates	7,000.00 Professional Services related to TIF
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>	
H.J. Umbaugh & Associates	200.00 Professional Services related to TIF
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>	
Walsh & Kelly, Inc.	23,790.90 Hill & Colfax Ave. on Site Improvement
Smith Group JJR	32,040.00 SB Riverfront Pks and Trails Master Plan
Walsh & Kelly, Inc.	377,310.09 East Bank Sewer Separation - Phase V -
H.J. Umbaugh & Associates	900.00 Professional Services related to TIF
<u>430 FUND SOUTH SIDE TIF AREA #1</u>	
Southgate Church	10,988.00 Re-coating of Parking Lot
Reith Riley Construction Co., Inc	555,010.40 SB One-Way to Two Way St. Conversion
H.J. Umbaugh & Associates	700.00 Professional Services related to TIF
<u>435 FUND DOUGLAS ROAD DEVELOPMENT AREA TIF</u>	
H.J. Umbaugh & Associates	100.00 Professional Services related to TIF
<u>436 TIF NORTHEAST RESIDENTIAL</u>	
H.J. Umbaugh & Associates	1,100.00 Professional Services related to TIF
Total	\$2,201,588.59

Upon a motion by Commissioner Downes, seconded by Secretary Inks, the motion carried 4-0, the Commission approved the Claims submitted October 13, 2016.

4. Old Business

A. Receipt of Bids 331 – 335 S. Main

David Relos stated the property at 331 – 335 S. Main has been taken through the disposition process and as of 9am this morning on October 13, 2016 no bids were received.

5. New Business

A. Public Hearings

(1) Public Hearing on Resolution Nos. 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358 and 3359

Beth Leonard Inks presented the Resolutions for Public Hearing Nos. 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358 and 3359. These are the 2017 appropriations for the TIF Allocation areas and other Commission administered funds, including, Redevelopment Retail, Redevelopment Admin., Airport Enterprise Zone and two debt reserves. The notices were published per state statute.

Resolution No. 3348 appropriates \$30,000,000 in River West.

Resolution No. 3349 appropriates \$1,125,000 in West Washington.

Resolution No. 3350 appropriates \$7,800,000 in River East Development Area.

Resolution No. 3351 appropriates \$3,430,000 in River East Residential.

Resolution No. 3352 appropriates \$6,000,000 in Southside Area #1.

Resolution No. 3353 appropriates \$4,848,795 in Southside Area #3.

Resolution No. 3354 appropriates \$340,000 in Douglas Road.

Resolution No. 3355 appropriates \$4,500 in Redevelopment Admin.

Resolution No. 3356 appropriates \$158,166 in Redevelopment Retail.

Resolution No. 3357 appropriates \$50,000 in Airport Urban Enterprise Zone.

Resolution No. 3358 appropriates \$14,000 in Airport Debt Service Reserve and

Resolution No. 3359 appropriates \$15,000 in Downtown Debt Service Reserve.

Upon a motion by Vice President Varner, seconded by Secretary Inks the motion carried unanimously, the Commission approved Resolution Nos. 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358 and 3359 submitted October 13, 2016.

No members of the public were present and no comments were made.

(2) Public Hearing on Resolution No. 3362

Beth Leonard Inks presented Resolution No. 3362 which adds \$10,000 to the Redevelopment Retail for 2016. There were additional expenses necessitating this appropriation.

Mr. Pawlowski added the money is for maintenance items, including air conditioning.

Upon a motion by Vice President Varner, seconded by Commissioner Downes the motion carried unanimously, the Commission approved Resolution No. 3362 submitted October 13, 2016.

No members of the public were present and no comments were made.

B. River West Development Area

(1) Real Estate Option Agreement – Heading for Home, LLC

Mr. Pawlowski presented the Real Estate Option Agreement with Heading for Home, LLC. This is for the old Studebaker Museum site across from Four Winds Field and the empty lot at the corner of Lafayette and Monroe by Zion Hill Missionary Baptist Church. There are no current development plans for these lots, but this Option Agreement coincides with the prior Option Agreement for Cove Lots 2 and 3, allowing that project to begin prior to these sites being considered for development. Other developers could work directly with Heading for Home, LLC and their team on future development proposals for these lots. We ask for Commissions approval of this agreement.

