



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: Dec. 8, 2022

FROM: Caleb Bauer, Executive Director of DCI

SUBJECT: Resolution Approving Proposed Lease with South Bend Redevelopment Authority

Marcia Jones _____ Pres/V-Pres
 ATTEST: *[Signature]* _____ Secretary
 Date: 11.8.22
 APPROVED Not Approved

Funding Source* (circle one) River West; River East; South Side; Douglas Road; West Washington; RDC General

*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

Purpose of Request: Authorization of Proposed Lease with South Bend Redevelopment Authority for issuance of Tax-Exempt Lease Rental Revenue Bonds, Series A, and Taxable Lease Rental Revenue Bonds, Series B

Specifics: The proposed lease would initiate the process of issuance of a pair of TIF-funded bonds to finance a number of Public Improvement Projects in the River West and River East TIF Districts, including:

River East

- Lasalle Avenue Streetscape Improvements (between MLK and Eddy St)
- Phase I and Phase II of shared-use path to improve bicycle and pedestrian access between downtown and Notre Dame
- Mishawaka Avenue Streetscape Improvements (Between Longfellow and Emerson)
- Coquillard Park Splash Pad Upgrades

River West

- Kennedy Park Funding Match for state grant program to make significant improvements to the park
- Portage-Elwood Sidewalk Project to improve pedestrian safety and activate storefronts near Portage-Elwood intersection
- Martin Luther King Jr. Dream Center park Improvements, including splashpad, playground, basketball courts
- Linden Avenue Streetscape Improvements (between College and Birdsell)
- Southeast Park improvements, including splashpad and playground resurfacing

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

- River Bridge Connector Pedestrian Bridge to connect trail systems across the St. Joseph River
- Walker Field and Connection to Rum Village Improvements to enhance the historic Walker Field pavilion and provide better pedestrian connection to Rum Village

The Taxable Lease Rental Revenue Bond, Series B would fund the construction of two structured parking garages and other site preparation work to support the Beacon Integrative Health and Lifestyle District, which will support more than \$350 million in private investment.

If approved, a preliminary bond resolution will go come before RDC at its Dec. 22nd meeting and then move to the South Bend Common Council.

RESOLUTION NO. 3564

A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION APPROVING A PROPOSED LEASE WITH THE SOUTH BEND REDEVELOPMENT AUTHORITY RELATING TO THE RIVER EAST PROJECTS, THE RIVER WEST PROJECTS AND THE BEACON DISTRICT PROJECT, AUTHORIZING PUBLICATION OF A NOTICE OF PUBLIC HEARING IN CONNECTION THEREWITH, AND ALL MATTERS RELATED THERETO

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

WHEREAS, the Commission, pursuant to declaratory resolutions previously adopted by the Commission and amended from time to time, the Commission has declared (i) a certain area of the City of South Bend (the “City”) known as the “River East Development Area” (the “River East Area”) as a redevelopment area and an allocation area under the Act and approved a redevelopment plan for the Area (ii) a certain area of the City of South Bend (the “City”) known as the “River West Development Area” (the “River West Area”) as an economic development area and an allocation area under the Act and approved an economic development plan for the Area; and

WHEREAS, the Commission has given consideration to undertaking local public improvement projects in the River West Area including all or any portion of the following: (i) River Bridge Connector (plus Madison) to South Bend-Notre Dame Trail which consists of Phase 3 of the trail project (the “Trail Project”) to construct a pedestrian bridge to connect the trail from the University of Notre Dame campus to the City’s downtown, and any related improvements; (ii) Linden improvements which consists of streetscape improvements in coordination with the Martin Luther King Jr. Dream Center, from College to Birdsell, including improvements for bikes and pedestrians, and any related improvements; (iii) Kennedy Park improvements which consist of natural and aquatic improvements to the existing park and any related improvements to increase accessible recreation resources on the west side of the City; (iv) South East Park improvements which consist of improvements to the park, including splashpad improvements and playground resurfacing, and any related improvements; (v) Martin Luther King Jr. Dream Center improvements which consist of exterior park redevelopment, including without limitation splashpad, playground, basketball court, other related park amenity improvements, and any related improvements; (vi) Rum Village Park Plan improvements which consist of enhancements to the historic pavilion and the Park including exterior restoration and stabilization of the fieldstones, broad arches, and courtyard, and any related improvements; and (vii) all projects related to any of the projects described in clauses (i) through and including (vi) (clauses (i) through and including (vii), collectively, the “River West Improvements”);

