

Department of
Community Investment

Memorandum

Monday, July 13, 2015

TO: Redevelopment Commissioners

FROM: Chris Fielding

SUBJECT: Niles and Jefferson Improvements

In an effort to extend the aesthetic improvements of the new infrastructure installed along Jefferson Boulevard, staff presents the enclosed development agreement to partner with Matthews LLC to spur private investment at the corner of Jefferson and Niles Ave.

Matthews LLC is the new owner of the Emporium Building, in addition to the "521 Building" along Jefferson Boulevard. The developer has presented a proposal to make improvements to the exterior of the Emporium building inclusive of removal of the white paint on the original brick façade, tuck-pointing, construction of a rear multi-story deck, parking lot improvements, new windows and interior remodeling. The 521 building has undergone substantial renovation and the developer has proposed the installation of a French quarter style steel and metal façade creating an upper deck and greatly improving the appeal of the building.

The developer has requested assistance from the RDC to address the improper flow and turn of the Jefferson Street tunnel and the restoration of the parking area which is 50% owned by the RDC. The developer has committed that the new business that will locate in the buildings will create 40 new jobs at \$10 per hour.

Staff is requesting approval of the development agreement with a request to allocate \$87,000 to the project as described under Local Public Improvements.



DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of May __, 2015 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), 121 River Race LLC, an Indiana limited liability company with offices at 121 S. Niles Avenue, South Bend, Indiana 46617 (the “Niles LLC”), and 521 Jefferson LLC, an Indiana limited liability company with a registered address of P.O. Box 338, Notre Dame, Indiana 46556 (the “Jefferson LLC”)(each, a “Party,” and collectively, the “Parties”). The Niles LLC and the Jefferson LLC are referred to in this Agreement, collectively, as the “Developer,” and their responsibilities and obligations stated in this Agreement will at all times be joint and several.

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the “Act”); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the Niles LLC owns certain real property (the “Niles Property”) and the Jefferson LLC owns certain real property (the “Jefferson Property”) described in Exhibit A, respectively, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”); and

WHEREAS, the Developer desires to construct, replace, or otherwise rehabilitate certain elements of the Developer Property (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as Exhibit B; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the River East Development Area (the “Area”), and within River East Allocation Area No. 1; and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in Exhibit C (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Eighty-Six Thousand Three Hundred Three Dollars (\$86,303.00) of tax increment finance revenues to be used for paying the costs to construct the Local Public Improvements.

1.4 Private Investment. “Private Investment” means an amount no less than Five Hundred Seventy-Seven Thousand Three Hundred Fifty-Nine Dollars (\$577,359.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to construction of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property.

SECTION 2. INTERPRETATION, TERMS, AND RECITALS.

2.1 Interpretation.

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 3. ACCESS.

3.1 Grant of Easement. The Niles LLC and/or the Jefferson LLC, as the case may require, will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the “Easement”) in the form attached hereto as **Exhibit D**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, and delivery of the Local Public Improvements. The Easement shall inure to the benefit of the Commission and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, and completion of the Local Public Improvements.

SECTION 4. DEVELOPER’S OBLIGATIONS.

4.1 Generally. The Parties acknowledge and agree that the Commission’s agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer’s commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

4.2 The Project.

(a) The Developer shall perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B.

4.3 Cooperation. The Developer agrees to endorse and support the Commission’s efforts to expedite the Local Public Improvements through any required planning, design, permitting, waiver, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer and Commission agree to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Parties’ obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement by the date that is eighteen (18) months after the Effective Date of this Agreement (the “Mandatory Project Completion Date”). Notwithstanding any provision of this Agreement to the contrary, the Developer’s failure to complete the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.6 Developer’s Property Employment Obligations. The Developer Property shall have businesses at those locations that create forty (40) new jobs, with expected average hourly wages of no less than Ten Dollars (\$10.00) per hour for each employee (the “Job Creation

Requirement”) by the date that is twelve (12) months after the Developer has performed its obligations under this Agreement (the “Job Creation Deadline”) and maintain said jobs for at least the period of time described in Section 4.7(c) below. Notwithstanding any provision of this Agreement to the contrary, the Developer’s failure to satisfy the Job Creation Requirement by the Job Creation Deadline will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.7 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the Commission the number of local contractors and local laborers involved in the Project, the amount of bid awards for each contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report demonstrating the Developer’s good-faith compliance with the terms of this Agreement. This report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created, detailed by location.

(c) On or before April 15 of the year that is one year after substantial completion of the Project and on each April 15 thereafter until April 15 of the year which is three (3) years after substantial completion of the Project, the Developer shall submit to the Commission a report with the following information: (i) the number of jobs created as a result of the Project and wage and benefit information for the jobs created; and (ii) a detailed description of the of the job and wage details for the number of people employed by the Developer in connection with the Project.

4.8 Submission of Plans and Specifications for Project. Upon completion of all plans and specifications for the Project, or changes thereto, the Developer shall deliver a complete set thereof to the Commission.

