



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Agenda

Regular Meeting, June 28, 2018 9:30 a.m.

1. Roll Call

2. Approval of Minutes

A. Minutes of the Regular Meeting of Thursday, May 24, 2018

3. Approval of Claims

A. Claims Submitted June 28, 2018

4. Old Business

5. New Business

A. River West Development Area

1. Second Amendment to Real Estate Purchase Agreement (Franklin Street Technology Park, LLC.) D2
2. Third Amendment to Development Agreement (Heading for Home LLC) D6
3. Development Agreement (Liberty Tower) D2
4. Second Amendment to Development Agreement (GLC) D2
5. Budget Request (Technology Resource Center) D2
6. Certificate of Completion (Southhold, LLC) D2
7. Fifth Amendment to Development Agreement (Southhold, LLC) D2

B. South Side Development Area

1. Budget Request (Small Drainage Design and Repair #118-063) D5

C. West Washington Development Area

1. Development Agreement (South Bend Heritage Foundation/Washington Colfax Apartments) D1

D. Other

1. TIF Neutralization Professional Services Proposal (H.J. Umbaugh & Associates)
All

6. Progress Reports

- A. Tax Abatement
- B. Common Council
- C. Other
 - a. RDC Law Updates - All

7. Next Commission Meeting:

Thursday, July 12, 2018, 9:30 a.m.

8. Adjournment

NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS

Auxiliary Aid or Other Services are Available upon Request at No Charge.
Please Give Reasonable Advance Request when Possible.

ITEM: 2A



South Bend
Redevelopment Commission
227 West Jefferson Boulevard, Room 1308, South Bend, IN

SOUTH BEND REDEVELOPMENT COMMISSION RESCHEDULED MEETING

May 24, 2018

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard
South Bend, Indiana

The meeting was called to order at 9:31 a.m.

1. ROLL CALL

Members Present: Marcia Jones, President
 Don Inks, Secretary
 Gavin Ferlic, Commissioner
 Quentin Phillips, Commissioner

Members Absent: Dave Varner, Vice-President
 Leslie Wesley, Commissioner

Legal Counsel: Sandra Kennedy, Esq.

Redevelopment Staff: David Relos, RDC Staff
 Mary Brazinsky, Board Secretary

Others Present: James Mueller DCI
 Daniel Buckenmeyer DCI
 Austin Gammage DCI
 Michael Davita DCI
 Jeff Young DCI
 Elizabeth Leonard Inks DCI
 Caleb Bauer South Bend Tribune
 Eric Henderson Prism Environmental
 Conrad Damian 718 E Broadway

2. Approval of Minutes

A. Approval of Minutes of the Regular Meeting of Thursday, May 10, 2018

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, May 10, 2018.

3. Approval of Claims

A. Claims Submitted May 24, 2018

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION Redevelopment Commission Claims May 24, 2018 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Torti Gallas & Partners	281.75	Loading Study to Develop A Concept Plan Test FL Space & Pking Capacity
American Electric Power	9,711.60	AEP Utility Move Hamilton Towing Block
The Lincoln Electric Company	72,149.16	Hand Torches Equip
Abonmarche	9,100.00	Lincoln Way West & Charles Martin Sr. Intersection
Lochmueller Group	40,432.81	Survey, Right of Way Research Design and Coordination with IDOT
Hull & Associates Inc.	2,508.89	GW & Vapor Intrusion Evaluation
Mann Manufacturing Services, Inc.	7,350.00	Stadium Floodlights
<u>422 FUND WEST WASHINGTON DEVELOPMENT AREA</u>		
Meridian Title	485.50	1043 W Colfax BEP Property Donation from SBH Needed for City Cemetery
Patricia Rybick	12,621.44	Relocation & Residential Schedule Move
James Patrick Rybicki	325.00	Relocation & Personal Property Move Only
Miguel Hernandez	300.00	Relocation & Personal Property Move Only
Total	155,266.15	

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the claims submitted on Friday, May 24, 2018.

4. Old Business

5. New Business

A. Receipt of Bids

1. 1522-1536 Prairie

Mr. Relos noted receipt of bids for 1522 -1536 Prairie were due this morning, Thursday, May 24, 2018 at 9:00 am. The properties went offered for disposition three different ways. No bids were received.

B. Staff Recommendation of Bid

1. 1743 Commerce Drive

Mr. Gammage stated that the Department of Community Investment is recommending acceptance of the bid by Enzyme Research for this property, received May 10, 2018. Enzyme Research has been in business for over 30 years manufacturing and distributing a variety of enzymes and cofactors used in basic coagulation research. This property abuts Enzyme Research's current property. The plan is to expand operations and use the new property for a larger employee parking area. With the expansion of operations, they will create more jobs with higher pay within the City of South Bend. Enzyme Research has agreed to allow the Airport Authority to place advertising signage on the property which will be outlined in the purchase agreement. Community Investment has received a fully executed bid packet offering the appraised value of \$28,250, the average of the two appraisals. Commission approval is requested.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the acceptance of Enzyme Research's bid for 1743 Commerce Drive.

C. River West Development Area

1. Fourth Amendment to Real Estate Purchase Agreement (Michigan Street Shops LLC)

Mr. Buckenmeyer presented the Fourth Amendment to Real Estate Purchase Agreement for the sale of the Michigan Street Shops and Wayne Street garage retail space. Because of the poor condition of some of the HVAC units, it has been agreed to credit the buyer at closing the estimated cost of replacement of certain units and for maintenance on the others, in the amount of \$36,398.38.

Mr. Relos noted that some units are original from when the shops were built in 1998. Some units have been replaced in the last several years, however there remains many units that have not been - the Wayne Street Garage space in particular. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the Fourth Amendment to Real Estate Purchase Agreement (Michigan Street Shops LLC) submitted on May 24, 2018.

2. Resolution No. 3435 (Franklin Street Technology Park, LLC)

Mr. Buckenmeyer presented Resolution No. 3435 (Franklin Street Technology Park, LLC). This Resolution is to approve the assignment of the Real Estate Purchase Agreement from Five Corners LLC to Franklin Street Technology Park, LLC, which are commonly owned. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3435 (Franklin Street Technology Park, LLC) submitted on May 24, 2018.

3. First Amendment to Real Estate Purchase Agreement (Franklin Street Technology Park, LLC)

Mr. Buckenmeyer presented this First Amendment To Real Estate Purchase Agreement with Franklin Street Technology Park, LLC. This Amendment extends the due diligence period an additional 90 days and updates the deed to the new entity's name. This is to allow AEP to re-route and re-locate lines in the north / south alley of this block.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved First Amendment to Real Estate Purchase Agreement (Franklin Street Technology Park, LLC) submitted on May 24, 2018.

4. First Amendment to Development Agreement (Ziker Sample Street LLC)

Mr. Buckenmeyer presented the First Amendment to Development Agreement with Ziker Sample Street LLC. This agreement extends the commencement and completion dates two months because of permitting delays. Commission approval is requested.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved First Amendment to Development Agreement (Ziker Sample Street LLC) submitted on May 24, 2018.

