

**FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT (this "Fifth Amendment") is made on June 27<sup>th</sup>, 2018, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and Southhold, LLC, an Indiana limited liability company with its registered office at 120 Dixieway North, South Bend, Indiana (the "Developer") (each a "Party," and collectively the "Parties").

**RECITALS**

A. The Commission and the Developer entered into that certain Development Agreement dated July 16, 2015, as amended by the First Amendment to Development Agreement dated March 24, 2016, the Second Amendment to Development Agreement dated May 26, 2016, the Third Amendment to Development Agreement dated August 25, 2016, and the Fourth Amendment to Development Agreement dated September 14, 2017 (collectively, the "Development Agreement"), for the redevelopment of the Project Site, including reusing and rehabilitating the building known as the former College Football Hall of Fame and constructing a new hotel on an adjacent parcel in downtown South Bend referred to as the Jefferson Lot.

B. As set forth in the Development Agreement, the Parties agreed that following Substantial Completion of the Project, the Developer would be granted a license and right of access to the Hall of Fame for preparation and construction of certain improvements on the Hall of Fame Property in accordance with the Project Plan, during which the Commission would pay the costs of maintaining, and replacing if necessary, the heating, ventilating, and air conditioning systems on the Hall of Fame Property for a period of thirty-six (36) months (collectively, the "HVAC Obligation").

C. In consideration of other accommodations stated herein to assist the Developer's use and redevelopment of the Hall of Fame Property, the Parties agree to eliminate the Commission's HVAC Obligation, adjust the purchase price to reflect the same, and amend the structure of the license agreement as of the Effective Date of this Fifth Amendment on the terms stated herein.

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

1. Sections 3.3, 3.3.1, and 3.3.2 are deleted in their entirety and replaced by the following:

**3.3 Access to Hall of Fame Property Before Hall of Fame Property Closing Date.** The Commission will permit the Developer to enter upon the Hall of Fame Property for purposes of construction planning pursuant to the temporary access agreement attached hereto as Exhibit G-1, as amended from time to time by the Parties (the "Temporary Access Agreement"). The Temporary Access Agreement will terminate on the Hall of Fame Closing Date.

2. Section 3.4 of the Development Agreement is deleted in its entirety and replaced by the following:

**3.4 Purchase of Hall of Fame Property.** On a date mutually agreed by the Parties in writing (the “Hall of Fame Property Closing Date”), the Commission will convey to the Development the Hall of Fame Property, including all fixtures, furniture, display cases, and other personal property related to the exhibits formerly maintained there, for Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), and the Commission recognizes that a payments have been made totaling Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) toward the Hall of Fame Property Purchase Price. The remaining amount shall be payable as described below, along with other valuable consideration, for the redevelopment of the Project Site in accordance with the purposes of the Act and subject to all of the terms, covenants, and conditions of this Development Agreement (all such payments made toward the Hall of Fame Property shall be collectively defined as the “Purchase Price”). The closing on the Hall of Fame Property will be held at the office of the Title Company, which shall act as closing agent.

3. Section 3.4.1 of the Development Agreement is deleted in its entirety and replaced by the following:

**3.4.1 Conditions Precedent to Closing.** Prior to and as conditions precedent to closing the conveyance of the Hall of Fame Property (unless otherwise waived by the Parties):

4. Section 3.4.1(b) of the Development Agreement is deleted in its entirety.

5. Section 3.4.1(d) of the Development Agreement is deleted in its entirety and replaced by the following: “The Developer will make a final payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) on or before the Hall of Fame Property Closing Date.”

6. The language “One Million Two Hundred Thousand Dollars (\$1,200,000.00) in Section 3.4.1(h) of the Development Agreement is deleted and replaced by “Five Hundred Twenty-Five Thousand (\$525,000.00).”

7. The first sentence of Section 3.5 of the Development Agreement is deleted in its entirety and replaced by the following: “The Commission is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Jefferson Lot or the Hall of Fame Property, including, but not limited to, any warranties or representations as to habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, operating history or projections, valuation, governmental approvals, governmental regulations, the truth, accuracy or completeness of the items or any other information provided by or on behalf of the Commission to the Developer or any other matter or thing regarding the Jefferson Lot or the Hall of Fame Property.”

8. Section 4.6 of the Development Agreement is modified to add the following sentence, “Additionally, within two (2) years of closing on the Hall of Fame Property, Developer will obtain a certificate of occupancy for, at a minimum, the street-level portion of the building.

9. Section 6.2 of the Development Agreement is deleted in its entirety.
10. Section 6.3 of the Development Agreement is deleted in its entirety and replaced by the following:

**6.3 Cure.** If the Commission shall fail or refuse to provide the Jefferson Lot Certificate of Completion, the Commission shall, within thirty (30) days of any written request by the Developer, provide the Developer with a written statement indicating in what respects the Developer has failed to satisfy the terms of the Development Agreement, or has otherwise committed a Default, and what measures or acts it will be necessary for the Developer to take to acquire such certification.

11. Exhibit H to the Development Agreement is deleted in its entirety and replaced by the form of special warranty deed that is attached as Exhibit 1, or, by further agreement of the Parties, a special warranty deed in substantially the same form as the special warranty deed attached as Exhibit 3.

12. The First Amendment to Temporary Access Agreement, attached hereto as Exhibit 2, shall be executed on and made effective as of the date of this Fifth Amendment.

13. In addition to the Commission's release from the HVAC Obligation, the Developer shall be bound by the following condition subsequent to the conveyance of the Hall of Fame Property to Developer:

- a. Condition Precedent to Conveyance to Third Party. The Parties agree that the Developer shall be prohibited from selling or otherwise conveying its interest in the Hall of Fame Property to a third party within thirty-six (36) months of the Hall of Fame Property Closing Date unless payment is made to the Commission of any amount of the third-party purchase price up to One Million Two Hundred Thousand Dollars (\$1,200,000.00) less the Purchase Price.

The Parties further agree that this condition precedent to the conveyance of the Hall of Fame Property is not contrary to public policy and shall be memorialized in the special warranty deed described in Section 11 of this Fifth Amendment.

14. The Parties agree to discuss in good faith any future improvements to or renovations of the Green Space, including the Parties respective contributions towards any such project.

15. The Developer hereby expressly reaffirms its obligations under the Development Agreement, and, unless expressly modified by this Fifth Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

16. Capitalized terms used in this Fifth Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.

17. The recitals set forth above are hereby incorporated into the operative provisions of this Fifth Amendment.

18. This Fifth Amendment will be governed and construed in accordance with the laws of the State of Indiana.

19. This Fifth Amendment 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.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this Fifth Amendment to Development Agreement as of the first date stated above.

COMMISSION:

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary

DEVELOPER:

Southhold, LLC

  
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Anant Patel, Sole Member