

FINANCING AGREEMENT

by and among

POTAWATOMI ZOOLOGICAL SOCIETY, INC.

and

CITY OF SOUTH BEND BUILDING CORPORATION

and

CITY OF SOUTH BEND, INDIANA

Dated as of March 1, 2022

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FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of March 1, 2022 (the “Financing Agreement”) by and among the POTAWATOMI ZOOLOGICAL SOCIETY, INC., an Indiana non-profit corporation (the “Corporation”), the CITY OF SOUTH BEND BUILDING CORPORATION (the “Building Corporation”), and the CITY OF SOUTH BEND, INDIANA (the “Issuer” or “City”), a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the “State”).

RECITALS

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the “Act”), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to acquire or construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of South Bend Economic Development Commission (the “Economic Development Commission”) held a public hearing regarding the Project (as defined herein), and, upon finding that the Project and the proposed financing of the acquisition, construction, expansion, renovation, equipping, furnishing and improvement thereof (i) will create or retain employment opportunities in the City, (ii) will benefit the health and general welfare of the citizens of the City and the State, and (iii) will comply with the purposes and provisions of the Act, the Economic Development Commission adopted a resolution, and the Common Council of the Issuer (the “Common Council”) adopted an ordinance, approving the proposed financing for the Project; and

WHEREAS, the Issuer intends to issue its City of South Bend, Indiana, Potawatomi Zoo Project Economic Development Lease Rental Revenue Bonds, Series 2022 (Potawatomi Zoo Project), in the aggregate principal amount not to exceed \$_____ (the “Series 2022 Bonds”), pursuant to a Trust Indenture, dated as of March 1, 2022 (the “Indenture”), by and between the Issuer and [U.S. Bank National Association], as trustee (the “Trustee”), for the purpose of providing funds to pay a portion of the costs of the Project and costs related to the issuance of the Series 2022 Bonds; and

WHEREAS, the Series 2022 Bonds issued under the Indenture will be payable solely from certain lease rental payments (the “Lease Rentals”) made by the South Bend Redevelopment Commission (the “Commission”) to the Building Corporation pursuant to a lease dated as of December 1, 2021 (the “Lease”); and

WHEREAS, the Commission expects to pay the Lease Rentals to the Building Corporation from certain St. Joseph County Hotel-Motel Tax Revenues pledged by the St. Joseph County Hotel-Motel Tax Board pursuant to Indiana Code 6-9-1-6.3 and if during the term of the Lease, such revenues are insufficient, the Lease Rentals will be paid by the levy of a special benefits tax pursuant to Indiana Code 36-7-14-27 and 36-7-14-25.2; and

WHEREAS, the Building Corporation now desires to assign its rights under the Lease, including the right to receive the Lease Rentals, to the Issuer pursuant to the terms of this Agreement.

PRELIMINARY STATEMENT AND GRANTING CLAUSES

In consideration of the premises, the provision of the proceeds of the Series 2022 Bonds to the Corporation for the purpose of funding the Project, and of other good and valuable consideration, the receipt of which is hereby acknowledged, including without limitation, representations, warranties and commitments given by the Corporation to the Issuer and the Building Corporation hereunder, the receipt of which is hereby acknowledged, the Building Corporation has executed and delivered this Financing Agreement and by these presents does assign, grant, and warrant and grant a security interest in, to the Issuer and its successors and assigns forever, all right title and interest of the Building Corporation in the Lease, including the Lease Rentals.

TO HAVE AND HOLD all and singular, the above described property (the "Security"), whether now owned or hereafter acquired, unto the Issuer, its successors and assigns forever, provided, however, that upon the payment of all of the principal of and interest on the Bonds and the Corporation and the Building Corporation shall keep, perform and observe all and singular the covenants and promises expressed herein to be kept, performed and observed by the Corporation and the Building Corporation, then this Financing Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

The Issuer, the Building Corporation and the Corporation hereby further covenant and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. Capitalized terms used in this Financing Agreement that are not otherwise defined herein, shall have the meanings provided for such terms in the Indenture. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“Act” means, collectively, Indiana Code 36-7-11.9 and 36-7-12.

“Bondholder” or “owner of a Bond” or any similar term means the owner of any Bond.

“Bond Fund” means the Bond Fund to be created and established by Section 4.2 of the Indenture.

“Bond Ordinance” means Ordinance No. _____, adopted by the Common Council on December _____, 2022, authorizing the issuance of the Series 2022 Bonds to finance the costs of the Project and pledging the Pledged Revenues to the payment of the principal of and interest on the Bonds.