5. Budget Request (Lincolnway West-Charles Martin Streetscape Improvements)

Mr. Divita presented the \$1.5m budget request for Lincolnway West-Charles Martin Streetscape Improvements. This request is for streetscape improvements around the Lincolnway West-Charles Martin Sr. Drive intersection. As part of its implementation of the West Side Main Streets Revitalization Plan, the City of South Bend proposes to make improvements creating an environment more inviting to commercial and residential investment. This project includes: completing intersection narrowing at the Lincolnway West and Charles Martin Sr. Drive intersection to promote safety and pedestrian crossings; reconfiguring the Leland Avenue-Marion Street-Scott Street connections just north of the intersection to promote greater neighborhood access and preparing City-owned land near the northwest corner of this intersection for development. As necessary, curbs, sidewalks, driveway approaches, and street pavement will be replaced. Street trees and decorative lighting will be added while scrub vegetation, dilapidated fencing and excess pavement will be removed. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Budget Request (Lincolnway West-Charles Martin Streetscape Improvements) submitted on May 24, 2018.

D. Other

1. Resolution No. 3436 (Determining Tax Increment to be Collected in Year 2019)

Ms. Leonard Inks presented Resolution No. 3436, regarding tax increment to be collected in the year 2019. This Resolution determines that tax increment to be collected in 2019 is needed to satisfy obligations of the Commission, with the exception of the Douglas Road Development Area which is planned to be closed after the completion of one final project. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3436 (Determining Tax Increment to be Collected in Year 2019) submitted on May 24, 2018.

2. License Agreement (Best Wednesday Ever)

Mr. Divita presented this License Agreement (Best Wednesday Ever). La Casa de Amistad will be hosting a Best Wednesday Ever event during Best Week Ever, and has asked to use the old PNA site at Western and Olive for parking and transportation needs given the expected attendance at the event. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved License Agreement (Best Wednesday Ever) submitted on May 24, 2018.

6. Progress Reports

- A. Tax Abatement
- B. Common Council
- C. Other

7. Next Commission Meeting:

Thursday, June 14, 2018, 9:30 a.m.

8. Adjournment

Thursday, May 24, 2018, 9:48 a.m.

ITEM: 3A

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION		
Redevelopment Commission Claims June 28, 2018 for approval & ratify		
324 RIVER WEST DEVELOPMENT AREA		
Kolata Enterprise LLC	405.00	Professional Services
Gibson-Lewis, LLC	257,856.66	Fire Station #4
Century Center	28,834.20	Vestibule Heater Replacement
Gibson-Lewis, LLC	532,052.87	Charles Black Center Renovation
Gibson-Lewis, LLC	63,816.54	Fire Station #4
Kil Architecture Planning	6,065.00	Repair Damaged Roof Joist once the Current Roof is Removed Lafayette Building
A&Z	34,987.50	Airport Annexation A&Z Topographic Survey along US20/Sanitary Sewers Design Ph. Geotechnical/Potholing
ARC	111.63	Downtown Cross St. Print
Selge Construction Co., Inc.	2,338.52	Western Ave and Olive St. Intersection Improvement
CBS Service, LLC	310,920.75	Berlin Place No. 2 Electrical, Mechanical & Plumbing
Aecom	17,324.62	South Shore Feasibility Study
Ram Construction Services of Michigan, Inc.	40,811.83	Leighton Deck Coatings - Ph. II
Opticos	39,016.00	South Bend Charrette
Slatile Roofing & Sheet Metal	153,091.30	Lafayette Building Roofing
IDEM	1,481.25	Olive Plow
Edward J White Inc.	30,263.17	Vestibule Heater Replacement
Premium Concrete Services	118,648.64	100 Wayne St. Plaza and Streetscape
Lochmuller Group	23,939.36	Licolnway Rehabilitation
DLZ	765.00	So. Bend Tucker Drive
Abonmarche	6,000.00	Lincoln Way West and Charles Martin St. Intersection
AT&T	6,140.46	Remove their lines in the Hamilton Towing Block
Walsh & Kelly Inc.	20,786.48	Monore St. Parking Lot
Dynamic Mechanical Services	72,039.45	Langlab HVAC Improvements
422 FUND WEST WASHINGTON DEVELOPMENT AREA		
DLZ	8,462.00	So. Bend Colfax Ave Two-Way
429 FUND RIVER EAST DEVELOPMENT TIF		
Lawson-Fisher Associates P.C	8,582.88	Corby St. Storm Sewer System Evaluation
Christopher B. Burke Engineering, LLC	2,192.25	East Race Sewer Analysis
430 FUND SOUTH SIDE TIF AREA #1		
Farrington Appraisals	3,225.00	Kohl Consulting
Kil Architecture Planning	37,874.48	Erskine Clubhouse Remodeling Ph. II
Associated Property Counselors, Ltd.	7,500.00	Appraisal Review 1290 Ireland Rd Kohl's
Botkin & Hall, LLP	4,659.31	Title / copies color & black Kohl's
Donohue & Associates	2,175.00	South Wellfield
Jones Petrie Rafinski	1,923.75	St. Joseph Streetscape Improvements
Barnes & Thornburg LLP	1,332.00	RC Committee Matters
Total	1,845,622.90	



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 28, 2018
FROM: David Relos, Property Development Manager
SUBJECT: Second Amendment to Real Estate Purchase Agreement
(Franklin Street Technology Park, LLC)

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

This Second Amendment to Real Estate Purchase Agreement is to correct the deed for this property’s legal description. The current deed contains the various parcels that made up this block prior to it being replatted. With the replat this block now contains one parcel, and the deed is being updated to reflect this one parcel.

Staff requests approval of the Second Amendment to Real Estate Purchase Agreement with Franklin Street Technology Park LLC, to update the deed’s legal description.

INTERNAL USE ONLY: Project Code: _____;
Total Amount new/change (inc/dec) in budget: ___-0-_____; Breakdown:
Costs: Engineering Amt: _____; Other Prof Serv Amt _____;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____
_____. Going to BPW for Contracting? Y/N
Is this item ready to encumber now? ___N/A___ Existing PO# _____ Inc/Dec \$ _____

SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This Second Amendment To Real Estate Purchase Agreement (this “Second Amendment”) is made effective as of June 28, 2018 (the “Effective Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Franklin Street Technology Park LLC (formerly Five Corners LLC), an Indiana limited liability company with its principal place of business 814 Marietta Street, South Bend, Indiana 46601 (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

A. Buyer and Seller entered into that certain Real Estate Purchase Agreement, dated February 22, 2018 (“the “Purchase Agreement”), as subsequently amended on May 24, 2018 by that certain First Amendment to Real Estate Purchase Agreement (the “First Amendment” and together, the “Agreement”), for the purchase and sale of the Property (as defined in the Purchase Agreement) located in the City of South Bend.

B. Seller recently re-platted the Property, consolidating four (4) parcels into one (1) parcel, changing the legal description of the Property, and necessitating a change to certain exhibits attached to the Agreement.

C. The Parties wish to further amend the Agreement as set forth herein.

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

1. **Exhibit A** of the Purchase Agreement is hereby deleted in its entirety and replaced with the **Exhibit One** attached hereto.