Upon a motion by Vice President Varner, seconded by Commissioner Downes the motion carried 4-0, the Commission approved the Real Estate Option Agreement – Heading for Home, LLC submitted October 13, 2016.

6. Progress Reports

- A. Tax Abatement
- B. Common
Council None
- C. Other

7. Next Commission Meeting:

Thursday, October 27, 2016, 9:30 a.m.

8. Adjournment

Thursday, October 13, 2016, 9:47 a.m.



Aaron Kobb, Director of Economic Resources

Marcia I. Jones, President

ITEM: 3A

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION Redevelopment Commission Claims October 27, 2016 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
DLZ	27,120.00	Marriott Hotel Site Development at Hall of Fame
Burkhart Sign System	22,951.00	Sale Agreement
Hull & Associates, Inc.	342546.49	Contractual Services / Oliver Industrial Pk / Ignition Park /
United Consulting	32,373.75	Coal Line Trail Ph I
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>		
Lehman & Lehman	1,885.56	City Cemetery Master Plan
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
US Bank	1,000.00	Eddy St Common Bond
	427,876.80	

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of October 27, 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 Unity Gardens, Inc., an Indiana non-profit corporation with its principal place of business at 3611 Prast Blvd., South Bend, Indiana 46628 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

RECITALS

WHEREAS, 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”); and

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

WHEREAS, the Developer owns certain real property described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”); and

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

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the River West Development Area (the “Area”); and

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

WHEREAS, 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; and

WHEREAS, 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 Fifty Thousand Dollars (\$50,000.00) 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 Two Hundred Ninety-Nine Thousand Six Hundred Eighty Dollars (\$299,680.00) 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. ACCESS.

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the “Easement”) in the form attached hereto as **Exhibit D**, 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.

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 submitted 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 submitted 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 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 Reserved.

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 Developer 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 this 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.

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: Unity Gardens, Inc.
P.O. Box 10022
South Bend, IN 46680
Attn: Sara Stewart

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

UNITY GARDENS, INC., an Indiana
non-profit corporation

Sara Stewart, President

Date:

4000.0000003

EXHIBIT A

Description of Developer Property

Lot Number One (1) of the Ardmore Trail Minor Subdivision, recorded on October 28, 2014, as Document No. 1426953 in the office of the St. Joseph County Recorder.

Commonly known as 3611 Prast Blvd., South Bend, IN 46628

Tax Key No.: 018-2188-7089

EXHIBIT B

Project Plan

The Developer will complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

Construct learning center facility and associated amenities on the Developer Property, as depicted in **Exhibit B-1** attached hereto.

EXHIBIT B-1

Depiction of Learning Center Facility

[See attached.]

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: site work and improvements in support of the construction of the Project.

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the 27th day of October, 2016 (the “Effective Date”), by and between Unity Gardens, Inc., an Indiana non-profit corporation with its principal place of business at 3611 Prast Blvd., South Bend, Indiana 46628 (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 October 27, 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:

Unity Gardens, Inc., an Indiana non-profit corporation

Sara Stewart, President

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared Sara Stewart, to me known to be the President 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

Lot Number One (1) of the Ardmore Trail Minor Subdivision, recorded on October 28, 2014, as Document No. 1426953 in the office of the St. Joseph County Recorder.

Commonly known as 3611 Prast Blvd., South Bend, IN 46628

Tax Key No.: 018-2188-7089

EXHIBIT E

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 |

LICENSE AGREEMENT FOR TEMPORARY STORAGE

This License Agreement For Temporary Storage (this “Agreement”) is made on October 27, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Swing-Batter-Swing, LLC, an Indiana limited liability company with offices at 501 W. South St., South Bend, Indiana 46601 (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

A. The Commission owns certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana (the “City”), as more particularly described in attached **Exhibit A** (the “Property”).