4.9 Costs and Expenses of Construction of Project. Developer hereby agrees to pay, or cause to be paid, all costs and expenses of construction for the Project (including legal fees, architectural and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount.

4.10 Specifications for Local Public Improvements. Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and Developer will pay all costs and expenses of the same. Developer will submit all bid specifications related to the Local Public Improvements to the Board of Works and the Commission for review and approval.

4.11 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Project.

4.12 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Commission and the City shall be named as additional insureds for the minimum amounts or greater, when required by law, as described in Exhibit E attached hereto (but not on any worker's compensation policies).

4.13 Property Maintenance; Liens. The Developer represents and warrants that as of the Effective Date of this Agreement, there are no delinquent tax obligations, mechanics' or statutory liens, or violations of applicable federal, state, or local laws, including the South Bend Municipal Code, associated with the Niles Property or the Jefferson Property. The Developer agrees that it will not place or suffer to be placed any lien or encumbrance of any kind on the Niles Property or the Jefferson Property after the Effective Date of this Agreement without notice to and consent of the Commission.

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

SECTION 5. COMMISSION'S OBLIGATIONS.

5.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in the Agreement.

5.2 Completion of Local Public Improvements.

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit C attached hereto on or before the date that is twelve (12) months after the Mandatory Project Completion Date.

(b) Before work on the Local Public Improvements will commence, the Commission will review and approve the bid specifications prepared by the Developer in accordance with Section 4.10 of this Agreement.

(c) Notwithstanding anything contained herein to the contrary, in the event the costs to construct the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount.

In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 7. DEFAULT.

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand. In the event that the Developer fails to satisfy the Job Creation Requirement by the Job Creation Deadline, then upon the written demand of the Commission, the Developer will repay the Commission an amount equal to

\$2,589.09 multiplied by the number of jobs by which the Developer fell short of the Job Creation Requirement as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST, INDEMNITY.

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer accepts the same pursuant to the provisions of this Agreement; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. Developer agrees to indemnify, defend, and hold the Commission and the City harmless from and against any third party claims suffered by the Commission or the City

as a result of a negligent act or omission of Developer, its members, employees and/or agents relating to the completion of the Project and/or the Local Public Improvements unless such claims arise by reason of the negligent act or omission of the Commission. The Commission agrees to indemnify, defend, and hold the Developer harmless from and against any third party claims suffered by the Developer as a result of an intentional or negligent act or omission of the Commission, its members, officials, employee's and/or agents relating to the completion of the Project and/or the Local Public Improvements unless such claims arise by reason of the negligent act or omission of the Developer.

SECTION 9. MISCELLANEOUS.

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

9.2 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.3 Waiver of Jury Trial. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both parties.

9.4 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.5 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.6 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.7 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: 121 River Race LLC
121 S. Niles Avenue
South Bend, Indiana 46617
Attn: David Matthews

and

521 Jefferson LLC
P.O. Box 338
Notre Dame, Indiana 46556
Attn: David Matthews

With a copy to: Marcellus M. Lebbin
May Oberfell Lorber
4100 Edison Lakes Parkway, Suite 100
Mishawaka, Indiana 46545

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Chris Fielding

With a copy to: South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

9.8 Governing Law. This Agreement is governed by the laws of the State of Indiana.

9.9 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.10 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.11 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. Upon written consent of the Commission, the Developer may assign its rights and obligations under this Agreement to another party.

9.12 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

9.13 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

9.14 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.15 Time. Time is of the essence of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date.

COMMISSION:

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

STATE OF INDIANA)
)
COUNTY OF ST. JOSEPH)

SS:

Before me, the undersigned, a Notary Public for and in said County and State, this ____ day of _____, 2015, personally appeared _____ and _____, the _____ and _____ of the South Bend Redevelopment Commission, and acknowledged execution of the foregoing Development Agreement for and on behalf of South Bend Redevelopment Commission for the use and purposes contained therein.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL) _____

Commission expires: _____, Notary Public
Resident of _____ County, _____

DEVELOPER:

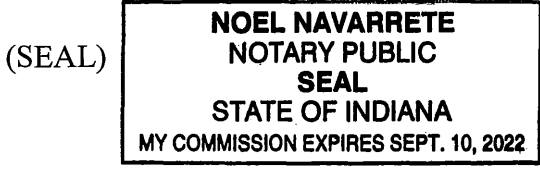
121 River Race LLC, an Indiana limited liability company

By: *David Matthews*
Name: DAVID MATTHEWS
Title: Member

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

Before me, the undersigned, a Notary Public in and for said County and State, this 8th day of July, 2015, personally appeared DAVID MATTHEWS, the Member of 121 River Race LLC, and acknowledged execution of the foregoing Development Agreement for and on behalf of 121 River Race LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Noel Navarrete

