



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: October 4, 2017
FROM: Lory Timmer
SUBJECT: Development Agreement (Historic Lincoln Way West Homes)

PURPOSE OF REQUEST:

Staff is seeking approval of the attached Development Agreement between the South Bend Redevelopment Commission and South Bend Heritage Foundation, Inc. and Neighborhood Development Associates, LLC. The DA provides the project with \$1,000,000 of TIF investment to convert the Classic Boutique/Brewery building at 1636 Lincolnway West into affordable apartments and retail/commercial space. The project also includes new construction single-family homes on scattered nearby vacant lots currently owned by the Urban Enterprise Association (UEA). The effort will improve a critical area on Lincolnway West between the airport and downtown, and will complement the West Side Main Streets plan, in particular the Wilber Street node.

The developers are seeking low income housing tax credits from the Indiana Housing and Community Development Authority (IHCDA). This is a competitive process, with the application to IHCDA due November 6, 2017, and awards announced February 22, 2018. If not awarded in that round, the project will be re-submitted to IHCDA July 30, 2018, with awards announced November 15, 2018. In addition to the tax credit equity, historic tax credits and a conventional first mortgage loan will finance the project. TIF funds are requested from the South Bend Redevelopment Commission to close the funding gap in the project.

Agreement highlights:

- Private investment of no less than \$12,000,000
- If the project is not awarded tax credits in either round, the DA terminates December 31, 2018
- If tax credits awarded, project completion required (36) months after Effective Date of the Agreement
- Developer will pursue goal of contracting no less than 8% of total private investment with MBE and/or WBE contractors
- (25) 1- & 2-BR apartments and (16) single-family homes will be created for low-moderate income tenants

INTERNAL USE ONLY: Project Code: 17J039
 Total Amount new/change (inc/dec) in budget: \$1,000,000; broken down by:
 Acct # 324.1050.460.42.02 Amt: \$1,000,000; Acct # _____ Amt: _____;
 Acct # _____ Amt: _____; Acct # _____ Amt: _____;
 Going to BPW for Contracting? Y(N) Is this item ready to encumber now? _____
 Existing PO# _____ Inc/Dec \$ _____

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of October 12, 2017 (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”), South Bend Heritage Foundation, Inc., an Indiana non-profit corporation with its registered office at 803 Lincoln Way West, South Bend, Indiana 46616 (“SBHF”), and Neighborhood Development Associates, LLC, in Indiana limited liability company with its registered office at 724 W. Washington St., South Bend, Indiana 46601 (“NDA,” and together with SBHF, 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 or will acquire 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 expects to fund the Project in part by obtaining and selling certain tax credits granted to the Developer by the Indiana Housing and Community Development Authority (the “IHCDA”) based on the Developer’s application to the IHCDA to be submitted on or before the IHCDA’s deadline of July 30, 2018; 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 One Million Dollars (\$1,000,000.00) 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 Twelve Million Dollars (\$12,000,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project 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.

(a) 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.

(b) The Parties acknowledge and agree that SBHF and NDA are jointly and severally obligated to perform all responsibilities of the Developer under this Agreement.

4.2 The Project.

(a) No later than August 31, 2019, the Developer will acquire fee simple ownership of the Developer Property and all other real property necessary to carry out each element of the Project Plan attached hereto as Exhibit B.

(b) 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 approved by the City Planner pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(c) 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 to be approved by 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 thirty-six (36) 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, (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 City Planner for the City of South Bend (the “City Planner”). The City Planner may approve or disapprove said plans and specifications for the Project in his or her sole discretion and may request revisions or amendments to be made to the same.

4.9 Project Costs and Expenses. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of planning, construction, management, and all other activities or purposes associated with the Project (including legal, 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 Use of MBE/WBE Contractors. The Developer will exercise good faith efforts to solicit bids from and award contracts to local Minority Business Enterprises ("MBEs") and/or Women's Business Enterprises ("WBEs") for work associated with the Project. The Developer will diligently pursue the goal of awarding to MBEs and/or WBEs Project-related contracts with an aggregate value of no less than eight percent (8%) of the Private Investment.

4.12 Non-Interference. The 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.

4.13 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).

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

4.15 Other Incentives. The Developer agrees that, for its completion of the Project (as defined in the Project Plan), the Developer will not request or pursue any financial incentive or support from the City other than the Commission's commitment of the Funding Amount under this Agreement, including without limitation any tax abatement with respect to the Developer Property or any other property associated with the Project.

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 contract is awarded for the completion of the Local Public Improvements and before any work on the Local Public Improvements will commence, (i) the Developer will have obtained and sold the tax credits awarded to the Developer by the IHCD and obtained all additional financing necessary to complete the Project in accordance with the Project Plan, (ii) the City Planner will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.8 of this Agreement, and (iii) 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 to the contrary contained herein, 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 Tax Credit Contingency. Notwithstanding anything to the contrary contained herein, this Agreement will terminate, and the Commission will have no obligation to expend any portion of the Funding Amount or to complete any portion of the Local Public Improvements, in the event the Developer has not obtained an award of tax credits for the Project from IHCD on or before December 31, 2018.

5.4 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.