B. The Company desires temporary access to and use of a portion of the Property, as described in attached Exhibit A (the “Storage Premises”), for the purpose of temporarily storing certain goods and equipment associated with the Company’s operation of the stadium commonly known as Four Winds Field at Stanley Coveleski Stadium (the “Stadium”).

C. The Commission is willing to permit the Company temporarily to gain access to and use the Storage Premises for said purpose, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **License; Limitation.** The Commission grants to the Company, its agents, contractors, and employees (collectively, the Company’s “Representatives”) a temporary, non-exclusive license to enter and use the Storage Premises for storage of goods and equipment associated with the Company’s operation of the Stadium, provided that the Company’s use of the Storage Premises is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission and the Company mutually acknowledge that the Commission and/or the Commission’s tenants, licensees, and invitees are entitled to use certain portions of the Property exclusive of the Storage Premises. In the event any conflict between the Company’s use of the Storage Premises and other preexisting uses of the Property arises, the Company agrees that it will not interfere with such other uses of the Property.

2. **Term; Termination.** The Company’s license to use the Storage Premises will commence on the Effective Date of this Agreement and will terminate as the Parties may mutually determine, provided, however, that the Commission or the Commission’s authorized representative may revoke and terminate the license at any time for any reason, as determined in its, his, or her sole discretion.

3. **License Fee.** For its use of the Storage Premises, the Company will pay to the Commission a license fee of One Thousand Dollars (\$1,000.00) per month (the “Fee”) on or before the first day of each month during the term of this Agreement. In the event this Agreement

terminates and the Company vacates the Storage Premises before the end of a month for which the Company paid the Fee in advance, the Commission agrees, upon the Company's request, to reimburse to the Company a prorated share of the Fee for that month.

4. Hazardous Materials. The Company shall not, without the prior written consent of the Commission, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

5. Security. The Company understands and agrees that the Commission shall not be liable for any loss, damage, destruction, or theft of the Company's property or any bodily harm or injury that may result from the Company's use of the Storage Premises or the Property. The Company understands and agrees that it will at all times be solely responsible for the safety and security of all its Representatives on or in the Storage Premises and the Property and any property the Company uses or stores on or in the Storage Premises.

6. Maintenance; Damage. At all times during the period of the license, the Company will keep the Storage Premises in good order and condition. To the extent that any portion of the Storage Premises is disturbed or damaged in connection with the Company's use of the Storage Premises, the Company, at the Company's sole expense, shall restore the Storage Premises to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Commission.

7. Compliance. The Company understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to its use of the Storage Premises under this Agreement.

8. Reservation. The Commission reserves the right to use the Property during the term of this Agreement for any purpose that does not substantially interfere with or obstruct the Company's permitted use of the Storage Premises in accordance with the terms of this Agreement.

9. Indemnity. The Company agrees and undertakes to indemnify and hold the City and the Commission, and their respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the City or the Commission may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the approval granted herein by the Commission or the Company's use of the Property. If any action is brought against the City or the Commission, or their respective agents, employees, successors, or assigns, in connection with the Company's use of the Property, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

10. Insurance. The Company, at the Company's sole expense, shall maintain during the term of this Agreement commercial general liability insurance covering the Company and its use of the Property for the purposes stated in this Agreement in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. The Company agrees to include the Commission and the City as additional insureds on any such policy and produce to the Commission a certificate of insurance evidencing the same. To the extent that the Commission or the City is harmed as a

result of the Company's use of the Property, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

11. Authority. Each undersigned person signing on behalf of his or her respective Party certifies that he or she is duly authorized to bind his or her respective Party to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have each executed 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

SWING-BATTER-SWING, LLC

Andrew Berlin, Manager

4000.0000069 47485749.003

EXHIBIT A

Description of Property

Real property located in the City of South Bend, St. Joseph County, Indiana, more particularly described as follows:

Lots Numbered Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty –two (22) and Twenty-three (23) as shown on the recorded Plat of William S. Vail's Addition to the Town, now City of South Bend; including that part of Railroad Avenue heretofore vacated lying South of and adjoining said Lots 22 and 23. Also, the entire vacated alley running East and West lying between Lots 20 and 21 as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend; also, the East One-half (1/2) of Vacated Franklin Street lying West of and adjacent to said Lots 17 through 23.