2. The Revised Deed defined in and attached to the First Amendment as **Exhibit A** shall be deleted in its entirety and destroyed. The Commission hereby approves, and will execute simultaneously with this Second Amendment, to be held by the Seller until Closing, the Special Warranty Deed attached hereto as **Exhibit Two** (the “Second Revised Deed”), correcting the legal description of the Property. For the purposes of Closing, the Second Revised Deed replaces all other deeds attached to the Agreement, and the Commission hereby authorizes and instructs David Relos of the City of South Bend Department of Community Investment to deliver to Buyer, at Closing, the Second Revised Deed. Buyer agrees to accept the Second Revised Deed at Closing.

3. Unless expressly modified by this Second Amendment, the terms and provisions of the Agreement remain in full force and effect.

4. Capitalized terms used in this Second Amendment will have the meanings set forth in the Agreement unless otherwise stated herein.

IN WITNESS WHEREOF, the Parties hereby execute this Second Amendment to Real Estate Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Franklin Street Technology Park LLC,
an Indiana limited liability company

Charles S. Hayes, Managing Member

SELLER:

City of South Bend, Department of Redevelopment,
by and through its governing body, the South Bend
Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

EXHIBIT ONE

Description of Property

Lot A of the recorded plat of Studebaker Corridor Fourth Minor Subdivision – Plat of City of South Bend First Replat, recorded on April 24, 2018, as Document No. 1809856 in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-8002-0061

EXHIBIT TWO

Second Revised Deed

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the “Grantor”)

CONVEYS AND SPECIALLY WARRANTS to Franklin Street Technology Park LLC, an Indiana limited liability company with its registered address at 814 Marietta Street, South Bend, Indiana 46601 (the “Grantee”), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the “Property”):

Lot A of the recorded plat of Studebaker Corridor Fourth Minor Subdivision – Plat of City of South Bend First Replat, recorded on April 24, 2018, as Document No. 1809856 in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-8002-0061

The Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases, licenses, and interests; subject to the terms and provisions of that certain Real Estate Purchase Agreement dated February 22, 2018, as amended from time to time, by and between the Grantor and the Grantee (the “Purchase Agreement”); subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission’s development area plan affecting the area in which the Property is situated and any design review guidelines associated therewith.

Pursuant to Section 11 of the Purchase Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to complete Phase I of the Property Improvements (as further defined in the Purchase Agreement), by the date that is two (2) years after the Grantor’s conveyance of the Property to the Grantee hereunder, then the Grantor shall have the right (but not the obligation) to re-enter and take possession of the Property (or any portion thereof) and to terminate and re-vest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee’s rights and interests in the Property (or any portion thereof) without offset or compensation for the value of

any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 11 of the Purchase Agreement will forever release and discharge the Grantor's reversionary interest stated in this paragraph.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

[Signature page follows.]

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

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 Special Warranty Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 14th day of June 2018.

My Commission Expires:
December 12, 2024

Mary C. Brazinsky, 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. Sandra L. Kennedy.

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement (this “Third Amendment”), is effective as of June 28, 2018 (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”), and Heading for Home LLC, a Delaware limited liability company with offices at 501 W. South St., South Bend, Indiana 46601 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

RECITALS

A. The Parties entered into that certain Development Agreement dated August 25, 2016, as amended by the First Amendment dated June 15, 2017 and the Second Amendment dated April 26, 2018 (collectively, the “Development Agreement”), concerning the Developer’s development of the Developer Property as a mixed-use project including, without limitation, residential, commercial, and retail/hospitality uses.

B. In accordance with and subject to the terms of the Development Agreement, the Commission agreed to expend no more than Four Million Forty-Eight Thousand Dollars (\$4,048,000.00) (the “Funding Amount”) to complete certain Local Public Improvements in support of the Developer’s construction on the Developer’s Property.

C. In accordance with Section 5.2(c) of the Development Agreement, bids were received for the Local Public Improvements by the City of South Bend Board of Public Works (the “Board”), as the Commission’s agent, and the winning bid exceeded the Funding Amount.

D. At its public meeting on June 26, 2018, the Board conditionally awarded the contract for the Local Public Improvements (the “LPI Contract”) upon the Commission’s increase of the Funding Amount by Forty-Five Thousand Dollars (\$45,000.00) (the “Funding Amount Increase”).

E. In consideration of the Commission’s willingness to increase the Funding Amount, and thereby to permit the Board’s award of the LPI Contract, the Developer has agreed to pay the Funding Amount Increase in the manner set forth in this Third Amendment.

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

1. In Section 1.3 of the Development Agreement, which defines the Commission’s Funding Amount, the term “Four Million Forty-Eight Thousand Dollars (\$4,048,000.00)” shall be deleted and replaced with the term “Four Million Ninety-Three Thousand Dollars (4,093,000.00).”

2. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of completing the Local Public Improvements, including any necessary change orders to the LPI Contract, in excess of the Funding Amount, as such amount is hereby amended. The Developer hereby acknowledges that the Developer or the Developer’s designee will inspect the Local Public Improvements upon completion and hereby expressly

reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of inspecting the Local Public Improvements.

3. Notwithstanding any provision to the contrary, the Commission's obligations to complete the Local Public Improvements will be satisfied in full upon the completion of the LPI Contract, irrespective of the final amount of the LPI Contract.

4. As an inducement for the Commission's increase of the Funding Amount under this Third Amendment and as a further assurance to the Commission pursuant to Section 9.12 of the Development Agreement, within five (5) days after the Effective Date of this Third Amendment, the Developer (or the Developer's designee) will submit to the Commission certified funds in the amount of Forty-Five Thousand Dollars (\$45,000.00), which funds will be applied at an appropriate time to the LPI Contract in accordance with the Board's ordinary payment practices and applicable laws.

5. Unless expressly modified by this Third Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

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

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

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

9. This Third 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 Third Amendment To Development Agreement to be effective as of the Effective Date stated above.

COMMISSION:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

DEVELOPER:

HEADING FOR HOME LLC,
a Delaware limited liability company

By: _____
Name: Andrew Berlin
Title: Manager

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of June 28, 2018 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Tower at Washington Square LLC, an Indiana limited liability company, with offices at 5-44 47 Avenue, Long Island City, New York 11101 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

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, re-planning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the Developer owns certain real property described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto, commonly known as Liberty Tower (collectively, the “Developer Property”); and

WHEREAS, the Developer has completed Phase I of its development plan, with an investment of Thirty-Three Million Eight Hundred Seventy Thousand Dollars (\$33,870,000.00), plus an overage of Six Million Eight Hundred Thousand Dollars (\$6,800,000.00), in the Developer Property; and

WHEREAS, the Developer desires to commence Phase II of its development plan, including the addition of ground floor retail space and exterior improvements on 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 West Development Area (the “Area”); 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 One Million Dollars (\$1,000,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means an amount no less than Two Million Seven Hundred Twenty Thousand Dollars (\$2,720,000.00) 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 completion 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 Developer 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, inspection, and delivery of the Local Public Improvements. The Easement shall (a) 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, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works.

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 will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement, 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 and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement.

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, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees 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 Commission’s obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to commence the Project on or before October 1, 2018 and complete the Project and any other obligations the Developer may have under this Agreement by December 31, 2019 (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 Reserved.