WHEREAS, the Commission has given consideration to undertaking additional local public improvements in the River West Area to support and provide incentives to foster the development of the Beacon Integrated Health and Lifestyle District project, said project having been awarded up to a \$11,780,000 Regional Economic Acceleration and Development Initiative grant by the South Bend-Elkhart Regional Development Authority, which local public

improvements include, without limitation, site work, construction of up to two (2) public parking garages and a skyway improvement, and any projects related to the foregoing (collectively, the “Beacon District Improvements”); and

WHEREAS, the Commission has given consideration to undertaking local public improvement projects in the River East Area including all or any portion of the following: (i) LaSalle Streetscape which consists of a road diet with a focus on bike and pedestrian improvements from Martin Luther King Boulevard to Eddy Street and any related improvements; (ii) Hill Street Trail (South Bend Avenue to LaSalle Street) which consists of Phase 2 of the Trail Project to construct a shared use path and any related improvements to improve bicycle and pedestrian facilities between the University of Notre Dame campus and the City’s downtown; (iii) South Bend Avenue (Hill Street to Notre Dame Avenue) and Hill Street Intersection which consists of Phase 1 of the Trail Project to construct a shared use path and any related improvements to improve bicycle and pedestrian facilities between the University of Notre Dame campus and the City’s downtown; (iv) Mishawaka Avenue Streetscape Improvements which consist of a road diet and improved parking from Longfellow Street to Emerson Street, storm sewer separation, and any related improvements; (v) Coquillard Splashpad which consists of upgrading the splashpad at Coquillard Park to modern health, safety, and experiential standards, and any related improvements; and (vi) all projects related to any of the projects described in clauses (i) through and including (v) (clauses (i) through and including (vi), collectively (collectively, the “River East Projects” and collectively with the River West Projects and the Beacon District Improvements, the “Projects”); and

WHEREAS, the Commission has given consideration to (i) financing the cost of funding all or any portion of the costs of the Projects and related expenses; (ii) funding a debt service reserve fund, if necessary in connection with the issuance of bonds to finance the costs of the Projects or purchasing a surety bond to satisfy a reserve requirement; and (iii) pay costs incurred in connection with the issuance of said bonds; and

WHEREAS, the Commission, being duly advised, now finds that it is in the best interests of the City and its citizens for the purpose of financing all or any portion of the costs of the Projects and other costs set forth above, to enter into negotiations with the South Bend Redevelopment Authority (the “Authority”) to enter into a lease (the “Lease”) with the Authority, as Lessee, for all or a portion of certain roads in the City as set forth at Exhibit A attached hereto in order to provide for increased redevelopment and economic development and job creation opportunities for the residents of the City; and

WHEREAS, the form of the proposed Lease has been presented to the Commission at this public meeting; and

WHEREAS, after the duly conducted public hearing, the Commission may adopt a Resolution pursuant to Section 25.2 of the Act authorizing the execution of the proposed Lease on behalf of the City if it finds that the service to be provided throughout the term of the proposed Lease will serve the public purpose of the City, is in the best interests of its residents, and that the Lease rentals provided for are fair and reasonable; and

WHEREAS, the Commission expects that the Authority will consider adoption of a resolution authorizing the issuance its lease rental revenue bonds (the “Bonds”) in one (1) or more

series for the purpose of financing all or any portion of the costs of the Projects and the other costs set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND, INDIANA, REDEVELOPMENT COMMISSION, AS FOLLOWS:

SECTION 1. The Commission hereby preliminary approves the proposed Lease between the Authority and the Commission in the form presented at this public meeting. The Commission hereby sets the public hearing on the Lease for Monday, December 19, 2022, at 9:30 a.m., Room 1308 of the County-City Building, located at 227 West Jefferson Boulevard, South Bend Indiana, or at such other time and/or place as any Officer of the Commission shall determine. The Commission hereby authorizes the publication of a notice of the public hearing on the Lease pursuant to applicable Indiana law and in the form authorized by any Officer of the Commission.

SECTION 2. This Resolution shall take effect, and be in full force and effect, upon passage and approval by the Commission, in conformance with applicable law.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on December 8, 2022, in Room 1308, County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana, 46601.

SOUTH BEND REDEVELOPMENT COMMISSION

By: 
Marcia I. Jones, President

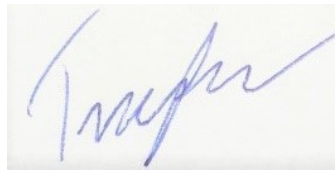
ATTEST: 
Troy Warner, Secretary

EXHIBIT A

LEASED PROPERTY

The Leased Premises under the Lease will consist of a portion of Portage Avenue extending from the intersection of Portage Avenue and Cleveland Road to the intersection of Portage Avenue and Angela Boulevard.