Commonly known as 313 W. Western Avenue, South Bend, Indiana.

Parcel Key Nos. 018-3012-0447 and 018-3012-0452

Description of Storage Premises

Approximately 2,000 square feet of the northernmost building situated in the above-described Property.

FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This First Amendment To Real Estate Purchase Agreement (this “First Amendment”) is made on October 27, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (“Seller”), and Heading for Home LLC, a Delaware limited liability company with its principal place of business at 501 W. South St., South Bend, Indiana 46601 (“Buyer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. Seller and Buyer entered into that certain Real Estate Purchase Agreement dated August 25, 2016 (the “Purchase Agreement”), for the purchase and sale of the Property (as defined in the Purchase Agreement) located in the City of South Bend.

B. Buyer continues its examination of the Property pursuant to Section 3 of the Purchase Agreement and has requested an extension of the Due Diligence Period.

C. Seller desires to grant the requested extension as stated in this First Amendment.

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

1. In Section 3.B. of the Purchase Agreement, the term “sixty (60)” is deleted and replaced by the term “one hundred twenty (120).”

2. Unless expressly modified by this First Amendment, the terms and provisions of the Purchase Agreement remain in full force and effect.

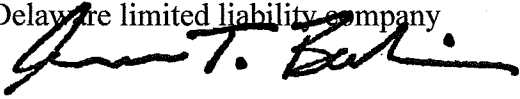
3. Capitalized terms used in this First Amendment will have the meanings set forth in the Purchase Agreement unless otherwise stated herein.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment To Real Estate Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Heading for Home LLC,
a Delaware limited liability company



Printed: Andrew Berlin

Its: Manager

Dated: 10/20/10

SELLER:

City of South Bend, Department of Redevelopment,
by and through its governing body, the South Bend
Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

4000.0000069 46042495.001

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), is effective as of September 15, 2016 (the "Effective Date"), by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), and Wayne Street Associates, LLC, an Indiana limited liability company with offices at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (the "Developer") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (Ind. Code 36-7-14 *et seq.*, the "Act"); and

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

WHEREAS, the Developer owns certain real property described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the "Developer Property"); and

WHEREAS, the Developer desires to construct, renovate, or otherwise rehabilitate certain elements of the Developer Property (the "Project") in accordance with the project plan (the "Project Plan") attached hereto as **Exhibit B** to facilitate the Developer's leasing of commercial space in the building on the Developer Property to the anticipated tenants set forth in **Exhibit B-1**; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the "City"), within the River West Development Area (the "Area"); and

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

WHEREAS, 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; and

WHEREAS, 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 Assessed Value. "Assessed Value" means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 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.

1.3 Funding Amount. "Funding Amount" means an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) 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.

1.4 Private Investment. "Private Investment" means an amount no less than Six Million Dollars (\$6,000,000.00) to be expended by the Developer for the costs associated with acquiring the Developer Property and constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property.

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. ACCESS.

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the "Easement") in the form attached hereto as Exhibit D, 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.

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, 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.

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 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 Developer's Employment Obligations. The Developer and/or the Developer's tenants in the Developer Property shall create approximately 100 new full-time jobs located at the

Developer Property, with average hourly wages of no less than Fifteen Dollars (\$15.00) per hour for each employee (the "Job Creation Requirement") by the December 31, 2017 (the "Job Creation Deadline") and maintain said jobs for at least the period of time described in Section 4.7(c) below. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy the Job Creation Requirement by the Job Creation Deadline will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

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, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

(c) On or before April 15 of the year that is one year after substantial completion of the Project and on each April 15 thereafter until April 15 of the year which is five (5) years after substantial completion of the Project, the Developer shall submit to the Commission a report with the following information: (i) the number of jobs created as a result of the Project and wage and benefit information for the jobs created; and (ii) a detailed description of the of the job and wage details for the number of people employed by the Developer in connection with the Project.