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 January 31, 2019 and July 31, 2019, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The 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, and (iii) an itemized accounting generally identifying the Private Investment to date

4.8 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, the Developer shall deliver a complete set thereof to the Commission. The Commission may approve or disapprove said plans and specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same.

4.9 Costs and Expenses of Construction of Project. The 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 subject to the terms of this Agreement.

4.10 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City Engineer or her designee. The City Engineer or her designee may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same.

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 Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in **Exhibit E** attached

hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.13 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 this 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 a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.8 of this Agreement, and (b) the City Engineer or her designee will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the City Engineer or her designee.

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with 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.

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 expressly accepts the same; 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. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Local Public Improvements or the Project.

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 Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall

may single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

9.3 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.

9.4 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. 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.

9.5 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.

9.6 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.

9.7 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.

9.8 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: Tower at Washington Square LLC
5-44 47 Avenue
Long Island City, NY 11101
Attn: _____

With a copy to: _____

Attn: _____

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director,
South Bend Department of Community Investment

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

9.9 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.10 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.

9.11 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.

9.12 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.13 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.

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

9.15 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.

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

[SIGNATURE PAGE FOLLOWS]

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

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

TOWER AT WASHINGTON SQUARE LLC

By: _____

Name: _____

Title: _____

4000.0000001 38236409.002

EXHIBIT A

Description of Developer Property

Property located at 211 West Washington Street, South Bend, Indiana, commonly known as Lots 239 & 240 & Vac Alley W & Adj O P, and more particularly described in four (4) separate tax parcels as follows:

Hotel Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Hotel Unit (H-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-0321

Retail Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Retail Unit (RE-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-032101

Parking Garage Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Parking Unit (P-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-032102

Apartment Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Apartment Unit (R-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-032103

EXHIBIT B

Project Plan

The Developer will commence Phase II of its plans, which includes the development of ground floor retail space and modifications to the exterior of the existing structure, in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations.

EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, improvements to the roof, sidewalk on West Washington Street and exterior finishes of the structure, including but not limited to paint, in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations.

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ day of _____, 2018 (the “Effective Date”), by and between Tower at Washington Square LLC, an Indiana limited liability company with offices at 5-44 47 Avenue, Long Island City, NY 11101 (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 to a certain Development Agreement by and between Grantor and Grantee, dated _____, 2018 (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in 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, and its successors and assigns, 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) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

SIGNATURE PAGE FOLLOWS

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:

TOWER AT WASHINGTON SQUARE LLC
An Indiana limited liability company

Printed: _____

Its: _____

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me known to be the _____ 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 _____ day of _____, 201__.

_____, Notary Public
Residing in _____ County, ____

My Commission Expires: _____

This instrument was prepared by Sandra L. Kennedy, 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. Sandra L. Kennedy.

EXHIBIT 1

Description of Property

Property located at 211 West Washington Street, South Bend, Indiana, commonly known as Lots 239 & 240 & Vac Alley W & Adj O P, and more particularly described as follows:

Hotel Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Hotel Unit (H-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-0321

Retail Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Retail Unit (RE-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-032101

Parking Garage Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Parking Unit (P-1) as shown on the “Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime” as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder’s office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-032102

Apartment Unit:

That part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, which is described as: Apartment Unit (R-1) as shown on the "Declaration of Horizontal Property Ownership, Washington Square Condominium Horizontal Property Regime" as recorded by Document No. 1605719 on March 10, 2016 and those certain floor plans for the building recorded on the date of record of declaration as Document No. 1605718 in the records of the St. Joseph County, Indiana recorder's office. Subject to all legal easements, exhibits and restrictions of record for said Washington Square Condominium Horizontal Property Regime.

Key No. 018-1008-032103

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. \$5,000,000.00 | Each Occurrence |
| | | b. \$5,000,000.00 | Annual Aggregate Products
and Completed Operation |
| | 2. | Property Damage | |
| | | a. \$5,000,000.00 | 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 |

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “Second Amendment”) is made on June 28, 2018, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Great Lakes Capital Development LLC, an Indiana limited liability company (the “Developer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. The Commission and the Developer entered into that certain Development Agreement dated April __, 2014, as amended by that First Amendment to Development Agreement dated September 15, 2016 (together, the “Development Agreement”), for the development of the Projects in the area commonly known as Ignition Park.

B. As set forth in the Development Agreement, the Commission committed to the Funding Amount for the Projects, and Developer agreed to commencement dates for each of the Projects.

C. The Parties now desire to modify the Funding Amount and the commencement date for the Third Building Project as set forth herein.

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

1. Section 1.4 shall be deleted in its entirety and replaced with the following:

1.4 Funding Amount. Funding Amount means an amount not to exceed Nine Hundred Thousand Dollars (\$900,000.00) for the First Building Project and the Second Building Project and Three Hundred Thousand Dollars (\$300,000.00) for the Third Building Project, representing no more than fifteen percent (15%) of project costs up to Six Million Dollars (\$6,000,000.00) per Project. Funding Amount shall be tax increment finance revenues which shall be used to pay the costs of constructing the Local Public Improvements related to each of the Projects. Funding Amount shall not exceed Two Million One Hundred Thousand Dollars (\$2,100,000.00). If Developer requires additional funds, Commission agrees to assist Developer in identifying funding sources.

2. Section 4.2(iii) shall be modified to delete the phrase “thirty-six (36) months” and replace it with “forty-eight (48) months.”

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

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

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

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

7. This Second 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.

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

COMMISSION:

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Marcia I. Jones, President

ATTEST:

By: _____
Donald E. Inks, Secretary

DEVELOPER:

Great Lakes Capital Development LLC

By: _____

Printed Name: _____

Title: _____



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 6/26/2018

FROM: City of South Bend Department of Innovation and Technology

SUBJECT: Budget Request (Resource Center)

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

Specifics: In April 2017, the commission approved \$3M of River West Area TIF funds pending execution on \$3.4M of IEDC funds associated with the Platform for Advanced Wireless Research (PAWR; aka SBXG) grant application with the University of Notre Dame. The proposal was favorably reviewed and will receive serious consideration in subsequent funding rounds.

To maintain momentum for South Bend’s emerging technology ecosystem and move this community resource forward, we request a modified amount of \$2.78M to adapt space at Catalyst II in Ignition Park, purchase necessary equipment, and support training and educational programming over the next four years. Of the \$2.78M total, we request \$1.65M to be used for the upfront investment and programming in 2018 and 2019.

INTERNAL USE ONLY: Project Code: 17J029 _____;
Total Amount new/**change** (inc/**dec**) in budget: \$2.78 M _____; Break down:
Costs: Engineering Amt: _____; Other Prof Serv Amt _____;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____
_____. Going to BPW for Contracting? Y/N
Is this item ready to encumber now? ____ Existing PO# _____ Inc/Dec \$ _____

CROSS REFERENCE:

Document No. 1607607, recorded March 31, 2016

CERTIFICATE OF COMPLETION

This Certificate of Completion (this “Certificate”) is issued on June 28, 2018, by the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission (the “Commission”), pursuant to the Development Agreement by and between the Commission and Southhold, LLC (the “Company”), 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, the Fourth Amendment to Development Agreement dated September 14, 2017, and the Fifth Amendment to Development Agreement dated June 28, 2018 (collectively, the “Agreement”).