LEASE AGREEMENT

between

SOUTH BEND REDEVELOPMENT AUTHORITY

LESSOR

and

SOUTH BEND
REDEVELOPMENT COMMISSION

LESSEE

Dated as of January 1, 2023

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and dated as of this 1st day of January, 2023, by and between the SOUTH BEND REDEVELOPMENT AUTHORITY (the “Lessor”), a separate body corporate and politic organized and existing under the provisions of I.C. 36-7-14.5 as an instrumentality of the City of South Bend, Indiana (the “City”), and the CITY OF SOUTH BEND REDEVELOPMENT COMMISSION (the “Lessee”), the governing body of the City of South Bend, Department of Redevelopment, acting for and on behalf of the City.

WITNESSETH:

WHEREAS, the City has created the Lessor under and in pursuance of the provisions of I.C. 36-7-14, I.C. 36-7-14.5 and I.C. 36-7-25 (collectively, the “Act”), for the purpose of financing, constructing, acquiring and leasing to the Lessee certain local public improvements and redevelopment and economic development projects; and

WHEREAS, the City has created the Lessee to undertake redevelopment and economic development in the City in accordance with the Act; and

WHEREAS, the Lessee is the governing body of the South Bend Department of Redevelopment and the Redevelopment District of the City (the “District”) which District is coterminous with the boundaries of the City; and

WHEREAS, in accordance with prior resolutions adopted by the Lessee, the Lessee has designated a certain area of the City known as the “River West Development Area” (the “Area”) as an economic development area under the Act and approved an economic development plan for the Area; and

WHEREAS, in accordance with prior resolutions adopted by the Lessee, the Lessee has designated a certain area of the City known as the “River East Development Area” (the “Area”) as a redevelopment area under the Act and approved a redevelopment plan for the Area; and

WHEREAS, the Commission has given consideration to undertaking local public improvement projects in the River West Area including all or any portion of the following: (i) River Bridge Connector (plus Madison) to South Bend-Notre Dame Trail which consists of Phase 3 of the trail project (the “Trail Project”) to construct a pedestrian bridge to connect the trail from the University of Notre Dame campus to the City’s downtown, and any related improvements; (ii) Linden improvements which consists of streetscape improvements in coordination with the Martin Luther King Jr. Dream Center, from College to Birdsell, including improvements for bikes and pedestrians, and any related improvements; (iii) Kennedy Park improvements which consist of natural and aquatic improvements to the existing park and any related improvements to increase accessible recreation resources on the west side of the City; (iv) South East Park improvements which consist of improvements to the park, including splashpad improvements and playground resurfacing, and any related improvements; (v) Martin Luther King Jr. Dream Center improvements which consist of exterior park redevelopment, including without limitation splashpad, playground, basketball court, other related park amenity improvements, and any related improvements; (vi) Rum Village Park Plan improvements which consist of enhancements to the historic pavilion and the Park including exterior restoration and stabilization of the fieldstones,

broad arches, and courtyard, and any related improvements; and (vii) all projects related to any of the projects described in clauses (i) through and including (vi) (clauses (i) through and including (vii), collectively, the “River West Improvements”);

WHEREAS, the Commission has given consideration to undertaking additional local public improvements in the River West Area to support and provide incentives to foster the development of the Beacon Integrated Health and Lifestyle District project, said project having been awarded up to a \$11,780,000 Regional Economic Acceleration and Development Initiative grant by the South Bend-Elkhart Regional Development Authority, which local public improvements include, without limitation, site work, construction of up to two (2) public parking garages and a skyway improvement, and any projects related to the foregoing (collectively, the “Beacon District Improvements”); and