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 Developer 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 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. In the event that the Developer fails to satisfy the Job Creation Requirement by the Job Creation Deadline, then upon the written demand of the Commission, the Developer will repay the Commission an amount equal to One Thousand Seven Hundred Eighty-Five Dollars (\$1,785.00) multiplied by the number of jobs by which the Developer fell short of the Job Creation Requirement 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.

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 Waiver of Jury Trial. 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: Wayne Street Associates, LLC
4100 Edison Lakes Parkway, Suite 350
Mishawaka, IN 46545
Attn: Edward F. Bradley, Jr.

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

WAYNE STREET ASSOCIATES, LLC


By: 
Name: Edmund T. Bradley
Title: President

Exhibit B-1

Anticipated Employee Tenant Count

100 East Wayne

Floor 1

RTU	6
Well Fargo	6
Interlink	9
Newmark Cressy	2
Wells Fargo Advisors	2

Floor 2

IRS	20
Aerotek	10

Floor 3

Ladue Curran Kuehn	32
Fulton Industries	7
Pfeil, Inc	3
FBI	8
ONI Risk Advisors	6

Floor 4

Beacon (prior to Nov 2018)	50
AC3 (after Nov 2018)	40

Floor 5

Beacon Market Research	4
US Trustee	12
AC3	40

Approx total employee count **257**

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:

Improvements to the following elements on or abutting the Developer Property: sidewalks, parking lot, lighting, landscaping, fencing, and plaza at Michigan and Wayne Streets.

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the 15th day of September, 2016 (the "Effective Date"), by and between Wayne Street Associates, LLC, an Indiana limited liability company with offices at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (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 following real property (the "Property")

The premises including the commercial building commonly known as One Michiana Square, located at 100 E. Wayne Street, South Bend, Indiana 46601 [Parcel Key Number 018-3091-347404]

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 15, 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 stated above.

GRANTOR:

Wayne Street Associates, LLC,
an Indiana limited liability company

[Handwritten Signature]

Printed: Edward F Bradley

Its: President

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 E

Minimum Insurance Amounts

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

- B. Commercial 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

FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This First Amendment To Real Estate Purchase Agreement (this “First Amendment”) is made on October 27, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (“Seller”), and Chris Gerard, doing business as Bare Hands Brewery, a sole proprietorship with its principal place of business at 12804 Sandy Ct., Granger, Indiana 46530 (“Buyer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. Seller and Buyer entered into that certain Real Estate Purchase Agreement dated August 25, 2016 (the “Purchase Agreement”), for the purchase and sale of the Property (as defined in the Purchase Agreement) located in the City of South Bend.

B. Buyer continues its examination of the Property pursuant to Section 3 of the Purchase Agreement, including zoning and land use matters, and has requested an extension of the Due Diligence Period.

C. Seller desires to grant the requested extension as stated in this First Amendment.

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

1. In Section 3.B. of the Purchase Agreement, the term “sixty (60)” is deleted and replaced by the term “ninety (90).”

2. Unless expressly modified by this First Amendment, the terms and provisions of the Purchase Agreement remain in full force and effect.

3. Capitalized terms used in this First Amendment will have the meanings set forth in the Purchase Agreement unless otherwise stated herein.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment To Real Estate Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Chris Gerard, doing business as Bare Hands Brewery, a sole proprietorship

Chris Gerard

Dated:

SELLER:

City of South Bend, Department of Redevelopment,
by and through its governing body, the South Bend
Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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ITEM: 5A6

Department of
Community Investment

Memorandum

October 24, 2016

TO: Redevelopment Commission
FROM: Chris Dressel, Staff 
SUBJECT: Environmental Services Contract for Ivy Tower Facility - Weaver Consultants Group

Attached is a proposal from Weaver Services Group LLC for environmental services related to the ongoing Ivy Tower Facility Renovation Project (Building 84, Building 113, and Future Parking Lot) not to exceed \$10,000.

