

## **RESOLUTION NO. 3546**

### **A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION AMENDING RESOLUTION NO. 3545 DETERMINING TO PROVIDE FOR A SPECIAL TAX IF NECESSARY TO PAY LEASE RENTALS IN CONNECTION WITH THE LEASE DATED AS OF DECEMBER 1, 2021, BETWEEN THE SOUTH BEND REDEVELOPMENT COMMISSION AND THE SOUTH BEND REDEVELOPMENT AUTHORITY RELATING TO THE MORRIS PERFORMING ARTS CENTER PROJECT AND OTHER RELATED MATTERS**

**WHEREAS**, the South Bend Redevelopment Commission (the “Commission”), the governing body of the South Bend Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana (the “District”), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the “Act”); and

**WHEREAS**, the City of South Bend, Indiana (the “City”) has determined to undertake certain improvements to the Morris Performing Arts Center (the “Performing Arts Center”) consisting of certain energy savings improvements, renovations of the floor and seating, and certain other improvements at the Performing Arts Center (collectively, the “Project”); and

**WHEREAS**, the Commission has given consideration to (i) financing the cost of all or a portion of the Project; (ii) funding a debt service reserve fund, if necessary in connection with the issuance of the Bonds (defined herein); and (iii) paying costs incurred in connection with the issuance of the Bonds; and

**WHEREAS**, the South Bend Redevelopment Authority (the “Authority”) has been created pursuant to IC 36-7-14.5 as a separate body, corporate and politic, and as an instrumentality of the City, to finance local public improvements for lease to the Commission; and

**WHEREAS**, the Authority intends to lease the Performing Arts Center (the “Leased Premises”) to the Commission pursuant to a lease dated as of December 1, 2021 (the “Lease”), which form of Lease was heretofore approved by this Commission, the Authority and the Common Council of the City in order to provide for the financing of the Project; and

**WHEREAS**, the Authority and the Commission have given consideration to (i) financing the cost of funding a portion of the cost of the Project; (ii) funding a debt service reserve fund, if necessary in connection with the issuance of the Bonds (defined herein); and (iii) paying costs incurred in connection with the issuance of the Bonds; and

**WHEREAS**, the Authority intends to issue bonds pursuant to IC 36-7-14.5-19 and a trust agreement (the “Trust Agreement”) between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), to be known as the “South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2022 (Morris Performing Arts Center Project)” in an aggregate principal amount not to exceed Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000) (the “Bonds”), the proceeds of which are to be used to finance all or any portion of the costs of (i) a

portion of the Project; (ii) funding a debt service reserve fund, if necessary, in connection with the issuance of the Bonds; and (iii) issuing the Bonds; and

**WHEREAS**, the Commission intends to pay rent to the Authority pursuant to the terms of the Lease, at a rate not to exceed Four Hundred Twenty Thousand Dollars (\$420,000) per year, in semiannual installments, with a term no longer than twenty-five (25) years beginning on the date the Authority acquires an interest in the Leased Premises, and ending on the day prior to a date not later than twenty-five (25) years after such date of acquisition by the Authority (the “Lease Rental Payments”); and

**WHEREAS**, the Commission anticipates that sufficient funds will be available to the Commission to make the required Lease Rental Payments with such funds being derived from the St. Joseph County hotel-motel tax revenues (the “Morris Hotel-Motel Tax Revenues”) deposited into the Morris Performing Arts Center Fund (the “Morris Hotel-Motel Tax Fund”) established pursuant to Indiana Code 6-9-1-6.4 and pledged for such purpose pursuant to a resolution adopted on November 4, 2021 (the “Pledge Resolution”) by the St. Joseph County Hotel-Motel Tax Board of Managers (the “Board of Managers”); and

**WHEREAS**, pursuant to the Pledge Resolution, the Board of Managers will pay sufficient Morris Hotel-Motel Tax Revenues to the Trustee as payment of the Lease Rental Payments when due under the Lease; and

**WHEREAS**, because the Commission anticipates that sufficient Morris Hotel-Motel Tax Revenues will be available to make the Lease Rental Payments, the Project does not constitute a “controlled project” as such term is defined by Indiana Code 6-1.1-20-1.1; and

**WHEREAS**, the Commission adopted Resolution No. 3545 on January 27, 2021 (“Resolution No. 3545”) determining to provide for the levy of a special tax pursuant to Section 27 of the Act (the “Special Tax”) in the event it becomes necessary to levy the Special Tax for the payment of the Lease Rental Payments owed by the Commission pursuant to the Lease and to authorize the establishment of certain funds and accounts in connection thereto; and

**WHEREAS**, the Commission desires to amend Resolution No. 3545 to provide that, in considering revenues available to the Commission in order to avoid the need to levy the Special Tax, the Commission will take into account only cash amounts on deposit in the debt service reserve fund established in the Trust Indenture;

**NOW, THEREFORE, BE IT RESOLVED, BY THIS SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:**

**SECTION 1.** The Commission hereby amends and restates Section 2 of Resolution No. 3544 in its entirety as follows:

**SECTION 2.** The Commission agrees that it shall levy in each calendar year pursuant to Section 27 of the Act during the term of the Lease the Special Tax upon all of the taxable property in the District in a total amount necessary, together with all other funds (other than special taxes), including, without limitation, the Morris Hotel-Motel Tax Revenues then on deposit in the Morris Hotel-Motel Tax Fund as

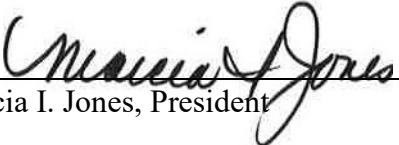
of August 1 of such calendar year, to pay all Lease Rental Payments payable in the 12-month period beginning on July 1 of the year following such calendar year pursuant to Section 4 of the Lease. The Controller of the City (the "Controller") is hereby authorized to create a fund (the "Lease Fund") for the purpose of depositing such taxes into and such taxes and any other funds deposited in the Lease Fund shall be irrevocably pledged for the purposes set forth in this Resolution, such pledge being effective as set forth in IC 5-1-14-4 without the necessity of filing or recording this resolution or any instrument except in the records of the Commission. In addition to any amounts then on deposit in the Lease Fund, if any, and in the Morris Hotel-Motel Tax Fund, the Commission may also take into account when determining whether it is necessary to levy the Special Tax as described herein, cash amounts available in the debt service reserve fund which may be established under the Trust Agreement to provide additional security for the Bonds, all based upon the advice and recommendation of the Controller. Notwithstanding the foregoing, the Commission expects that the Morris Hotel-Motel Tax Revenues will be sufficient to pay the Lease Rental Payments when due without the need for the Special Tax.

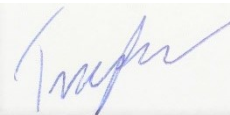
SECTION 2. Except as amended herein, Resolution No. 3545 is hereby ratified and confirmed and shall remain in full force and effect.

SECTION 3. This Resolution shall be in full force and effect after its adoption by the Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on February 10, 2022, as authorized by Executive Order 20-09 issued by the Governor of the State of Indiana, as subsequently renewed.

SOUTH BEND REDEVELOPMENT  
COMMISSION

By:   
Marcia I. Jones, President

ATTEST:  
  
Troy Warner, Secretary