WHEREAS, the Commission has given consideration to undertaking local public improvement projects in the River East Area including all or any portion of the following: (i) LaSalle Streetscape which consists of a road diet with a focus on bike and pedestrian improvements from Martin Luther King Boulevard to Eddy Street and any related improvements; (ii) Hill Street Trail (South Bend Avenue to LaSalle Street) which consists of Phase 2 of the Trail Project to construct a shared use path and any related improvements to improve bicycle and pedestrian facilities between the University of Notre Dame campus and the City’s downtown; (iii) South Bend Avenue (Hill Street to Notre Dame Avenue) and Hill Street Intersection which consists of Phase 1 of the Trail Project to construct a shared use path and any related improvements to improve bicycle and pedestrian facilities between the University of Notre Dame campus and the City’s downtown; (iv) Mishawaka Avenue Streetscape Improvements which consist of a road diet and improved parking from Longfellow Street to Emerson Street, storm sewer separation, and any related improvements; (v) Coquillard Splashpad which consists of upgrading the splashpad at Coquillard Park to modern health, safety, and experiential standards, and any related improvements; and (vi) all projects related to any of the projects described in clauses (i) through and including (v) (clauses (i) through and including (vi), collectively (collectively, the “River East Projects” and collectively with the River West Projects and the Beacon District Improvements, the “Projects”); and

WHEREAS, the Projects will foster economic development and redevelopment and improved employment opportunities throughout the District, including the River West Area and the River East Area; and

WHEREAS, the City, the Lessor, and the Lessee seek to provide a means to finance the all or any portion of the costs of the Projects; and

WHEREAS, the Act authorizes the Lessor to issue bonds for the purpose of obtaining money to pay the cost of acquiring property or constructing, improving, reconstructing or renovating local public improvements; and

WHEREAS, the costs related to acquiring an interest in the property described on Exhibit A hereto by the Authority (the “Leased Premises”) and completing the Projects will be paid from proceeds of bonds to be issued by the Lessor in one (1) or more series; and

WHEREAS, the annual rentals to be paid under this Lease by the Lessee will be pledged by the Lessor to pay debt service on and other necessary incidental expenses of the Authority

relating to the Bonds to be issued by the Lessor to finance the acquisition of the Leased Premises and pay a portion of the costs of the Projects; and

WHEREAS, the Lessor has acquired or will acquire an interest in the Leased Premises described on Exhibit A hereto and such interest shall be for a term no less than the term of this Lease; and

WHEREAS, the Lessee has determined, after a public hearing held pursuant to the Act after notice given pursuant to I.C. § 5-3-1, that the lease rentals provided for in this Lease are fair and reasonable, that the execution of this Lease is necessary and that completion of the Projects will serve the public purpose of the City and are in the best interests of its residents, and the Common Council of the City (the “Common Council”) has, by resolution, approved this Lease in accordance with the provisions of Section 25.2 of the Act, and the Resolution has been entered in the official records of the Common Council; and

WHEREAS, the Lessor has determined that the lease rentals provided for in this Lease are fair and reasonable, that the execution of this Lease is necessary, that the Projects will serve the public purpose of the City and are in the best interests of its residents, and the Lessor has duly authorized the execution of this Lease by Resolution, and the Resolution has been entered in the official records of the Lessor.

THIS AGREEMENT WITNESSETH THAT:

1. **Premises, Term and Warranty.** The Lessor does hereby lease, demise and let to Lessee all of the Lessor’s right, title and interests in and to the Leased Premises.

TO HAVE AND TO HOLD the Leased Premises with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee, beginning on the date the Lessor acquires an interest in any of the Leased Premises and ending on the day prior to a date not later than twenty (20) years after such date of acquisition by the Lessor. Notwithstanding the foregoing, the term of this Lease will terminate at the earlier of (a) the exercise by the Lessee of the option to purchase all of the Leased Premises pursuant to Section 11 hereof and the payment of the option price, or (b) the payment or defeasance of all obligations issued by the Lessor and secured by this Lease or any portion thereof; provided that no bonds or other obligations of the Lessor issued to finance the Leased Premises remain outstanding at the time of such payment or defeasance. The Lessor hereby represents that it is possessed of, or will acquire, the Leased Premises and the Lessor warrants and will defend the Leased Premises against all claims whatsoever not suffered or caused by the acts or omissions of the Lessee or its assigns.

Notwithstanding the foregoing, the Leased Premises may be amended to add additional property to the Leased Premises or remove any portion of the Leased Premises, including, but not limited to the Leased Premises, provided however, following such amendment, the rental payable under this Lease shall be based on the value of the portion of the Leased Premises which is available for use, and the rental payments due under this Lease shall be in amounts sufficient to pay when due all principal of and interest on all outstanding Bonds.

2. **Lease Rental.** (a) **Fixed Rental Payments.** The Lessee agrees to pay rental for the Leased Premises at an annual rate per year during the term of the Lease not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), payable in semi-annual installments. Each

such semi-annual installment, payable as hereinafter described, shall be based on the value of the Leased Premises, together with that portion of the Project which is complete and ready for use by the Lessee at the time such semi-annual installment is made. Such rental shall be payable in advance in semi-annual installments on January 15 and July 15 of each year, with the first rental installment due no earlier than July 15, 2023. The last semi-annual rental payment due before the expiration of this Lease shall be adjusted to provide for rental at the yearly rate so specified from the date such installment is due to the date of the expiration of this Lease.