“Bond Proceeds” means an amount equal to \$ _____ (which equals the face amount of the Bonds plus original issue premium of \$ _____, less an underwriter’s discount of \$ _____, less costs of issuance of the Bonds (\$ _____) and less an amount used to purchase a municipal bond debt service reserve insurance policy to satisfy the requirements of the debt service reserve fund under the Indenture (\$ _____)) to be provided for out of the proceeds of the Bonds, plus investment earnings, all of which will be made available to the Corporation, pursuant to the terms of this Financing Agreement and the Indenture, to pay for Eligible Costs.

“Building Corporation” means the City of South Bend Building Corporation, an Indiana non-profit corporation organized for the purpose of financing buildings and other capital improvements in the City.

“City Parties” means, collectively, (a) the Issuer and the Economic Development Commission, and their successors and assigns, (b) any financial advisor or legal counsel to any entity listed in subclause (a) hereof, (c) the underwriter for the Bonds, (d) the owners of the Bonds (beneficial or otherwise), and (e) the Trustee.

“Commission” means the South Bend Redevelopment Commission, the governing body of the South Bend Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana, existing and operating under the provisions of Indiana Code 36-7-14, as amended from time to time.

“Code” means the Internal Revenue Code of 1986, as amended, the regulations (whether proposed, temporary, or final) promulgated thereunder or the statutory predecessor thereof, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures, and judicial determinations, regarding any of the foregoing.

“Construction Fund” means the Series 2022 Construction Fund established by Section 4.5 of the Indenture.

“Corporation” means Potawatomi Zoological Society, Inc., an Indiana non-profit corporation, together with each of its successors and assigns under Sections 3.2 and 6.4 hereof.

“Disbursement” means the transfer of all or any portion of Bond Proceeds by the Trustee from the Construction Fund to the Corporation to fund Eligible Costs approved by the City.

“Disbursement Request” means any request from the Corporation to the Trustee for a Disbursement, which request is subject to the prior written approval of the City. The form of Disbursement Request is attached as Exhibit B to the Indenture.

“Economic Development Commission” means the City of South Bend Economic Development Commission.

“Eligible Costs” means the costs of the Project specifically described in the Disbursement Requests approved by the City.

“Indenture” means the Trust Indenture, dated as of March 1, 2022, by and between the Issuer and the Trustee, authorizing and securing the Series 2022 Bonds.

“Issuer” or “City” means the City of South Bend, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

“Lease” means the Lease, dated as of December 1, 2021, between the Building Corporation, as lessor, and the Commission, as lessor, and all supplements and amendments thereto

“Lease Rentals” means the lease rentals paid by the Commission, as lessee under the Lease.

“Pledged Revenues” shall have the meaning set forth in the Indenture.

“Project” means the construction, renovation, equipping, furnishing and improving of the Potawatomi Zoo, located at 500 South Greenlawn Avenue within the City (the “Zoo”), including, without limitation, all or any portion of the following: (i) the renovation, construction and equipping of a new lion habitat to include a new rock façade, new fencing and a new visitor viewing area; (ii) the construction, equipping and furnishing a new concession and dining facility in the North American portion of the Zoo, permitting visitors to view a newly constructed black bear habitat which will permit the introduction of a new species for the Zoo; (iii) replacement of the existing corporate and family picnic area with a new covered pavilion along with a new kitchen area and new fencing, pathways and storage areas; (iv) renovation of the North American animal habitats to meet modern Zoo standards including without limitation the construction and equipping of a new holding barn in the center and the installation of new fencing and habitat esthetics; and (v) the construction and equipping of a new Tiger habitat to meet current accreditation standards for zoos which will include the construction of a new, modern habitat within a portion of Potawatomi Park land not currently being utilized by the Zoo.

“Series 2022 Bonds” or “Bonds” means the City of South Bend, Indiana, Economic Development Revenue Bonds, Series 2022 (Potawatomi Zoo Project), anticipated to be issued pursuant to the Indenture, in an aggregate principal amount not to exceed \$_____, for the purpose of paying a portion of the costs of the Project, paying for a debt service reserve surety policy to satisfy the requirements of the debt service reserve fund for the Bonds, and a portion of the costs related to the issuance thereof.

“State” means the State of Indiana.