Coordinate Site Status Letter Application Activities with Indiana Brownfields Program:

- On-going project management services (communications, meetings, written responses to Indiana Brownfields Program (IBP) comments) to obtain Site Status Letter for the Ivy Tower Property from current submittals to the IBP.
- Complete Phase I & Phase II Environmental Site Assessment/Site Investigation for SSL
- One Phase I ESA update of the 2014 Phase I ESA completed for the Ivy Tower property.
- Project Management activities including meetings associated with Site Status Letter application.

Coordinate Lead Based Paint, Asbestos, and, Polychlorinated Biphenyl (PCB) abatement

- Limited site characterization prior to preparing abatement (lead and asbestos) specifications
- Preparation of environmental abatement specifications and response service during abatement
- Screening and testing of building component surfaces to further characterize the presence of lead-based paint including window frames, fire protection pipes, and roof trusses.
- Sampling, testing, EPA work plan, EPA notification, EPA completion report preparation, bid specification preparation for polychlorinated biphenyl (PCB) remediation, and contractor oversight associated with PCB-impacted concrete within one transformer room located below the ground surface.
- Additional bid specification preparation and project management activities associated with asbestos and lead-based paint abatement.
- Additional project management time associated with multiple pre-bid meetings.
- Modification of USEPA notice associated with PCB cleanup. Initially the cleanup space was going to be backfilled, then that was modified to reusing room and replacing concrete floor.



- Additional project management time associated with meetings both at SBRC offices and on-site. This included discussions regarding occupancy designation for the transformer room, historical preservation concerns associated with the lead-based paint abatement, awarding the lead-based paint abatement contract to Interstate Environmental Services instead of Environmental Demolition Group, and addressing property owner and SBRC concerns regarding what building components were to be (or not to be) included as part of the lead-based paint abatement project.
- Additional bid specification preparation associated with lead-based paint abatement (original scope).
- Additional inspections of the building. Inspections included confirmatory lead-based paint analysis.
- Additional bid specification preparation, lead screening/testing, clearance report review, and management/oversight associated with lead-based paint abatement, for lead-based paint abatement change orders for Floors 5 and 6 of Building 84.
- Additional bid specification preparation/management and clearance testing for PCB impacted soil removal (not the concrete and initial round of PCB soil clearance sampling and testing).

Coordinate removal of hazardous/regulated waste from site:

- Includes contract specification preparation, coordination with three qualified contractors prior to bid, site inspection and inventory of material, and project management/oversight services associated with contractor and property owner during removal.
- Oversight and management of IDEM inspection associated with hazardous/regulated waste materials.
- Completion of 2014 hazardous waste report.
- Screening and testing of concrete pavement within courtyard to assess possible disposal alternatives.

Staff seeks commission approval to proceed with the proposal as presented. Please contact me at 235-5843 or cdressel@southbendin.gov if you have any questions.



Department of
Community Investment

Redevelopment Commission Agenda Item

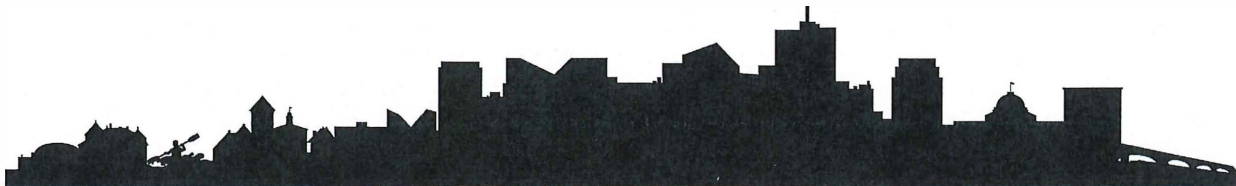
DATE: September 15, 2016
FROM: Aaron Kobb, Director of Economic Resources
SUBJECT: Perley Primary Center – Safe Routes to School

PURPOSE OF REQUEST: Budget Increase

Specifics are:

Staff is requesting the approval of a budget increase of \$258,900, taking the total budget for this project to \$350,000. The net cost of this project is anticipated to be approximately \$208,000 as 80% of the engineering and inspection costs (\$142,000) will be reimbursed by the State.