After the sale of the Bonds, the annual rental shall be reduced to an amount sufficient to pay principal and interest due in each twelve (12) month period commencing each year on August 1, rounded up to the next One Thousand Dollars (\$1,000), together with incidental costs in each year in an amount to be determined at the time the Bonds are sold for the purpose of paying annual trustee fees and related costs, payable in advance in semi-annual installments. In addition, each such reduced semi-annual installment shall be based on the value of the Leased Premises at the time such semi-annual installment is made. Such amount of adjusted rental shall be endorsed on this Lease at the end hereof in the form of Exhibit B attached hereto by the parties hereto as soon as the same can be done after the sale of the Bonds, and such endorsement shall be recorded as an addendum to this Lease.

(b) **Additional Rental Payments.** (i) The Lessee shall pay as further rental in addition to the rentals paid under Section 2(a) for the Leased Premises (“Additional Rentals”) the amount of all taxes and assessments levied against or on account of the Leased Premises or the receipt of lease rental payments and the amount required to reimburse the Lessor for any insurance payments made by it under Section 6. The Lessee shall pay as additional rental all administrative expenses of the Lessor, including ongoing trustee fees, relating to the Bonds. Any and all such payments shall be made and satisfactory evidence of such payments in the form of receipts shall be furnished to the Lessor by the Lessee, at least three (3) days before the last day upon which such payments must be paid to avoid delinquency. If the Lessee shall in good faith desire to contest the validity of any such tax or assessment, the Lessee shall so notify the Lessor and shall furnish bond with surety to the approval of the Lessor conditioned for the payment of the charges so desired to be contested and all damages or loss resulting to the Lessor from the nonpayment thereof when due, the Lessee shall not be obligated to pay the contested amounts until such contests shall have been determined. The Lessee shall also pay as Additional Rentals the amount calculated by or for the Lessor as the amount required to be rebated, or paid as a penalty, to the United States of America under Section 148(f) of the Internal Revenue Code of 1986, as amended and in effect on the date of issue of the Bonds (“Code”), after taking into account other available moneys, to prevent the Bonds from becoming arbitrage bonds under Section 148 of the Code.

(ii) The Lessee may, by Resolution, pay Additional Rentals to enable the Lessor to redeem or purchase Bonds prior to maturity. Rental payments due under this Section 2 shall be reduced to the extent such payments are allocable to the Bonds redeemed or purchased by the Lessor with such Additional Rentals. The Lessee shall be considered as having an ownership interest in the Leased Premises valued at an amount equal to the amount of the Additional Rentals paid pursuant to this subsection (b)(ii).

(c) **Source of Payment of Rentals.** The annual rentals set forth in Section 2(a) hereof and the Additional Rentals shall be payable solely from the 2023 Improvements Principal and Interest Account of the Redevelopment District Bond Fund (the “Bond Fund”). The Lessee may

pay the annual rentals and the Additional Rentals, or any other amounts due hereunder, from any other revenues legally available to the Lessee; provided, however, the Lessee shall be under no obligation to pay any annual rentals or Additional Rentals or any other amounts due hereunder from any moneys or properties of the Lessee except the revenues deposited into the Bond Fund.

3. **Payment of Rentals.** All rentals payable under the terms of this Lease shall be paid by the Lessee to the bank or trust company designated as Trustee (“Trustee”) under the Trust Indenture between it and the Lessor (“Indenture”), or to such other bank or trust company as may from time to time succeed such bank as Trustee under the Indenture securing the bonds to be issued by the Lessor to finance the acquisition and construction of the Leased Premises. Any successor trustee under the Indenture shall be endorsed on this Lease at the end hereof by the parties hereto as soon as possible after selection, and such endorsement shall be recorded as an addendum to this Lease. All payments so made by the Lessee shall be considered as payment to the Lessor of the rentals payable hereunder.

4. **Abatement of Rent; Substitution.** If any part of the Leased Premises is taken under the exercise of the power of eminent domain, so as to render it unfit, in whole or part, for use by the Lessee, it shall then be the obligation of the Lessor to restore and reconstruct that portion of the Leased Premises as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessor excepted; provided, however, that the Lessor shall not be obligated to expend on such restoration or reconstruction more than the condemnation proceeds received by the Lessor.