“Trustee” means initially [U.S. Bank National Association] or any successor trustee serving in such capacity under the Indenture.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as expressly provided herein or unless the context otherwise requires:

(a) “This Financing Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Indenture shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

(g) The word “including” and any variation thereof means “including, without limitation” and must not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) Where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

(End of Article I)

ARTICLE II

REPRESENTATIONS; USE OF BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Subject to the terms of this Agreement, the Issuer shall issue the Series 2022 Bonds in the aggregate principal amount not to exceed \$ _____, in order to pay the costs of the Project approved by the Issuer, pay the cost of a debt service reserve surety policy to satisfy the requirements of the debt service reserve fund under the Indenture, and to pay the costs of issuance incurred in connection therewith, all for the purpose of creating or retaining employment opportunities in the City and benefiting the health and general welfare of the citizens of the City and the State.

Section 2.2. Representations by Building Corporation. The Building Corporation represents and warrants that:

(a) The Building Corporation is a non-profit corporation duly organized and validly existing under the laws of the State of Indiana solely for the purpose to serve as an on-behalf of issuer to the City for the purpose of completing capital improvements in the City.

(b) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Building Corporation's Articles of Incorporation or By-laws, or any restriction or any agreement or instrument to which the Building Corporation is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Building Corporation to perform its obligations hereunder), or any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Building Corporation or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Building Corporation under the terms of any instrument or agreement, except as may be set forth in this Financing Agreement.

(c) There are no actions, suits or proceedings pending, or, to the knowledge of the Building Corporation, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, if determined adversely to the Building Corporation, could materially and adversely affect the transactions contemplated by this Financing Agreement or which in any way would affect the validity and enforceability of such document or the ability of the Building Corporation to perform its obligations under this Financing Agreement.

(d) This Financing Agreement has been duly executed and delivered by the Building Corporation and constitutes the legal, valid and binding agreement of the Building Corporation, enforceable against the Building Corporation in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights in general. The enforceability of the Building Corporation's obligations under said document is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(e) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Financing Agreement.

Section 2.3. Representations by Corporation. The Corporation represents and warrants that:

(a) It is a non-profit corporation duly organized and validly existing under the laws of the State of Indiana and is an organization described in Section 501(c)(3) of the Code, exempt from federal income taxation under Section 501(a) of the Code, and is not a private foundation within the meaning of Section 509 (a) of the Code, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Corporation's Articles of Incorporation or By-laws, or any restriction or any agreement or instrument to which the Corporation is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Corporation to perform its obligations hereunder), or any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Corporation or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement, except as may be set forth in this Financing Agreement.

(c) There are no actions, suits or proceedings pending, or, to the knowledge of the Corporation, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, if determined adversely to the Corporation, could materially and adversely affect the transactions contemplated by this Financing Agreement or which in any way would affect the validity and enforceability of such document or the ability of the Corporation to perform its obligations under this Financing Agreement.

(d) This Financing Agreement has been duly executed and delivered by the Corporation and constitutes the legal, valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights in general.

(e) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Financing Agreement. The enforceability

of the Corporation's obligations under said document is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(End of Article II)

ARTICLE III

PARTICULAR COVENANTS OF THE ISSUER, BUILDING CORPORATION AND CORPORATION

Section 3.1. Consent to Assignment to Trustee. The Building Corporation and the Corporation acknowledge and consent to the assignment of the Lease Rentals and the assignment of the Issuer's rights hereunder to the Trustee pursuant to the Indenture and agrees that the Trustee may enforce the rights, remedies and privileges granted to the Issuer hereunder.

Section 3.2. Payment of Principal and Interest; Payment of Pledged Revenues.

(a) In accordance with the Indenture, the Series 2022 Bonds, if and when issued, shall be payable solely and only from Pledged Revenues, including without limitation, the Lease Rentals. Under no circumstances shall the Building Corporation or the Corporation be liable for making any payments due under the Indenture or the Series 2022 Bonds, including any payment of the principal of, premium, if any, or interest on any of the Series 2022 Bonds, as the payments on the Series 2022 Bonds shall be payable solely from the Pledged Revenues, including, without limitation, the Lease Rentals.

(b) In accordance with the terms of the Indenture, the Issuer shall transfer to the Trustee for deposit into the Bond Fund (as defined in the Indenture), on or before each February 1 and August 1 (or on such other dates and in such manner required by the Bond Ordinance), the Pledged Revenues in an amount sufficient to pay the principal of and interest due on the Series 2022 Bonds on the next February 1 or August 1 together with any Annual Fees as described and defined in the Indenture.

(c) Under no circumstances shall the Building Corporation or the Corporation be liable for payment of any other costs or expenses under or in connection with this Financing Agreement or the transactions contemplated by this Financing Agreement, the Indenture or the Series 2022 Bonds. Any amounts owed to the Trustee shall be payable solely from the Lease Rentals (or other Pledged Revenues available for such purpose) pursuant to the terms of the Lease.

