



Department of
Community Investment

Memorandum

March 10, 2016

TO: South Bend Redevelopment Commission

FROM: David Relos, Economic Resources *DR*

SUBJECT: Certificate of Completion and First Amendment to Agreement for Sale of Land for Private Development with River Race Townhomes LLC
 First Amendment to Agreement for Sale of Land for Private Development with East Bank South Bend Development LLC

On October 15, 2010 the Commission approved the final site plan with East Bank South Bend Development LLC (East Bank), for the construction of six townhomes on the old Rink site at the corner of Colfax and Sycamore. These townhomes were constructed and a Certificate of Completion issued on April 24, 2012.

On April 10, 2012 the Commission approved the final site plan with River Race Townhomes LLC (River Race), for the construction of ten townhomes on the old Troeger site at the corner of Jefferson and Niles. The Agreement for Sale for this site, entered in to on June 28, 2011, called for Certificates of Occupancy to be received within three years from this June date. During the time frame between June 2011 and April 2012, a CSO project was being planned along Niles north of Jefferson, which delayed site planning. Because project construction was completed within the three year period and Certificates of Occupancy were issued this past November, staff request approval of the Certificate of Completion for this site.

Additionally, when the Agreements for Sale for both sites were drafted, they contained language that no tax abatements would be sought for the "property". It is felt that the no tax abatement pledge was for the projects as approved, not for future development that may or may not have occurred, and there are no deed restrictions of this type that run with the land. To encourage future development at these two sites, it is recommended to amend the Agreements for Sale to clarify that no tax abatements would be sought for the projects as approved, and future tax abatement requests could be sought for the remaining subdivided parcels.

Staff requests approval of the Certificate of Completion with River Race, and the First Amendment to Agreement for Sale of Land with River Race and East Bank, to encourage more development at both sites.



RETURN TO:
SOUTH BEND REDEVELOPMENT
COMMISSION
1400 S. COUNTY-CITY BUILDING
SOUTH BEND, IN 46601

AUDITOR'S RECORD
TRANSFER NO. _____
TAXING UNIT _____
DATE _____
KEY NO. _____

CERTIFICATE OF COMPLETION

This Certificate of Completion (this "Certificate") is issued this 10th day of March, 2016, pursuant to the Agreement for Sale of Land for Private Development, by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission (the "Commission"), and River Race Townhomes, LLC, an Indiana limited liability company (the "Developer"), dated June 28, 2011, and recorded on July 20, 2011, as Document No. 1118419 in the Office of the Recorder of St. Joseph County, Indiana, as amended by the First Amendment to Agreement for Sale of Land for Private Development, of even date herewith (collectively, the "Agreement").

The Commission states as follows:

1. Pursuant to the Agreement, the Commission conveyed to the Developer the real property identified in attached Exhibit A (the "Property") by the warranty deed recorded on May 10, 2012, as Document No. 1213737 in the Office of the Recorder of St. Joseph County, Indiana.
2. The Commission hereby certifies that the Developer has completed the Project (as defined in the Agreement) in accordance with the terms of the Agreement. This Certificate will have the effect stated in the Agreement.
3. This Certificate does not amend or otherwise alter the Agreement, which remains in full force and effect according to its terms.

[Signature page follows.]

SOUTH BEND
REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Donald E. Inks, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Certificate of Completion.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the _____ day of _____, 2016.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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.

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

4000.0000027 34720603.001

EXHIBIT A

Description of Property

Lots Numbered One Hundred Fifty-Eight (158), One Hundred Fifty-Nine (159), One Hundred Sixty (160), One Hundred Sixty-One (161), One Hundred Sixty-Two (162), and One Hundred Sixty-Three (163), all as shown on the recorded Plat of Samuel L. Cottrell's addition to the Town of Lowell, now within and a part of the City of South Bend, together with the North Half of the Vacated Alley lying South of and adjacent to said Lot Numbered 160 in said Addition and together with the South Half of Vacated Alley lying North of and adjacent to said Lot Numbered 161 in said Addition.