5.5 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: South Bend Heritage Foundation, Inc.
803 Lincoln Way West
South Bend, IN 46616
Attn: Executive Director

and

Neighborhood Development Associates, LLC
724 W. Washington St.
South Bend, IN 46601

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: James Mueller, 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, provided, however, that the Developer may assign this Agreement to a legal entity formed specifically for carrying out the Project with IHEDA tax-credit financing upon giving written notice of such assignment to the Commission without the requirement of seeking the Commission's consent. 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.

[SIGNATURE PAGE FOLLOWS]

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

SOUTH BEND HERITAGE FOUNDATION, INC.

By: _____
Name: _____
Title: _____
Date: _____

NEIGHBORHOOD DEVELOPMENT ASSOCIATES, LLC

By: _____
Name: _____
Title: _____
Date: _____

4000.0000101 41781683.003

EXHIBIT A

Description of Developer Property

A part of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 3rd North, Range 2 East, now within and a part of the City of South Bend, which part is bounded by a line running as follows: Beginning at the intersection of the East line of College Street with the Southerly line of Lincolnway West (formerly Michigan Avenue) in the City of South Bend, thence running South 67 1/2 degrees East with the Southerly line of Lincolnway West, a distance of 411.5 feet, more or less to the Northwest corner of a tract of land formerly owned by Herman Huffman, thence South parallel with the East line of said Section 3 to the North line of Rupel Street, thence West with the North line of Rupel Street to the intersection of said North line of Rupel Street with the East line of College Street; thence North with said East line of College Street, to the place of beginning, ~~excepting therefrom~~ the right of way across said tract occupied by the Indiana, Illinois and Iowa Railway Company, a branch of the New York Central Lines, and ~~excepting therefrom~~ the following described tract: Beginning at the intersection of the South line of Lincolnway West (formerly Michigan Avenue) with the East line of the right of way of the Indiana, Illinois and Iowa Railway Company, a branch of the New York Central Lines, which point is 329.3 feet South 67 1/2 degrees East of the point of intersection of the East line of College Street with the Southerly line of Lincolnway West, thence running South 67 1/2 degrees East with the Southerly line of said Lincolnway West a distance of 81.4 feet, more or less, to the Northwest corner of a tract of land conveyed to Herman Hoffman by Jonathan P. Creed and Lucretia M. Creed, by deed dated December 2, 1896 and recorded in Deed Record 102, pages 560-1, Recorder's Office of St. Joseph County, Indiana; thence South parallel with the East line of said Section 3, 173.2 feet, more or less to the North line of Rupel Street, thence West along the North line of Rupel Street 215.29 feet, more or less to the East line of said right of way of Indiana Illinois and Iowa Railway Company, thence Northeasterly along the Easterly line of said right of way 247 feet, more or less, to the place of beginning.

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:

- A. Rehabilitation and renovation of the Developer Property into a mixed-use development including first-floor commercial space and a total of no less than twenty-five (25) apartments on the upper floors.
- B. Construction of no less than sixteen (16) new single-family residences in the vicinity of the Developer Property.

EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations, certain infrastructure elements or other improvements necessary to support the redevelopment of the Developer Property, which will be identified and specifically determined by the Commission (or the City's Department of Community Investment acting on the Commission's behalf) in coordination with the Developer as soon as reasonably practicable following the Effective Date of this Agreement.

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ day of _____, 201__ (the “Effective Date”), by and between _____, an Indiana _____ with offices at _____ (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 _____, 2017 (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:

_____, an Indiana _____

Printed: _____

Its: _____

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 _____, 201__.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

This instrument was prepared by _____.

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. _____.

EXHIBIT 1

Description of Property

A part of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 37 North, Range 2 East, now within and a part of the City of South Bend, which part is bounded by a line running as follows: Beginning at the intersection of the East line of College Street with the Southerly line of Lincolnway West (formerly Michigan Avenue) in the City of South Bend, thence running South 67 1/2 degrees East with the Southerly line of Lincolnway West, a distance of 411 6 feet, more or less to the Northwest corner of a tract of land formerly owned by Herman Huffman, thence South parallel with the East line of said Section 3 to the North line of Rupel Street, thence West with the North line of Rupel Street to the intersection of said North line of Rupel Street with the East line of College Street; thence North with said East line of College Street, to the place of beginning, excepting therefrom the right of way across said tract occupied by the Indiana, Illinois and Iowa Railway Company, a branch of the New York Central Lines, and excepting therefrom the following described tract Beginning at the intersection of the South line of Lincolnway West (formerly Michigan Avenue) with the East line of the right of way of the Indiana, Illinois and Iowa Railway Company, a branch of the New York Central lines, which point is 329 3 feet South 67 1/2 degrees East of the point of intersection of the East line of College Street with the Southerly line of Lincolnway West, thence running South 67 1/2 degrees East with the Southerly line of said Lincolnway West a distance of 81.4 feet, more or less, to the Northwest corner of a tract of land conveyed to Herman Hoffman by Jonathan P Creed and Lucretia M Creed, by deed dated December 2, 1896 and recorded in Deed Record 102, pages 560-1, Recorder's Office of St. Joseph County, Indiana; thence South parallel with the East line of said Section 3, 173 2 feet, more or less to the North line of Rupel Street, thence West along the North line of Rupel Street 215 29 feet, more or less to the East line of said right of way of Indiana Illinois and Iowa Railway Company, thence Northeasterly along the Easterly line of said right of way 247 feet, more or less, to the place of beginning.

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 |