Section 3.3. Maintenance of Existence. The Building Corporation and the Corporation each covenant and agree that it will maintain its existence as Indiana non-profit corporation, will not, while the Series 2022 Bonds remain outstanding, dissolve or otherwise dispose of all or substantially all of its assets, will not consolidate with or merge into another entity, or permit one or more other entities to consolidate or merge with it, and will not sell or transfer any ownership interests in itself in any manner that would result in a change of control of itself, without (i) the express written consent of the Issuer and (ii) providing to the Issuer an opinion of Bond Counsel to the effect that such transaction will not cause the interest on the Series 2022 Bonds to be included in the gross income of the holders thereof for federal income tax purposes. For purposes of this section, "control" (including the terms "controlling") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Building Corporation or the Corporation, respectively, whether through the ownership of voting securities, by contract, or by other means.

Section 3.4. Building Corporation and Corporation Not Responsible for Bond Payments. Notwithstanding anything in this Financing Agreement to the contrary, the Issuer acknowledges

and agrees that each of the Building Corporation or the Corporation is in no way (i) guaranteeing or providing credit enhancement for or supporting financially or otherwise the issuance, sale or resale, offering or reoffering, or payment of the Bonds, or (ii) guaranteeing or providing credit enhancement for or supporting financially or otherwise the payment of the principal of or premium or interest on the Bonds (or any portion thereof). The Issuer further acknowledges and agrees that neither the Building Corporation nor the Corporation will indemnify, defend or hold harmless the Issuer or any City Parties against any losses, liabilities, expenses (including attorneys' and other professionals' fees and expenses), claims and damages asserted against, resulting to, imposed upon or suffered by the Issuer or the City Parties or any of them to the extent arising from or attributable to the issuance, sale or resale, offering or reoffering, or payment of the Bonds.

Section 3.5. Payment of Costs of Issuance of Bonds, Other Fees and Expenses. The Issuer shall pay from the proceeds of the sale of the Bonds, as necessary, the costs of issuance of the Bonds. Neither the Building Corporation nor the Corporation is obligated to pay (except from the proceeds of the Bonds) any costs of issuance of the Bonds or any related costs, fees or expenses in connection with the issuance, sale or offering of the Bonds; nor is Building Corporation or the Corporation obligated to pay any fees, charges or expenses in connection with or related to the Bonds after the Bonds have been issued, which fees, charges and expenses include financial advisory and/or accounting fees, charges and expenses, Trustee and other fiduciary fees and expenses and Issuer fees and expenses (including in each instance legal fees and expenses), all of which are obligations of the Issuer.

Section 3.6. Completion and Use of the Project.

(a) The Corporation agrees that it will make, execute, acknowledge and deliver (or cause to be made, executed, acknowledged and delivered) any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things reasonably within its power which may be requisite or proper for the substantial completion (as certified by the Corporation) of the construction, expansion, renovation, equipping, furnishing, and improvement of the Project, and, upon subsequent completion of the Project, the Corporation will operate and maintain the Project in such manner as reasonably within Corporation's power so as to conform with all applicable and material zoning, planning, building, environmental and other applicable governmental regulations and so as to be consistent with the Act.

(b) The Issuer shall deposit all proceeds from the sale of the Bonds in the manner specified in Article III of the Indenture, and the Issuer shall maintain such proceeds and funds in the manner specified in Article IV of the Indenture. Under the Indenture, the Trustee, on behalf of the Issuer, is authorized and directed to make payments from the Construction Fund to pay for costs of the Project approved by the Issuer, or to reimburse the Corporation for any costs of the Project approved by the Issuer, with any such disbursements to be made in accordance with the terms and conditions of the Indenture and this Financing Agreement. The Corporation agrees to direct such requisitions to the Trustee as may be necessary to effect payments out of the Construction Fund for costs of the Project approved by the Issuer, all in accordance with Section 4.5 of the Indenture and this Financing Agreement.

(c) Any moneys remaining in the Construction Fund after completion of the Project shall be transferred and applied in the manner provided in the Indenture.

(d) The Corporation hereby acknowledges receipt of a copy of the Indenture.

Section 3.7. Indemnity by Corporation. The Corporation will pay, and protect, indemnify and save the City Parties, the Building Corporation, the Bondholders and the Trustee harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the City Parties, the Building Corporation and the Trustee), causes of action, suits, claims, demands and judgments of any nature arising from or relating to:

(a) Violation of any contract, agreement or restriction by the Corporation relating to the Project, or a part thereof; and

(b) Violation by the Corporation of any law, ordinance or regulation arising out of the ownership, occupancy or use of the Project, or a part thereof.