The Commission states as follows:

1. Pursuant to the Agreement, the Commission conveyed to the Company the real property described in attached Exhibit A (the “Property”) by the special warranty deed recorded on March 31, 2016, as Document No. 1607607 in the Office of the Recorder of St. Joseph County, Indiana (the “Deed”).
2. The Agreement established certain development obligations of the Company following its acceptance of the Deed from the Commission, and such obligations are set forth in the Deed. The Commission hereby acknowledges and affirms that the Company has performed its development obligations as required under the Agreement and has provided satisfactory evidence of the same.
3. This Certificate will serve as a conclusive determination of the Company’s satisfaction of the Development Obligations and, upon recordation, will constitute a full release of the Commission’s reversionary interest in the Property established under the Deed and the Agreement.
4. This Certificate does not amend or otherwise alter the Agreement, and this Certificate shall be binding upon the Commission and its successors and assigns and shall inure to the benefit of the Company and its successors and assigns.

[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 Vice 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 28th day of June, 2018.

My Commission Expires:
December 12, 2024

Mary C. Brazinsky, 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. Sandra L. Kennedy.

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT A

Description of Property

Lot Numbered Thirty-Eight A (38A), as shown on the recorded Plat of Hall of Fame & Chocolate Café Minor Subdivision and the Original Town of South Bend, First Replat, recorded September 30, 2008 as Document No. 0832004 and amended by an Affidavit recorded October 17, 2008 as Document No. 0833986 in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 18-3001-0024

FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT (this "Fifth Amendment") is made on June 27th, 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

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

DEVELOPER:

Southhold, LLC



Anant Patel, Sole Member



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 26, 2018

FROM: Kara Boyles, City Engineer

SUBJECT: Budget Request – Small Drainage Design and Repair, #118-063

Which TIF? (Circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Funding request in the amount of \$300,000 for the design and construction of the drainage improvements described below. This request for funding is part of the Department of Public Works allocation for engineering projects in the South Side TIF District.

Specifics: This project includes the design and construction to remedy various small drainage issues throughout the South Side TIF District. Three projects, identified as: Hawbaker Street, 2700 S. Main Street, and Overlook Court have been identified as part of this study. Hawbaker Street experiences flooding on the north side of the road due to a high amount of impervious area southwest that flows toward the resident at 713 Hawbaker. The southern portion of the 2700 block of South Main Street drains into a private parking lot, flooding the basement and garage. Overlook Court has experienced on-going flooding as a result of improper and/or incomplete drainage construction.

The design will include topographic survey, design plans and specifications and cost estimating in order to deliver a quality project for the City of South Bend.

The Board of Public Works approved a professional services agreement with Danch, Harner & Associates, Inc. for \$27,560 at the Board of Public Works meeting on June 12, 2018. The approval was contingent upon RDC approval.

These projects are anticipated for bidding or quoting in late summer or early fall of 2018.

INTERNAL USE ONLY: Project Code: _____;
Total Amount new/change (inc/dec) in budget: _____; Break down:
Costs: Engineering Amt: _____; Other Prof Serv Amt _____;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____
_____. Going to BPW for Contracting? Y/N
Is this item ready to encumber now? ____ Existing PO# _____ Inc/Dec \$ _____



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 28, 2018
FROM: Pam Meyer
SUBJECT: Washington Colfax Apartments

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: To support the investment in the rehabilitation of the property and return of quality rental units to the market.

Specifics: \$3M project: South Bend Heritage Foundation (SBHF) investment is no less than \$2M with \$1M of TIF (\$500,000 in 2018 and \$500,000 in 2019).

Ownership by SBHF no later than July 16, 2018; completion date of project May 31, 2019.

Rehab and repair of no less than 60 apartments-30 in each building.

TIF funds will support: Roof repair/replacement, masonry/exterior painting, site work-(landscaping, parking lot, storm water handling, lighting), windows, safety-security, fire safety, communications systems, basic mechanical, electrical and plumbing upgrades.

SBHF agrees to pursue goal of awarding to MBEs and/or WBEs project related contracts with an aggregate value of no less than 8% of the private investment.

INTERNAL USE ONLY: Project Code: 18J027 ;
Total Amount new/change (inc/dec) in budget: \$500,000 (2018) and \$500,000 in (2019); Break down:
Costs: Engineering Amt: _____; Other Prof Serv Amt _____;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt \$500,000; Sewers Amt _____; Other (specify) Amt: _____
_____ Going to BPW for Contracting? Y/N
Is this item ready to encumber now? No Existing PO# _____ Inc/Dec \$ _____

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), is effective as of _____ 2018 (the "Effective Date"), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), South Bend Heritage Foundation, Inc., an Indiana non-profit corporation with its registered office at 803 Lincoln Way West, South Bend, Indiana 46616 ("SBHF") the "Developer").

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 Developer owns or will acquire certain real property described in Exhibit A, 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, renovate, 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 West Washington Development Area (the "Area"); 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 One Million Dollars (\$1,000,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements. \$500,000 in 2018 and \$500,000 in 2019.

1.4 Private Investment. “Private Investment” means an amount no less than Two Million Dollars (\$2,000,000.00) 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 completion 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 Developer 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 substantially the same form attached hereto as **Exhibit D**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) 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, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works.

SECTION 4. DEVELOPER'S OBLIGATIONS.

4.1 Generally.

(a) 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) No later than July 16, 2018, the Developer will acquire fee simple ownership of the Developer Property and all other real property necessary to carry out each element of the Project Plan attached hereto as Exhibit B.

(b) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications approved by the City Planner pursuant to Section 4.7 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(c) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.7 of this Agreement.

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, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees 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 Commission's 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 May 31, 2019 (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 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 December 31, 2018 and June 30, 2019, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The 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 for employment at the Developer Property.

(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 five (5) 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.

4.7 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, the Developer shall deliver a complete set thereof to the City Planner for the City of South Bend (the "City Planner"). The City Planner may approve or disapprove said plans and specifications for the Project in his or her sole discretion and may request revisions or amendments to be made to the same. ✓

4.8 Project Costs and Expenses. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of planning, construction, management, and all other activities or purposes associated with the Project (including legal, architectural, and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.9 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same. ✓



4.10 Use of MBE/WBE Contractors. The Developer will exercise good faith efforts to solicit bids from and award contracts to local Minority Business Enterprises (“MBEs”) and/or Women’s Business Enterprises (“WBEs”) for work associated with the Project. The Developer will diligently pursue the goal of awarding to MBEs and/or WBEs Project-related contracts with an aggregate value of no less than eight percent (8%) of the Private Investment.

4.11 Non-Interference. The 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 Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in Exhibit E attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker’s compensation policies).

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

4.14 Other Incentives. The Developer agrees that, for its completion of the Project (as defined in the Project Plan), the Developer will not request or pursue any financial incentive or support from the City other than the Commission’s commitment of the Funding Amount under this Agreement, including without limitation any tax abatement with respect to the Developer Property or any other property associated with the Project.

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 this 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 a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) Before any contract is awarded for the completion of the Local Public Improvements and before any work on the Local Public Improvements will commence, (i) the Developer will have obtained all additional financing necessary to complete the Project in accordance with the Project Plan, (ii) the City Planner will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.7 of this Agreement, and (iii) the Engineering Department will have received satisfactory

bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.9 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) Notwithstanding anything to the contrary contained herein, in the event the costs associated with 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.