If any part of the Leased Premises shall be partially or totally destroyed, or is taken under the exercise of the power of eminent domain, so as to render it unfit, in whole or part, for use or occupancy by the Lessee, the rent shall be abated for the period during which the Leased Premises or such part thereof is unfit or unavailable for use, and the abatement shall be in proportion to the percentage of the Leased Premises which is unfit or unavailable for use or occupancy.

Notwithstanding the foregoing, the Leased Premises may be amended to add additional property to the Leased Premises or remove any portion of the Leased Premises, provided however, following such amendment, the rental payable under this Lease shall be based on the value of the portion of the Leased Premises which is available for use, and the rental payments due under this Lease shall be in amounts sufficient to pay when due all principal of and interest on all outstanding Bonds. In the event that all or a portion of the Leased Premises shall be unavailable for use by the Lessee, subject to the completion of any process required by law, the Lessor and the Lessee shall amend the Lease to add to and/or replace a portion of the Leased Premises to the extent necessary to provide for available Leased Premises with a value supporting rental payments under the Lease sufficient to pay when due all principal of and interest on outstanding Bonds.

5. **Maintenance, Alterations and Repairs.** The Lessee may enter into agreements with one (1) or more other parties for the operation, maintenance, repair and alterations of all or any portion of the Leased Premises. Such other parties may assume all responsibility for operation, maintenance, repairs and alterations to the Leased Premises. At the end of the term of this Lease, the Lessee shall deliver the Leased Premises to the Lessor in as good condition as at the beginning of the term, reasonable wear and tear only excepted.

6. **Insurance.** During the full term of this Lease, the Lessee shall, at its own expense, keep in effect public liability insurance in amounts customarily carried for similar properties. Such

insurance may be provided under the public liability self-insurance program of the City. Additionally, notwithstanding anything in this Lease to the contrary, Lessee does not waive any governmental immunity or liability limitations available to it under Indiana law.

The proceeds of the public liability insurance required herein (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid. Such policies shall be for the benefit of persons having an insurable interest in the Leased Premises, and shall be made payable to the Lessor, the Lessee, and the Trustee and to such other person or persons as the Lessor may designate. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana and deposited with the Lessor and the Trustee. If, at any time, the Lessee fails to maintain insurance in accordance with this Section, such insurance may be obtained by the Lessor and the amount paid therefor shall be added to the amount of rentals payable by the Lessee under this Lease; provided, however, that the Lessor shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance.

The insurance policies described in this Section 6 may be acquired by another party and shall satisfy this Section as long as the Lessor, the Lessee and the Trustee are named as additional insureds under such policies. Such coverage may be provided by scheduling it under a blanket insurance policy or policies.

7. **Eminent Domain**. If title to or the temporary use of the Leased Premises, or any part thereof, shall be taken under the exercise or the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by the Trustee under the Indenture.

Such proceeds shall be applied in one (1) or more of the following ways:

- (a) The restoration of the Leased Premises to substantially the same condition as it existed prior to the exercise of that power of eminent domain, or
- (b) The acquisition, by construction or otherwise, of other improvements suitable for the Lessee's operations on the Leased Premises and which are in furtherance of the purposes of the Act and the Plan (the improvements shall be deemed a part of the Leased Premises and available for use and occupancy by the Lessee without the payment of any rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby).

Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct the Lessor and the Trustee in writing as to which of the ways specified in this Section the Lessee elects to have the net proceeds of the condemnation award applied. Any balance of the net proceeds of the award in such eminent domain proceedings not required to be applied for the purposes specified in subsections (a) or (b) above shall be deposited in the sinking fund held by the Trustee under the Indenture and applied to the repayment of the Bonds.

The Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof and will to the extent it may lawfully do so permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor. In no event will the Lessor voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld.

8. **General Covenant.** The Lessee shall not assign this Lease or mortgage, pledge or sublet the Leased Premises herein described, without the written consent of the Lessor. The Lessee shall contract with the other parties to use and maintain the Leased Premises in accordance with the laws, regulations and ordinances of the United States of America, the State of Indiana, the City and all other proper governmental authorities.