Section 3.8. Fees and Expenses of Corporation. The Corporation hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel, of the Corporation incurred in connection with this Financing Agreement to the extent that any such fees, charges and expenses of the Corporation are not paid or provided for out of the proceeds of the Bonds in accordance with the terms of the Indenture and in the amounts set forth in Exhibit C thereto, which are deemed to be approved by the Corporation without further action or authorization.

Section 3.9. Tax Covenants. The Corporation hereby represents that it has taken and caused to be taken, and covenants that it will take and cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer, for the interest on the Series 2022 Bonds to be and remain excluded from gross income for federal income tax purposes, and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Code.

The Corporation and the Issuer each covenant to the owners of the Series 2022 Bonds that, notwithstanding any other provision of this Financing Agreement or any other instruments, it shall take no action, nor shall the Corporation direct the Trustee to take or approve any action or make any investment or use of proceeds of the Series 2022 Bonds or any other moneys which may arise out of or in connection with this Financing Agreement, the Indenture or the Project, which would cause the Series 2022 Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code. In addition, the Corporation covenants and agrees to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Series 2022 Bonds or the proceeds derived from the sale of the Series 2022 Bonds or any other moneys which may arise out of or in connection with this Financing Agreement, the Indenture or the Project throughout the term of the Series 2022 Bonds.

The Corporation shall provide the Issuer with, and the Issuer may base its certifications on, a certificate of an appropriate officer, employee or agent of or consultant to the Corporation for inclusion in the transcript of proceedings for the Series 2022 Bonds, setting forth the reasonable expectations of the Corporation on the date of delivery of and payment for the Series 2022 Bonds regarding the amount and use of the proceeds of the Series 2022 Bonds and the facts, estimates and circumstances on which those expectations are based.

No provision of this Financing Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations.

Section 3.10. Limitations on Use of Project. The Corporation agrees that it will not use the Project, or permit the Project to be used, in such a way as to subject the Corporation to the tax imposed by Section 511 of the Code, on unrelated business taxable income, as defined in Section 512 thereof, unless such use will in no way adversely affect the status of the Corporation as an organization described in Section 501(c)(3) of the Code or adversely affect the exclusion from gross income of the interest on the Series 2022 Bonds under the Code; nor will it use or permit the Project to be used by any non-exempt person in such manner as would result in the inclusion of interest on the Series 2022 Bonds in gross income for federal income tax purposes under Section 103 of the Code; nor will it act or fail to act in any other manner which would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2022 Bonds. The Corporation further covenants that none of its revenues, income or profits, whether realized or unrealized, will be distributed to any of its officers or members, or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of the Corporation; provided, however, that the Corporation may pay to any person, association or corporation the value of any service or product performed for or supplied to the Corporation by such person, association or corporation.

(End of Article III)

ARTICLE IV

IMMUNITY

Section 4.1. Extent of Covenants of Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bonds, the Indenture or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer or the Building Corporation or the Corporation, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or the Building Corporation or the Corporation or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Pledged Revenues and as otherwise provided under this Financing Agreement and the Indenture. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

(End of Article IV)

ARTICLE V

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to Financing Agreement. The Issuer, the Building Corporation and Corporation may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable.

(End of Article V)

Section 6.4. Successors and Assigns.

(a) Subject to Section 6.1 hereof, whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Corporation, by or on behalf of the Building Corporation, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

(b) The Corporation or the Building Corporation may assign this Financing Agreement or any of its rights or obligations under this Financing Agreement only upon the written consent of the Issuer which shall not be unreasonably withheld and the Corporation or the Building Corporation, as the case may be, providing to the Issuer the opinion of Bond Counsel described in Section 3.2 hereof.

Section 6.5. Counterparts. This Financing Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Financing Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 6.6. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with, the laws of Indiana.

(End of Article VI)

IN WITNESS WHEREOF, the Issuer, the Building Corporation, and the Corporation have caused this Financing Agreement to be executed in their respective names, and the Issuer has caused its official seal to be hereunto affixed and attested by the Clerk of the City, all as of the date first above written.

POTAWATOMI ZOOLOGICAL SOCIETY INC.,
a non-profit corporation

By: _____

Printed Name: _____

Title: _____

CITY OF SOUTH BEND BUILDING
CORPORATION, a non-profit corporation

By: _____

Printed Name: _____

Title: _____

CITY OF SOUTH BEND, INDIANA

(SEAL)

Attest:

Dawn M. Jones, MPA, Clerk

James Mueller, Mayor

[Signature Page to Financing Agreement]