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 environmental 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 expressly accepts the same; 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. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Local Public Improvements or the Project.

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 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. 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: South Bend Heritage Foundation, Inc.
803 Lincoln Way West
South Bend, IN 46616
Attn: Executive Director

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director
South Bend Department of Community Investment

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 and construed in accordance with 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 

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. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion, provided, however, that the Developer may assign this Agreement to a legal entity formed specifically for carrying out the Project with IHCDA tax-credit financing upon giving written notice of such assignment to the Commission without the requirement of seeking the Commission's consent. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

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.

9.16 No Waiver. Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

[SIGNATURE PAGE FOLLOWS]

A handwritten signature in black ink, appearing to be "O. J. Miller", is written over the page number 10.

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

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

SOUTH BEND HERITAGE FOUNDATION, INC.

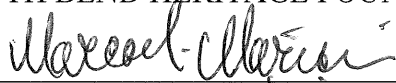
By: 
Name: MARCO J. MARIANI
Title: EXECUTIVE DIRECTOR
Date: 6.26.18

EXHIBIT A

Description of Developer Property

A part of Bank Out Lots Numbered Nineteen (19) and Twenty-seven (27) of the First Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana, which part is bounded by a line running as follows, viz: Beginning at a point 128 feet East and 189.78 feet South of the northwest corner of said Bank Out Lot Numbered 19; thence running South on a line parallel with the west line of said Bank Out Lots Numbered 19 and 27 and 128 feet East thereof, a distance of 222.38 feet to the south line of said city; thence East on said line 85.35 feet to the southeast corner of said Bank Out Lot Numbered 27; thence North on the east line of Bank Out Lots Numbered 27 and 19 a distance of 223.2 feet to a point 189.11 feet South of the northeast corner of said Bank Out Lot Numbered 19; thence West to the place of beginning.

ALSO, a part of Bank Out Lot Numbered Nineteen (19) of the First Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana, which part is bounded by a line running as follows, viz: Beginning at a point 128 feet East of the northwest corner of said Bank Out Lot Numbered 19, thence running South on a line parallel with the west line of said lot, and 128 feet East thereof, a distance of 189.78 feet to an iron stake; thence East to the east line of said lot; thence North on said east line 189.11 feet to the northeast corner thereof; thence West on the north line of said Lot 85.25 feet to the place of beginning. ALSO, a part of Bank Out Lots Numbered Nineteen (19) and Thirty-four (34) of the First Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana, which part is bounded by a line running as follows, viz: Beginning at the Northwest corner of said Bank Out Lot Numbered 19, which corner is now indicated by an iron stake; thence running South along the west line of said Bank Out Lot Numbered 19, 150 feet; thence West (approximately 15 feet) to the center of the partition stone wall between the land formerly owned by Wilbur E. Gorsuch and the land formerly owned by Mary L. Studebaker; thence South along the center of said stone wall, 48 feet; thence East 143 feet; thence North 198 feet to the south line of Colfax Avenue in said City; thence

West along the south line of Colfax Avenue and the North line of said Bank Out Lot Number 19, 128 feet to the place of beginning, in St. Joseph County, Indiana.

EXCEPT

A parcel of land being a part of Bank Out Lots Numbered Nineteen (19) and Thirty-four (34) of the First Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana, which commencing at the northwest corner of said Bank Out Lot Numbered 19, which corner is now indicated by an iron stake; thence running South along the west line of said Bank Out Lot Numbered 19, 150 feet to a point of beginning; thence West which part is bounded by a line running (approximately 15 feet) to the center of the partition stone wall between the land formerly owned by Wilbur E. Gorsuch and the land formerly owned by Mary L. Studebaker; 2 thence South along the center of said stone wall, 48 feet; thence East which part is bounded by a line (approximately 15 feet); thence North which part is bounded by a line 48 feet to the place of beginning, in St. Joseph County, Indiana.

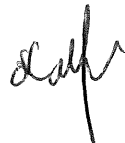


EXHIBIT B

Project Plan

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

- A. Rehabilitation and repair of the Developer Property, including the construction of a total of no less than sixty (60) apartments, 30 units in each building to provide decent, safe and sanitary rental housing for individuals and families of varying income levels. Rent levels will be set at varied amounts including market-rates and those that meet HUD Fair Market Rent levels.
- B. The full scope of work to include mechanical, electrical, plumbing repair/replacement, wall and flooring repair, interior fixtures and finishes, exterior masonry repairs, roof replacement, communication systems, safety lighting, landscaping and new parking lot.

*ok
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EXHIBIT C

Description of Local Public Improvements

The Commission will complete, or cause to be completed, in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations, certain infrastructure elements or other improvements necessary to support the redevelopment of the Developer Property, which will be identified and specifically determined by the Commission (or the City's Department of Community Investment acting on the Commission's behalf) in coordination with the Developer as soon as reasonably practicable following the Effective Date of this Agreement.

dc
rj

EXHIBIT D

Form of Easement

dc
will

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the 26th day of June, 2018 (the "Effective Date"), by and between South Bend Heritage, an Indiana Corporation with offices at 803 Lincolnway West, SBN (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 to a certain Development Agreement by and between Grantor and Grantee, dated _____, 2018, as the same may be amended from time to time (the "Development Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in 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, and its successors and assigns, 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) completion of the Local Public Improvements; (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:

SOUTHBEND HERITAGE, an Indiana Corporation

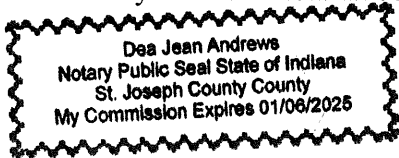
Printed: MARCO J MARIANI MARCO J MARIANI

Its: Executive Director

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared MARCO J MARIANI to me known to be the Executive Director 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 2nd day of June, 2018



Dea Jean Andrews

_____, Notary Public
Residing in St Joseph County, IN

My Commission Expires: 01/08/2025

This instrument was prepared by _____.

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. _____.

EXHIBIT 1

Description of Property

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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. \$5,000,000.00 Each Occurrence
 - b. \$5,000,000.00 Annual Aggregate Products and Completed Operation

 - 2. Property Damage
 - a. \$5,000,000.00 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

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refel*



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 28, 2018
FROM: David Relos, Property Development Manager
SUBJECT: Professional Services Agreement – H.J. Umbaugh Associates
Annual TIF Neutralization

Which TIF? (circle one) **All** River West; River East; South Side; Douglas Road; West Washington

This proposal from H. J. Umbaugh & Associates is to provide professional services for the annual TIF Neutralization worksheets required by state law.

These worksheet calculations are done for each TIF area, and are used to adjust the base value by adjusting for natural growth in property values.

For example, if the base value of a TIF area was originally \$1,000,000 and the area had natural appreciation of 3%, or \$30,000, this amount would become part of the increment captured unless the base is adjusted.

After adjustment, this \$30,000 would be added to the base, which would now be \$1,030,000, allowing other taxing jurisdictions to maintain their tax base by capturing the natural appreciation of property. Increment captured by the TIF area should be a result of new development, not the natural appreciation in property values that pre-existed the TIF.