Property Address: Vacant Land Niles Avenue

South Bend 46617

- 18-5010-0285/71-08-12-252-001.000-026 Lot 158
- 18-5010-0286/71-08-12-252-007.000-026 Lot 158
- 18-5010-0287/71-08-12-252-008.000-026 Lot 158
- 18-5010-0288/71-08-12-252-002.000-026 Lot 159
- 18-5010-0290/71-08-12-252-003.000-026 Lots 159-160
- 18-5010-0291/71-08-12-252-004.000-026 Lot 161
- 18-5010-0292/71-08-12-252-005.000-026 Lot 162
- 18-5010-0293/71-08-12-252-006.000-026 Lot 163

**FIRST AMENDMENT TO AGREEMENT FOR SALE OF LAND
FOR PRIVATE DEVELOPMENT**

This First Amendment to Agreement for Sale of Land for Private Development (this "First Amendment") is made on March 10, 2016 (the "Effective Date"), by and between the South Bend Redevelopment Commission (the "Commission") and East Bank South Bend Development, LLC, an Indiana limited liability company (the "Developer") (each a "Party" and together the "Parties").

RECITALS

A. The Commission and the Developer entered into that certain Agreement for Sale of Land for Private Development (the "Development Agreement") dated March 5, 2010, and recorded on March 16, 2010, as Document No. 1006659 in the Office of the Recorder of St. Joseph County, Indiana, under which the Commission sold the Property (as defined in the Development Agreement) to the Developer.

B. The Developer completed its construction of the Project (as defined in the Development Agreement) in accordance with Section III of the Development Agreement.

C. The Commission issued a Certificate of Completion dated April 24, 2012, and recorded on May 11, 2012, as Document No. 1213970 in the Office of the Recorder of St. Joseph County, Indiana, evidencing the Developer's completion of the Project.

D. The Development Agreement provides that the Developer will not seek any tax abatements for the Property.

E. The Parties agree that the Development Agreement does not accurately state their intent concerning tax abatements.

F. The Parties desire to clarify that they intended to limit the Development Agreement's prohibition on tax abatements only to the portion of the Property upon which the Project was to be constructed, rather than the whole of the Property.

G. The Parties desire to correct the Development Agreement's language in accordance with the terms of this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and obligations in the Development Agreement and this First Amendment, the Parties agree as follows:

1. The last sentence of Section I of the Development Agreement is deleted in its entirety and replaced by the following: "As further consideration, the Developer will not apply for any tax abatements for the portion of the Property identified as Lots 3 through 8 on the recorded plat of East Bank Townhomes Minor Subdivision, recorded on January 6, 2011, as Document No. 1100776 in the Office of the Recorder of St. Joseph County, Indiana, as corrected by the Affidavit of Scriveners [*sic*] Error recorded on April 11, 2011 as Document No. 1109817 in the Office of the Recorder of St. Joseph County, Indiana. Notwithstanding any provision to the contrary, the prohibition stated in the foregoing sentence will survive the Commission's issuance of any certificate of completion in connection with the Project." Solely for purposes of illustration, a copy of said plat is attached hereto as Exhibit 1.

2. This First Amendment will be recorded in the Office of the Recorder of St. Joseph County, Indiana.

3. Capitalized terms in this First Amendment will have the meanings stated in the Development Agreement unless otherwise provided herein.

4. Except as expressly modified by this First Amendment, the terms and conditions of the Development Agreement remain in full force and effect.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to be effective on the Effective Date stated above.

SOUTH BEND
REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public for and in said County and State this 10th day of March, 2016, personally appeared Marcia I. Jones and Donald E. Inks, the President and Secretary, respectively, of the South Bend Redevelopment Commission, and acknowledged execution of the foregoing First Amendment.

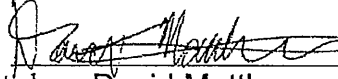
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL)

_____, Notary Public

Commission expires: _____ Resident of _____ County, _____

EAST BANK SOUTH BEND
DEVELOPMENT, LLC

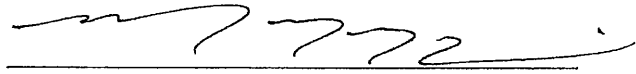
By: 
Printed: David Matthews
Its: Member

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

Before me, the undersigned, a Notary Public for and in said County and State this 8th day of March, 2016, personally appeared David Matthews, Member of East Bank South Bend Development, LLC and acknowledged the execution of the foregoing First Amendment.