INTERNAL USE ONLY: Project Code: 15J026
Total Amount new/change (inc/dec) in budget: \$258,900; broken down by:
Acct # 429-1050-460-31.06 Amt: \$86,200; Acct # _____ Amt: _____;
Acct # 429-1050-460-92.02 Amt: \$172,700; Acct # _____ Amt: _____;
Going to BPW for Contracting? Y N Is this item ready to encumber now? _____
Existing PO# _____ Inc/Dec \$ _____



**LICENSE AGREEMENT
FOR TEMPORARY USE OF REDEVELOPMENT COMMISSION PROPERTY**

This License Agreement (this “Agreement”) is made on October 27, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Downtown South Bend, Inc., an Indiana non-profit corporation with a registered office address of 217 S. Michigan St., South Bend, Indiana 46601 (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

WHEREAS, the Commission owns certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana (the “City”), as more particularly described in **Exhibit A** attached hereto (the “Property”); and

WHEREAS, Southhold, LLC (“Southhold”) retains or will acquire certain rights of access to the Property, including rights pursuant to the Temporary Access Agreement between Southhold and the Commission dated July 16, 2015, and any subsequent agreement between Southhold and the Commission; and

WHEREAS, the Company desires temporary access to the Property for the purpose of conducting the event known as Santa’s Workshop (the “Activity”), as described in the proposal attached hereto as **Exhibit B** (the “Activity Proposal”); and

WHEREAS, the Commission is willing to permit the Company to gain access to and temporarily use the Property for the Activity, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Commission grants to the Company, its agents, employees, and invitees, a temporary, non-exclusive license to enter and use the Property for the purpose of conducting the Activity, provided that the Company’s use of the Property is reasonable at all times and comports with the terms of the Activity Proposal, the terms of this Agreement, and all applicable laws. The Company understands that the Property is comprised of the area commonly known as the Gridiron alone, and this Agreement does not permit the Company to use the alleys, parking lots, or sidewalks adjacent to the Property.

2. The Company’s license to use the Property for the Activity shall be effective during the 2016 dates and times stated for set-up, operations, and teardown in the Activity Proposal, provided, however, that the Commission or the Commission’s authorized representative may revoke and terminate the license at any time for any reason, as determined in its, his, or her sole discretion. The Company agrees that it will not store any supplies, materials, goods, or personal property of any kind on the Property or otherwise use the Property for any purposes except during the time of the license stated in the foregoing sentence. Immediately upon the completion of the

Activity, the Company will remove from the Property all supplies, materials, goods, and personal property (including trash) used in connection with the Activity. At all times during the period of the Activity, the Company will keep the Property in good order and condition.

3. The Company understands and agrees that the Commission shall not be liable for any loss, damage, destruction, or theft of the Company's property or any bodily harm or injury that may result from the Company's use of the Property. The Company understands and agrees that it will at all times be solely responsible for the safety and security of all persons on the Property and any property the Company uses or stores on the Property in connection with the Activity.

4. The Company shall not, without the prior written consent of the Commission, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

5. The Company understands and agrees that it will secure in its own name and at its own expense all necessary permits and authorizations needed in order to conduct the Activity.

6. The Company understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Activity conducted on the Property.

7. The Commission reserves the right to use the Property during the term of this Agreement for any purpose that does not substantially interfere with or obstruct the Company's permitted use of the Property in accordance with the Activity Proposal and the other terms of this Agreement.

8. To the extent that any portion of the Property is disturbed or damaged in connection with the Company's use of the Property, the Company, at the Company's sole expense, shall restore the Property to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Commission.