Staff requests approval of this professional services agreement in a not-to-exceed amount of \$12,500 (being the same amount as last year).

INTERNAL USE ONLY: Project Code: _____;
Total Amount **new**/change (inc/dec) in budget: \$12,500 ; Breakdown:
Costs: Engineering Amt: _____; Other Prof Serv Amt **Between all TIF areas per Beth**;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: Land Improv
324-1050-460-42.01. Going to BPW for Contracting? Y/N
Is this item ready to encumber now? Yes Existing PO# _____ Inc/Dec \$ _____

UMBAUGH

H. J. Umbaugh & Associates
Certified Public Accountants, LLP
8365 Keystone Crossing
Suite 300
Indianapolis, IN 46240-2687
Phone: 317-465-1500
Fax: 317-465-1550
www.umbaugh.com

June 14, 2018

City of South Bend Redevelopment Commission
c/o Mr. David Relos, Department of Community Investment
227 W. Jefferson Blvd.
Suite 1400 S.
South Bend, IN 46601

Re: South Bend Redevelopment Commission - Proposed Financial Advisory Services

Dear Members of the Redevelopment Commission:

Thank you for requesting that H.J. Umbaugh & Associates, Certified Public Accountants, LLP (the "Firm") provide to the City of South Bend Redevelopment Commission (the "Client") those services more fully set forth in Exhibit A hereto (the "Services").

Fees and Costs

Fees charged for work performed are generally based on hourly rates, as set forth in Exhibit B, for the time expended, a fixed amount or other arrangement as mutually agreed upon as more appropriate for a particular matter. Hourly rates for work performed by our professionals vary by individual and reflect the complexity of the engagement.

Disclosure of Conflicts of Interest with Various Forms of Compensation

The Municipal Securities Rulemaking Board (MSRB) requires us, as your municipal advisor, to provide written disclosure to you about the actual or potential conflicts of interest presented by various forms of compensation. Exhibit C sets forth the potential conflicts of interest associated with various forms of compensation. By signing this letter of engagement, the signee acknowledges that he/she has received Exhibit C and that he/she has been given the opportunity to raise questions and discuss the matters contained within the exhibit with the municipal advisor.

Billing Procedures

Normally, you will receive a monthly statement showing fees and costs incurred in the prior month. Occasionally, we may bill on a less frequent basis if the time involved in the prior month was minimal or if arrangements are made for the payment of fees from bond proceeds. The account balance is due and payable on receipt of the statement. Once our representation has been concluded or terminated, a final billing will be sent to you. If requested to provide an estimate of our fees for a given matter, we will endeavor in good faith to provide our best estimate, but unless there is a mutual agreement to a fixed fee, the actual fees incurred on any project may be less than or exceed the estimate. Any questions or errors in any fee statement should be brought to our attention in writing within sixty (60) days of the billing date.

Termination

Both the Client and the Firm have the right to terminate the engagement at any time after reasonable advance written notice. On termination, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and the Firm, the scope of services provided in Exhibit A will terminate 60 days after completion of the services in each Article.

City of South Bend Redevelopment Commission
c/o Mr. David Relos, Department of Community Investment
Re: South Bend Redevelopment Commission - Proposed Financial Advisory Services
June 14, 2018
Page 2

Accountants' Opinion

In performing our engagement, we will be relying on the accuracy and reliability of information provided by Client personnel. The services provided may include financial advisory services, consulting services, and accounting report services such as compilation, preparation, and agreed upon procedures reports. Please see Exhibit A. We will not audit, review, or examine the information. Please also note that our engagement cannot be relied on to disclose errors, fraud, or other illegal acts that may exist. However, we will inform you of any material errors and any evidence or information that comes to our attention during the performance of our procedures that fraud may have occurred. In addition, we will report to you any evidence or information that comes to our attention during the performance of our procedures regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal control as part of this engagement.

The procedures we perform in our engagement will be heavily influenced by the representations that we receive from Client personnel. Accordingly, false representations could cause material errors to go undetected. The Client, therefore, agrees to indemnify and hold us harmless for any liability and all reasonable costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material errors resulting from false representations made to us by any Client personnel and our failure to provide an acceptable level of service due to those false representations.

The responsibility for auditing the records of the Client rests with the Indiana State Board of Accounts and the work performed by the Firm shall not include an audit or review of the records or the expression of an opinion on financial data.

Client Responsibilities

It is understood that the Firm will serve in an advisory capacity with the Client. The Client is responsible for management decisions and functions, and for designating an individual with suitable skill, knowledge or experience to oversee the services we provide. The Client is responsible for evaluating adequacy and results of the services performed and accepting responsibility for such services. The Client is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

Additional Services

Exhibit A sets forth the scope of the Services to be provided by the Firm. From time to time, additional services may be requested by the Client beyond the scope of Exhibit A. The Firm may provide these additional services and be paid at the Firm's customary fees and costs for such services. In the alternative, the Firm and the Client may complete a revised and supplemented Exhibit A to set forth the additional services (including revised fees and costs, as needed) to be provided. In either event, the terms and conditions of this letter shall remain in effect.

E-Verify Program

The Firm participates in the E-Verify program. For the purpose of this paragraph, the E-Verify program means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.401(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). The Firm does not employ any "unauthorized aliens" as that term is defined in 8 U.S.C. 1324a(h)(3).

City of South Bend Redevelopment Commission
c/o Mr. David Relos, Department of Community Investment
Re: South Bend Redevelopment Commission - Proposed Financial Advisory Services
June 14, 2018
Page 3

Investments

The Firm certifies that pursuant to Indiana Code 5-22-16.5 *et seq.* the Firm is not now engaged in investment activities in Iran. The Firm understands that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

Municipal Advisor Registration

The Firm is a Municipal Advisor registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. As such, the Firm is providing certain specific municipal advisory services to the Client. The Firm is neither a placement agent to the Client nor a broker/dealer.

The offer and sale of any Bonds shall be made by the Client, in the sole discretion of the Client, and under its control and supervision. The Client agrees that the Firm does not undertake to sell or attempt to sell the Bonds, and will take no part in the sale thereof.

Mediation Provision

The Client and the Firm agree that if any dispute (other than our efforts to collect any outstanding invoice(s)) arises out of or relates to this engagement, or any prior engagement we may have performed for you, and if the dispute cannot be settled through informal negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (or such other administrator or rules as the parties may mutually agree) before resorting to litigation. The parties agree to engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall take place in Indianapolis, Indiana, or such other location as the parties may mutually agree. If the parties are unable to mutually agree on the selection of a mediator, the mediator shall be determined in accordance with the American Arbitration Association's Commercial Mediation Procedures. The results of any such mediation shall be binding only upon a written settlement agreement executed by each party to be bound. Each party shall bear its own costs and fees, including attorneys' fees and expenses, in connection with the mediation. The costs of the mediation, including without limitation the mediator's fees and expenses, shall be shared equally by the participating parties. Any ensuing litigation shall be initiated and maintained exclusively before any state or federal court having appropriate subject matter jurisdiction located in Indianapolis, Indiana.