9. **Tax Covenants.** In order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes and as an inducement to purchasers of the Bonds, the Lessee and the Lessor represent, covenant and agree that neither the Lessor nor the Lessee will take any action or fail to take any action with respect to the Bonds, this Lease or the Leased Premises that will result in the loss of the exclusion from gross income for federal tax purposes of interest on the Bonds under Section 103 of the Code, nor will they act in any other manner which will adversely affect such exclusion; and it will not make any investment or do any other act or thing during the period that the Bonds are outstanding which will cause any of the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

The covenants in this Section are based solely on current law in effect and in existence on the date of issuance of the Bonds. It shall not be an event of default under this Lease if interest on any Bonds is not excludable from gross income pursuant to any provision of the Code which is not in existence and in effect on the issue date of the Bonds.

All Officers, Members, Employees and Agents of the Lessor and the Lessee are authorized to provide certifications of facts and estimates that are material to the reasonable expectations of the Lessor and the Lessee as of the date the Bonds are issued and to enter into covenants on behalf of the Lessor and the Lessee evidencing the Lessor’s and the Lessee’s commitments made herein. In particular, all or any Members or Officers of the Lessor and the Lessee are authorized to certify and enter into covenants regarding the facts and circumstances and reasonable expectations of the Lessor and the Lessee on the date the Bonds are issued and the commitments made by the Lessor and the Lessee herein regarding the amount and use of the proceeds of the Bonds.

Notwithstanding any other provisions hereof, the foregoing covenants and authorizations (the “Tax Sections”) which are designed to preserve the exclusion of interest on the Bonds from gross income under federal income tax law (the “Tax Exemption”) need not be complied with if the Lessee receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

10. **Option to Renew.** The Lessor hereby grants to the Lessee the right and option to renew this Lease for a further like or lesser term upon the same or like conditions as herein contained, and applicable to the portion of the premises for which the renewal applies, and the Lessee shall exercise this option by written notice to the Lessor given upon any rental payment date prior to the expiration of this Lease.

11. **Option to Purchase.** The Lessor hereby grants to the Lessee the right and option, on any date, upon sixty (60) days' written notice to the Lessor, to purchase the Leased Premises, or any portion thereof, at a price equal to the amount required to pay all indebtedness incurred on account of the Leased Premises, or such portion thereof (including indebtedness incurred for the refunding of any such indebtedness), including all premiums payable on the redemption thereof and accrued and unpaid interest, and including the proportionate share of the expenses and charges of liquidation, if the Lessor is to be then liquidated. In no event, however, shall such purchase price exceed the capital actually invested in such property by the Lessor represented by outstanding securities or existing indebtedness plus the cost of transferring the property and liquidating the Lessor. The phrase "capital actually invested" as used herein shall be construed to include, but not by way of limitation, the following amounts expended by the Lessor in connection with the acquisition and financing of the Leased Premises: organization expenses, financing costs, carry charges, legal fees, architects' fees and reasonable costs and expenses incidental thereto.

Upon request of the Lessee, the Lessor agrees to furnish an itemized statement setting forth the amount required to be paid by the Lessee in order to purchase the Leased Premises, or any portion thereof, including, but not limited to all indebtedness incurred on account of the Leased Premises in accordance with the preceding paragraph. Upon the exercise of the option to purchase granted herein, the Lessor will upon payment of the option price deliver, or cause to be delivered, to the Lessee documents conveying to the Lessee, or any entity (including the City) designated by the Lessee, all of the Lessor's title to the property being purchased, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to the property was subject when conveyed to the Lessor; (ii) those liens and encumbrances created by the Lessee and to the creation or suffering of which the Lessee consented, and liens for taxes or special assessments not then delinquent; and (iii) those liens and encumbrances on its part contained in this Lease.

In the event of purchase of the Leased Premises, or any portion thereof as set forth above, by the Lessee or conveyance of the Leased Premises, or any portion thereof as set forth above, to the Lessee or the Lessee's designee, the Lessee shall procure and pay for all surveys, title searches, abstracts, title policies and legal services that may be required, and shall furnish at the Lessee's expense all documentary stamps or tax payments required for the transfer of title.

Nothing contained herein shall be construed to provide that the Lessee shall be under any obligation to purchase the Leased Premises, or any portion thereof as set forth above, or under any obligation respecting the creditors, members or security holders of the Lessor.

12. **Transfer to Lessee.** If the Lessee has not exercised its option to renew in accordance with the provisions of Section 10, and has not exercised its option to purchase the Leased Premises, or any portion thereof, in accordance with the provisions of Section 11, and upon the full discharge and performance by the Lessee of its obligations under this Lease, the Leased Premises, or such portion thereof remaining, shall thereupon become the absolute property of the Lessee, subject to the limitations, if any, on the conveyance of the site for the Leased Premises to the Lessor and, upon the Lessee's request the Lessor shall execute proper instruments conveying to the Lessee, or to any entity (including the City) designated by the Lessee, all of Lessor's title to the Leased Premises, or such portion thereof.

