

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made on December 13, 2018, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Wharf Partners 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 February 22, 2018 (the “Development Agreement”), for the development of a Project in the River East Development Area near Seitz Park.

B. In the course of its performance under the Development Agreement, the Developer removed a known underground storage tank (“UST”) on certain Commission property to be transferred to the Developer, and the Commission has agreed to compensate the Developer for such removal.

C. The Parties now desire to modify the Development Agreement to reflect the Parties’ agreement, as set forth herein.

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

1. Section 1.3 of the Development Agreement shall be deleted in its entirety and replaced with the following:

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Five Million Two Hundred Thirty-Seven Thousand Dollars (\$5,237,000) 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 in support of the Project. Notwithstanding the foregoing sentence, the Parties agree that no more than one-half (1/2) of the Funding Amount will be expended before January 1, 2020, for Local Public Improvements supporting Phase I of the Project (as defined in the Project Plan). Further, the parties agree that the Funding Amount shall be spent as set forth on Exhibit C.

2. Section 8.4 shall be added to the Development Agreement as a new section:

8.4 Underground Storage Tank. The parties acknowledge the existence of an underground storage tank (“UST”) on certain property owned by the Commission to be transferred to the Developer in furtherance of the Project. The UST was previously filled with inert material during the period of the City’s ownership of the Developer Property. The Developer has determined that it is in the best interest of the Project to remove the UST, and the City has agreed to provide the Developer Two Hundred Thirty-Seven

Thousand Dollars (\$237,000) of additional Local Public Improvements to compensate in part for the cost of the UST's removal and any ancillary remediation necessary due directly to the UST's removal. The Developer agrees to indemnify, defend, and hold the City harmless with regard to the choice of contractor and procedure used to remove the UST and with regard to any ancillary remediation directly due to the UST removal.

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

4. Capitalized terms used in this First 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 First Amendment.

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

7. This First 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 First 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:

Wharf Partners LLC

By: _____

Printed Name: _____

Title: _____