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

(SEAL)



Marcellus M. Lebbin, Notary Public

Commission expires: 06/15/2022 Resident of St. Joseph County, INDIANA

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.

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EXHIBIT 1

East Bank Townhomes Minor Subdivision

[See attached.]

**FIRST AMENDMENT TO AGREEMENT FOR SALE OF LAND
FOR PRIVATE DEVELOPMENT**

This First Amendment to Agreement for Sale of Land for Private Development (this "First Amendment") is made on March 10, 2016 (the "Effective Date"), by and between the South Bend Redevelopment Commission (the "Commission") and River Race Townhomes, LLC, an Indiana limited liability company (the "Developer") (each a "Party" and together the "Parties").

RECITALS

A. The Commission and the Developer entered into that certain Agreement for Sale of Land for Private Development (the "Development Agreement") dated June 28, 2011, and recorded on July 20, 2011, as Document No. 1118419 in the Office of the Recorder of St. Joseph County, Indiana, under which the Commission sold the Property (as defined in the Development Agreement) to the Developer.

B. The Developer completed its construction of the Project (as defined in the Development Agreement) in accordance with Section III of the Development Agreement.

C. The Commission has issued a Certificate of Completion of even date herewith evidencing the Developer's completion of the Project.

D. The Development Agreement provides that the Developer will not seek any tax abatements for the Property.

E. The Parties agree that the Development Agreement does not accurately state their intent concerning tax abatements.

F. The Parties desire to clarify that they intended to limit the Development Agreement's prohibition on tax abatements only to the portion of the Property upon which the Project was to be constructed, rather than the whole of the Property.

G. The Parties desire to correct the Development Agreement's language in accordance with the terms of this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and obligations in the Development Agreement and this First Amendment, the Parties agree as follows:

1. The last sentence of Section I of the Development Agreement is deleted in its entirety and replaced by the following: "As further consideration, the Developer will not apply

for any tax abatements for the portion of the Property identified as Lots 1 through 10 on the recorded plat of River Race Townhomes Minor Subdivision, recorded on September 20, 2012, as Document No. 1229942 in the Office of the Recorder of St. Joseph County, Indiana. Notwithstanding any provision to the contrary, the prohibition stated in the foregoing sentence will survive the Commission's issuance of any certificate of completion in connection with the Project." Solely for purposes of illustration, a copy of said plat is attached hereto as Exhibit 1.

2. Section IV.C. is deleted in its entirety.
3. This First Amendment will be recorded in the Office of the Recorder of St. Joseph County, Indiana.
4. Capitalized terms in this First Amendment will have the meanings stated in the Development Agreement unless otherwise provided herein.
5. Except as expressly modified by this First Amendment, the terms and conditions of the Development Agreement remain in full force and effect.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to be effective on the Effective Date stated above.

SOUTH BEND
REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

STATE OF INDIANA)

)

SS:

COUNTY OF ST. JOSEPH)

)

Before me, the undersigned, a Notary Public for and in said County and State this 10th day of March, 2016, personally appeared Marcia I. Jones and Donald E. Inks, the President and Secretary, respectively, of the South Bend Redevelopment Commission, and acknowledged execution of the foregoing First Amendment.

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

(SEAL)

_____, Notary Public

Commission expires: _____

Resident of _____ County, _____

RIVER RACE TOWNHOMES, LLC

By: [Signature]
Printed: David Matthews
Its: Member

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

Before me, the undersigned, a Notary Public for and in said County and State this 8th day of March, 2016, personally appeared David Matthews, Member of River Race Townhomes, LLC and acknowledged the execution of the foregoing First Amendment.

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

(SEAL)

[Signature]

Marcellus M. Lebbin Notary Public

Commission expires: 06-15-2022 Resident of St. Joseph County, INDIANA

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.

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EXHIBIT 1

River Race Townhomes Minor Subdivision

[See attached.]