13. **Defaults.** If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; or (b) in the observance of any other covenant, agreement or condition hereof, and such default shall continue for ninety (90) days after written notice to correct such default; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

14. **Notices.** Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at the following addresses: (a) to Lessor: South Bend Redevelopment Authority, Attention: President, c/o Department of Community Investment, 227 West Jefferson Blvd., Suite 14005, South Bend, Indiana; (b) to Lessee: South Bend Redevelopment Commission, Attention: President, c/o Department of Community Investment, 227 West Jefferson Blvd., Suite 14005, South Bend, Indiana.

The Lessor, the Lessee and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

15. **Successors or Assigns.** All covenants of this Lease, whether by the Lessor or the Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

16. **Construction of Covenants.** The Lessor was organized for the purpose of acquiring, constructing, equipping and renovating local public improvements and leasing the same to the Lessee under the provisions of the Act. All provisions herein contained shall be construed in accordance with the provisions of the Act, and to the extent of inconsistencies, if any, between the covenants and agreements in this Lease and the provisions of the Act, the Act shall be deemed to be controlling and binding upon the Lessor and the Lessee; provided, however, any amendment to the Act after the date hereof shall not have the effect of amending this Lease.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed for and on their behalf on the date first written above.

LESSOR:

**SOUTH BEND REDEVELOPMENT
AUTHORITY**

President

ATTEST:

Secretary-Treasurer

LESSEE:

**CITY OF SOUTH BEND, INDIANA,
REDEVELOPMENT COMMISSION**

President

ATTEST:

Secretary

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary-Treasurer, respectively, of the South Bend Redevelopment Authority (the “Authority”), and acknowledged the execution of the foregoing Lease for and on behalf of the Authority.

WITNESS my hand and notarial seal this ____ day of _____, 2023.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of the South Bend Redevelopment Commission (the “Commission”), and acknowledged the execution of the foregoing Lease for and on behalf of the Commission.

WITNESS my hand and notarial seal this ____ day of _____, 2023.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Randolph R. Rompola

This instrument was prepared by Randolph R. Rompola, Barnes & Thornburg LLP,
100 North Michigan, Suite 700, South Bend, Indiana 46601.

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

All of the City's interest in all or a portion of the Leased Premises which consists of Portage Avenue from its intersection with Cleveland Road to its intersection with Angela Boulevard and which comprise the Leased Premises to be acquired by the Lessor, as more particularly described below:

[The legal description will be included here for the Leased Premises prior to recording.]

EXHIBIT B

**ADDENDUM TO LEASE BETWEEN SOUTH BEND REDEVELOPMENT
AUTHORITY, LESSOR AND SOUTH BEND REDEVELOPMENT COMMISSION,
LESSEE**

THIS ADDENDUM (this “Addendum”), entered into as of this ____ day of _____, 2023, by and between South Bend Redevelopment Authority (the “Lessor”), and South Bend Redevelopment Commission (the “Lessee”);

WITNESSETH:

WHEREAS, the Lessor entered into a lease with the Lessee dated as of January 1, 2023 (the “Lease”); and

WHEREAS, it is provided in the Lease that there shall be endorsed thereon the adjusted rental.

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the parties to the Lease that the adjusted rental is set forth on Appendix I attached hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed for and on their behalf as of the day and year first above written.

LESSOR

LESSEE

**SOUTH BEND REDEVELOPMENT
AUTHORITY**

**SOUTH BEND REDEVELOPMENT
COMMISSION**

President

President

ATTEST:

ATTEST:

Secretary-Treasurer

Secretary

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Randolph R. Rompola

This instrument was prepared by Randolph R. Rompola Barnes & Thornburg LLP,
100 North Michigan, Suite 700, South Bend, Indiana 46601.

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary-Treasurer, respectively, of the South Bend Redevelopment Authority (the “Authority”), and acknowledged the execution of the foregoing Addendum to Lease for and on behalf of the Authority.

WITNESS my hand and notarial seal this _____ day of _____, 2023.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of the South Bend Redevelopment Commission (the "Commission"), and acknowledged the execution of the foregoing Addendum to Lease for and on behalf of the Commission.

WITNESS my hand and notarial seal this _____ day of _____, 2023.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

Appendix I to Addendum to Lease

Adjusted Rental Schedule

Payment <u>Date</u>	Total <u>Rental Payment</u>
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