Commission expires: SEPT 10, 2022

Noel Navarrete, Notary Public
Resident of St JOSEPH County, INDIANA

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

521 Jefferson LLC, an Indiana limited liability company

By: David Matthews
Name: DAVID MATTHEWS
Title: Member

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

Before me, the undersigned, a Notary Public in and for said County and State, this 8th day of July, 2015, personally appeared DAVID MATTHEWS, the MEMBER of 521 Jefferson LLC, and acknowledged execution of the foregoing Development Agreement for and on behalf of 521 Jefferson LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL) **NOEL NAVARRETE**
NOTARY PUBLIC
SEAL
STATE OF INDIANA
MY COMMISSION EXPIRES SEPT. 10, 2022

David Matthews

Commission expires: SEPT 10 2022 NOEL NAVARRETE, Notary Public
Resident of ST JOSEPH County, INDIANA

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

EXHIBIT A

Description of Developer Property

Niles Property

Jefferson Property

EXHIBIT B

Project Plan

The Developer will complete the following work in accordance with the terms and conditions of the Development Agreement and in compliance with all applicable laws and regulations:

- A. The Developer will remove all obstructions or impediments, including any existing decking or other structures, that may interfere with the Commission's work on the tunnel situated on or near the Developer Property.
- B. The Developer will construct and equip a seating deck on the Jefferson Property with a capacity of ___ persons, in substantial conformity with the rendering(s) attached as hereto as Exhibit B-__.
- C. The Developer will repair and improve the façade of the Niles Property, in substantial conformity with the rendering(s) attached hereto as Exhibit B-__.
- D. The Developer will construct and equip a seating deck on the Niles Property with a capacity of ___ persons, in substantial conformity with the rendering(s) attached hereto as Exhibit B-__.
- E. The Developer will construct or improve the following elements of Suite 11 at the Niles Property: stage, sound, windows, doors, ramp, floors, bar, and kitchen.

EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of the Development Agreement and in compliance with all applicable laws and regulations:

Phase One: After the Developer has cleared any obstructions or impediments on the Developer Property, the Commission will repair and/or reconfigure the tunnel exit situated on or near the Developer Property.

Phase Two: After the Developer has completed items A through D set forth in the Project Plan attached to the Development Agreement as Exhibit B, the Commission will:

- A. construct, repair, and/or rehabilitate the parking lots situated on the Developer Property and an adjacent parking lot owned by the City of South Bend; and
- B. improve the landscaped area adjacent to the parking lots situated on the Developer Property.
- C. Façade improvements, specifically window replacement of the building situated on the Developer Property.

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ day of _____, 2015 (the "Effective Date"), by and between _____, an Indiana limited liability company with offices at _____ (the "Grantor"), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the "Grantee").

WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the "Easement") on, in, over, under and across the real property described in attached Exhibit 1 (the "Property") for the construction, equipping, and delivery of certain improvements on the Property (the "Local Public Improvements"), together with the right of ingress to and egress from the Easement for said purposes, all pursuant a certain Development Agreement by and between Grantor and Grantee, dated _____, 2015 (the "Development Agreement").

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee's contractors acting on Grantee's behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the "Construction Termination Date") of the earliest of the following: (a) April 30, 2016; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

121 River Rock LLC, an Indiana limited liability company

David Matthews

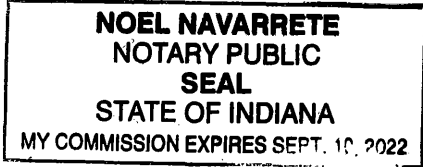
Printed: DAVID MATTHEWS

Its: Member

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID MATTHEWS, to me known to be the MEMBER of the Grantor in the above Grant of Temporary Easement, and acknowledged the execution of the same as the Grantor's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this 8 day of July, 2015.



Noel Navarrete

Noel Navarrete Notary Public
Residing in St. Joseph County, IN

My Commission Expires: Sept 10, 2022

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

EXHIBIT 1

Description of Property

EXHIBIT E

Minimum Insurance Amounts

- | | | | |
|----|------------------------------------|--|--|
| A. | Worker's Compensation | | |
| | 1. State | | Statutory |
| | 2. Applicable Federal | | Statutory |
| | 3. Employer's Liability | | \$100,000.00 |
| | | | |
| B. | Comprehensive General Liability | | |
| | 1. Bodily Injury | | |
| | a. \$1,000,000.00 | | Each Occurrence |
| | b. \$5,000,000.00 | | Annual Aggregate Products
and Completed Operation |
| | 2. Property Damage | | |
| | a. \$1,000,000.00 | | Each Occurrence |
| | b. \$5,000,000.00 | | Annual Aggregate |
| | | | |
| C. | Comprehensive Automobile Liability | | |
| | 1. Bodily Injury | | |
| | a. \$500,000.00 | | Each Person |
| | b. \$500,000.00 | | Each Accident |
| | 2. Property Damage | | |
| | a. \$500,000.00 | | Each Occurrence |
| | | | |
| D. | Comprehensive Liability Insurance | | |
| | 1. Bodily Injury | | |
| | a. \$1,000,000.00 | | Each Occurrence |
| | b. \$5,000,000.00 | | Annual Aggregate Products
and Completed Operation |
| | 2. Property Damage | | |
| | a. \$1,000,000.00 | | Each Occurrence |
| | b. \$5,000,000.00 | | Annual Aggregate |