9. The Company agrees and undertakes to indemnify and hold the City and the Commission, and their respective agents, employees, successors, assigns, and licensees harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the City or the Commission may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the approval granted herein by the Commission or the Company's use of the Property. If any action is brought against the City or the Commission, or their respective agents, employees, successors, or assigns, in connection with the Activity, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

10. The Company, at the Company's sole expense, shall maintain during the term of this Agreement commercial general liability insurance covering the Company and the Activity in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. The Company agrees to include the Commission and the City as additional insureds on any such policy and produce to the Commission a certificate of insurance evidencing the same. To the extent that the

Commission or the City is harmed as a result of the Company's use of the Property, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

11. Each undersigned person signing on behalf of his/her respective Party certifies that he/she is duly authorized to bind his/her respective Party to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have each executed 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

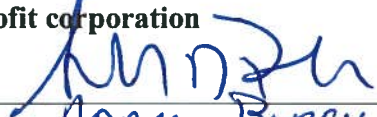
4000.0000030 76612835.001

**DOWNTOWN SOUTH BEND, INC.,
an Indiana non-profit corporation**

By: _____

Printed: _____

Its: _____


ADAM BURCK
EXECUTIVE DIRECTOR

CONSENT OF SOUTHHOLD, LLC

Southhold, LLC hereby consents to the foregoing License Agreement between the South Bend Redevelopment Commission and Downtown South Bend, Inc.

**SOUTHHOLD, LLC,
an Indiana limited liability company**

By: _____

Printed: _____

Its: _____

Date: _____

**DOWNTOWN SOUTH BEND, INC.,
an Indiana non-profit corporation**

By: _____
Printed: _____
Its: _____

CONSENT OF SOUTHHOLD, LLC

Southhold, LLC hereby consents to the foregoing License Agreement between the South Bend Redevelopment Commission and Downtown South Bend, Inc.

**SOUTHHOLD, LLC,
an Indiana limited liability company**


By:  _____
Printed: ANANT PATEL
Its: MEMBER
Date: 10-25-16

EXHIBIT A

Description of Property

The ground floor, second floor, and the “Gridiron” area of the real property commonly known as the former College Football Hall of Fame and more particularly described as follows:

Lot 1 of the recorded plat of Hall of Fame Second Minor Subdivision, recorded on July 22, 2015, as Document No. 1518735, in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 018-3091-347405]

EXHIBIT B

Activity Proposal

Santa's House & Workshop

Look for the little red and white house located next to The South Bend Chocolate Café. Santa's House is a great place to spend one-on-one time with the "big guy." So don't forget to bring your wish list and a camera. After your visit with Santa head inside the former College Football Hall of Fame. The Workshop is where you can spend time with family and friends doing all sorts of activities and having fun. Coloring, holiday movies, hands-on activities - cookie decorating and demonstrations. Live musical performances throughout the month. Visit Santa's Gingerbread Village to see the beautiful gingerbread creations by "kids" of all ages and don't forget to vote for your favorite. Stop by the downtown information table for special offerings by downtown merchants and businesses.

Set-up

November 21 – December 2, 10 am. – 5 p.m.

Operations

Santa's House & Workshop Hours:

Friday, December 2, 6:30 - 9 p.m.

Saturday, December 3, 12 - 6 p.m.

Sunday, December 4, 12 - 4 p.m.

Friday, December 9, 5 - 9 p.m.

Saturday, December 10, 12 - 6 p.m.

Sunday, December 11, 12 - 4 p.m.

Friday, December 16, 5 - 9 p.m.

Saturday, December 17, 12 - 6 p.m.

Sunday, December 18, 12 - 4 p.m.

Monday, December 19, 12 - 4 p.m.

Tuesday, December 20, 12 - 4 p.m.

Wednesday, December 21, 12 - 4 p.m.

Thursday, December 22, 12 - 4 p.m.

Friday, December 23, 5 – 9 p.m.

Saturday, December 24, 12 – 4 p.m.

Teardown

December 27 – December 30, 10 a.m. – 5 p.m.