

## DONATION AGREEMENT STUDEBAKER FOUNTAIN

THIS DONATION AGREEMENT of the Studebaker Fountain (the "Agreement") is made this 18<sup>th</sup> day of April 2022, by and between The Northern Indiana Historical Society Inc., doing business under the assumed business name of The History Museum, (the "Museum"), an Indiana nonprofit corporation, 808 West Washington Street, South Bend, Indiana 46601, and the City of South Bend, Indiana (the "City"), by and through its Board of Park Commissioners (the "Board"), 301 South St. Louis Blvd., South Bend, Indiana 46617.

### RECITALS

WHEREAS, the Board, pursuant to Indiana Code §36-10-4-9, has exclusive control of and maintains all property within the City used for park purposes, and pursuant to Indiana Code §36-10-3-11(4) may accept donations of personal property from any source; and

WHEREAS, the Museum in 2009 came into possession of sections of the Studebaker Fountain (the "Fountain"); and

WHEREAS, in 2019 the Museum turned over possession of the Fountain to the City as part of the efforts to restore the fountain for operation in the City's Leeper Park.

WHEREAS, through an oversight, the Museum's donation of the Fountain to the City was never memorialized in writing; and

WHEREAS, The Museum and the City through this Agreement desire to remedy the oversight.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DONATION.** The Museum hereby unconditionally gives, donates, transfers, assigns, bestows, sets over, and delivers to the City, by and through the Board, all rights, title, and interest in and to the Fountain, including copyrights, whether at common law or by statute. The Board hereby accepts the donation, transfer, assignment, bestowal, set over and delivery of the Fountain from the Museum as is authorized by Indiana Code §36-10-3-11(4).
2. **REPRESENTATIONS AND WARRANTIES.** The Museum hereby represents that it has unencumbered title to the Fountain, free of any conflicting claims or interests. The Museum asserts that it is its intent and understanding that the Fountain may be exhibited, loaned, retained, or disposed of by the City at its unrestricted discretion. It is distinctly understood by the Museum that it is the Museum's purpose and intention to vest all the incidents of absolute ownership, with the exception of the Section 3, of the Fountain in the City, and hereby waives

all present and future rights in, to, and over said property, its use or disposition, for itself, its distributees, heirs, assignees, personal representatives, and all others who might claim by, under or through the Museum.

3. RIGHT OF RECALL OF OWNERSHIP. Should the Fountain be dismantled, de-installed, or fall into disarray, the Museum shall have full right to regain ownership, prior to any other decision of disposal. The City shall contact the Museum first and foremost prior to other parties. In the event of neglect or extreme damage, the Museum retains the right to recall ownership of the Fountain pieces donated.
4. INDEMNIFICATION. The Museum agrees to indemnify, defend, and hold the City, the Board, its officers, employees, and agents harmless with regard to any and all claims of any nature which may arise from the donation of the Fountain.
5. WAIVER. No failure or delay on the part of either party in exercising any right under this Agreement will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will have effect unless given in a written document signed by the party waiving such right. No waiver of any right will be deemed a waiver of any other right hereunder.
6. ENTIRE AGREEMENT, AMENDMENTS, JURISDICTION AND APPLICABLE LAW. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Museum and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana and any actions arising hereunder shall be tried in the courts of St. Joseph County, Indiana.
7. COUNTERPARTS. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective as of the Effective Date set forth above.

NORTHERN INDIANA HISTORICAL SOCIETY, INC.  
D/B/A THE HISTORY MUSEUM

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Signature

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Printed Name


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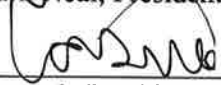
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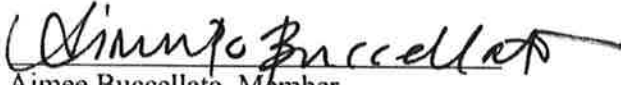
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Date


THE CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS

  
\_\_\_\_\_  
Mark Neal, President

  
\_\_\_\_\_  
Consuela Hopkins, Vice President

  
\_\_\_\_\_  
Aimee Buccellato, Member

  
\_\_\_\_\_  
Dan Farrell, Member

ATTEST:   
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Jessica Williams, Clerk