Other Financial Industry Activities and Affiliations

Umbaugh Cash Advisory Services, LLC ("UCAS") is a wholly-owned subsidiary of the Firm. UCAS is registered as an investment adviser with the Securities and Exchange Commission under the federal Investment Advisers Act. UCAS provides non-discretionary investment advice with the purpose of helping clients create and maintain a disciplined approach to investing their funds prudently and effectively. UCAS may provide advisory services to the clients of the Firm.

UCAS has no other activities or arrangements that are material to its advisory business or its clients with a related person who is a broker-dealer, an investment company, other investment adviser or financial planner, bank, law firm or other financial entity.

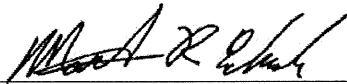
City of South Bend Redevelopment Commission
c/o Mr. David Relos, Department of Community Investment
Re: South Bend Redevelopment Commission - Proposed Financial Advisory Services
June 14, 2018
Page 4

If the foregoing accurately represents the basis upon which we may provide Services to the Client, we ask that you execute this letter, in the space provided below setting forth your agreement. Execution of this letter can be performed in counterparts each of which will be deemed an original and all of which together will constitute the same document.

If you have any questions, please let us know. We appreciate this opportunity to be of service to you and the City of South Bend.

Very truly yours,

H.J. Umbaugh & Associates
Certified Public Accountants, LLP

By: 
Matthew R. Eckerle, Principal

The undersigned hereby acknowledges and agrees to the foregoing letter of engagement.

City of South Bend Redevelopment Commission

Date: _____

By: _____

Exhibit A

Services Provided

Scope of Services

The Firm agrees to perform the following services for the South Bend Redevelopment Commission (the "Commission") with respect to all existing TIF Areas located within the City of South Bend (the "City"). Articles I and II below describe services to be performed.

Article I. Calculate Base Value Adjustments ("Neutralization") for Trending and General Reassessments

- A. Contact the County Auditor's office and, with its cooperation and based on information provided by the County Auditor and Assessor, assist in performing or checking calculations with respect to base value adjustments, including determining base value adjustment factors, appeal and tax rate assumptions, and captured assessed values in conjunction with annual Trending or General Reassessments. In performing this work, we rely on the accuracy of the information provided by the County Auditor and Assessor. We will not audit their information.
- B. If necessary, travel to the County Auditor's and/or County Assessor's offices to perform field work that may be required. Obtain new tax abatement information, a list of new developments, a list of demolished structures, a list of parcels with tax status changes, and outstanding appeals information (if available) for each TIF Area to use in the calculation. Compare resulting calculations to historical captured value.

Article II. Assist With Assessed Value Certification and Abstract Preparation

- A. Assist the County Auditor's office with the monitoring of captured assessed value amounts for each taxing district that are used during the assessed value certification process. If needed, assist the Auditor's office with any corrections to captured assessed value amounts that must be undertaken prior to certification.
- B. Assist the County Auditor's office with the monitoring of captured assessed value amounts for each taxing district that are used in the preparation of the County Abstract. If needed, assist the Auditor's office with any corrections to captured assessed value amounts that must be undertaken prior to the completion of the Abstract.

Exhibit B

Fees

The Firm's fees for services as set forth in Articles I and II of Exhibit A shall be billed at the Firm's standard billing rates based upon the actual time and expenses incurred. The total fee shall not exceed Twelve Thousand Five Hundred Dollars (\$12,500) without prior approval from the Client.

Standard Hourly Rates by Job Classification 1/1/2018

Partners / Principals	\$240.00	to	\$550.00
Managers	\$200.00	to	\$325.00
Senior Consultants	\$150.00	to	\$250.00
Consultants	\$135.00	to	\$200.00
Municipal Bond Disclosure Specialists	\$120.00	to	\$190.00
Support Personnel	\$110.00	to	\$150.00

- *Billing rates are subject to change periodically due to changing requirements and economic conditions. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

The above fees shall include all expenses incurred by the Firm with the exception of expenses incurred for mileage which will be billed on a separate line item. No such expenses will be incurred without the prior authorization of the Client. The fees do not include the charges of other entities such as rating agencies, bond and official statement printers, couriers, newspapers, bond insurance companies, bond counsel and local counsel, and electronic bidding services, including Parity®. Coordination of the printing and distribution of Official Statements or any other Offering Document are to be reimbursed by the Client based upon the time and expense for such services.

Exhibit C

Disclosure Statement of Municipal Advisor

PART A – Disclosures of Conflicts of Interest

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by the municipal advisor, municipal advisors are required to provide a written statement to that effect.

Material Conflicts of Interest – The Firm makes the disclosures set forth below with respect to material conflicts of interest in connection with the Scope of Services under this Agreement, together with explanations of how the Firm addresses or intends to manage or mitigate each conflict.

General Mitigations – As general mitigations of the Firm’s conflicts, with respect to all of the conflicts disclosed below, the Firm mitigates such conflicts through its adherence to its fiduciary duty to Client, which includes a duty of loyalty to Client in performing all municipal advisory activities for Client. This duty of loyalty obligates the Firm to deal honestly and with the utmost good faith with Client and to act in Client’s best interests without regard to the Firm’s financial or other interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

- I. **Compensation-Based Conflicts.** The fees due under this Agreement are based on hourly fees of the Firm’s personnel, with the aggregate amount equaling the number of hours worked by such personnel times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if Client and the Firm do not agree on a reasonable maximum amount at the outset of the engagement, because the Firm does not have a financial incentive to recommend alternatives that would result in fewer hours worked. This conflict of interest is mitigated by the general mitigations described above.

- II. **Other Municipal Advisor Relationships.** The Firm serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of Client. For example, the Firm serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to Client under this Agreement. These other clients may, from time to time and depending on the specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, the Firm could potentially face a conflict of interest arising from these competing client interests. This conflict of interest is mitigated by the general mitigations described above.

Exhibit C

Disclosure Statement of Municipal Advisor (cont'd)

PART B – Disclosures of Information Regarding Legal Events and Disciplinary History

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, the Firm sets out below required disclosures and related information in connection with such disclosures.

- I. **Material Legal or Disciplinary Event.** There are no legal or disciplinary events that are material to Client's evaluation of the Firm or the integrity of the Firm's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.
- II. **How to Access Form MA and Form MA-I Filings.** The Firm's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001610268>.
- III. **Most Recent Change in Legal or Disciplinary Event Disclosure.** The Firm has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

PART C – Future Supplemental Disclosures

As required by MSRB Rule G-42, this Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the Firm. The Firm will provide Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.

PART D – Rule G-10: Investor and Municipal Advisory Client Education and Protection

MSRB Rule G-10 requires that municipal advisors to notify their clients of the availability of a client brochure on the MSRB's website that provides information on the processes for filing a client complaint.

Accordingly, the Firm sets out below the required information.

- I. The Firm is registered as a Municipal Advisor with the Securities and Exchange Commission (867-00278) and the Municipal Securities Rulemaking Board (K0171).
- II. The website address for the Municipal Securities Rulemaking Board is www.msrb.org.
- III. The website for the Municipal Securities Rulemaking Board has a link to a brochure that describes (i) the protections that may be provided by the Municipal Securities Rulemaking Board rules and (ii) describes how to file a complaint with an appropriate regulatory authority.