

RESOLUTION EDC # 2019-1

**A RESOLUTION OF THE CITY OF SOUTH BEND, INDIANA,
ECONOMIC DEVELOPMENT COMMISSION PROVIDING
PRELIMINARY APPROVAL OF THE ISSUANCE OF BONDS FOR THE
PURPOSE OF FINANCING CERTAIN ECONOMIC DEVELOPMENT
FACILITIES FOR MAH CEDAR GLEN, LLC**

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of South Bend, Indiana (the “City”), is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development, creation or retention of opportunities for gainful employment and affordable housing in or near the City; and

WHEREAS, Merchants Affordable Housing Corp. and MAH Cedar Glen, LLC, one or more subsidiaries or affiliates thereof, and/or one or more entities in which any of the foregoing entities is a member, whether such entity is currently in existence or is to be created following the date hereof (collectively, the “Company”), in cooperation with the City, desires to finance a project within the City, including all or any portion of the acquisition, construction, renovation, installation and equipping of a 179-unit apartment community, together with functionally related and subordinate facilities for low and moderate income persons, located 425 25th Street, South Bend, Indiana (the “Project”); and

WHEREAS, the Company has advised the South Bend Economic Development Commission (the “Commission”) and the City concerning the Project, and has requested that the City issue, pursuant to the Act, one or more series of its taxable or tax-exempt City of South Bend, Indiana, economic development revenue bonds (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the bonds are issued) (the “Bonds”) in the approximate aggregate principal amount of Seven Million Three Hundred Thousand Dollars (\$7,300,000), for the purpose of providing funds for paying all or part of the costs of the Project by making a portion of the proceeds of such Bonds available to the Company and paying all incidental expenses in connection with and on account of the issuance of the Bonds; and

WHEREAS, the Company has further advised that the issuance and sale of said Bonds will not reduce the legal bonding capacity of the City, and the City shall bear no expense in connection with the issuance and sale of said Bonds with all expenses in connection therewith which are incurred by the City to be reimbursed to the City by the Company; and

WHEREAS, the Company has further advised that the principal of and interest payable on said Bonds shall not be payable from any revenues of the City and shall not obligate the full faith and credit of the City but shall be payable solely from funds of the Company; and

WHEREAS, the Company has further advised the Commission that the determination by the City to agree preliminarily, on a non-binding basis, to accept such a request for financing the Project will constitute an inducement to the Company to proceed with the negotiations for the financing of the Project, it being the intent of the Commission and the City to defer any final approval of the Project and the financing thereof until a subsequent meeting held in accordance with Section 25 of the Act following a public hearing in accordance with Section 24 of the Act; and

WHEREAS, the Commission has studied the Project and the proposed financing of the Project and its effects on the health and general welfare of the City and its citizens; and

WHEREAS, the Company has further advised that the completion of the Project will result in the diversification of industry, the creation and retention of jobs, the creation and retention of business opportunities in the City, the creation and retention of affordable housing in the City, and will be of public benefit to the health, safety and general welfare of the City and its citizens; and

WHEREAS, pursuant to and in accordance with the Act, the Company is requesting that the City provide funds necessary to finance all or a portion of the Project by issuing the Bonds, which financing shall be without recourse to the City and its citizens; and

WHEREAS, the Company has further advised that the diversification of industry and creation of job opportunities to be achieved by the acquisition, design, construction and equipping of the Project will be of public benefit to the health, safety and general welfare of the City and its citizens; and

WHEREAS, the Commission has been asked to find that that the acquisition, design, construction and equipping of the Project will not have an adverse competitive effect on any similar facility already constructed or operating near or in South Bend, Indiana; and

WHEREAS, the Commission is considering a form of inducement resolution (the "Common Council Resolution") with respect to the Project to be adopted by the Common Counsel of the City (the "Common Council") and is considering recommending that the Common Council adopt such resolution in substantially such form;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION AS FOLLOWS:

Section 1. After considering the evidence presented and findings of fact set forth in the Report (as defined herein), the Commission hereby finds, determines, ratifies and confirms that the financing of the economic development facilities consisting of the Project, the issuance and sale of the Bonds, and the use of the net proceeds thereof by the City and/or the Company to

finance all or a portion of the Project will: (i) result in the diversification of industry, the creation or retention of business opportunities, the creation or retention of opportunities for gainful employment and the creation of affordable housing within the jurisdiction of the City; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, the creation or retention of opportunities for gainful employment and the creation of affordable housing within the jurisdiction of the City; and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City. The findings of fact set forth in the Report and this paragraph are based upon evidence and testimony presented to the Commission at its meeting on April 16, 2019 that the proceeds of the Bonds will be used for the acquisition, design, construction and equipping of the Project, capitalized interest on the Bonds during construction and costs of issuance for the Bonds.

Section 2. The Commission hereby finds and determines that the issuance and sale of economic development revenue bonds in an approximate principal amount of \$7,300,000 of the City under the Act for the lending of the proceeds of the revenue bonds to the Company for the purpose of financing a portion of the cost of the acquisition, design, construction and equipping of the Project will serve the public purposes referred to above, in accordance with the Act.

Section 3. The Commission hereby approves the report with respect to the Project (the "Report") presented at this meeting, and hereby adopts the findings of fact set forth therein. The Secretary or Vice President of this Commission shall submit such report to the executive director or chairman of the Area Plan Commission serving the City.

Section 4. In order to induce the Company to proceed with the acquisition, design, construction and equipping of the Project, the Commission hereby finds and determines that (i) it will take or cause to be taken such actions pursuant to the Act as may be required to implement the aforesaid financing, or as it may deem appropriate in pursuance thereof; provided that all of the foregoing shall be mutually acceptable to the City and the Company; (ii) it will adopt such resolutions and authorize the execution and delivery of such instruments and the taking of such action as may be necessary and advisable for the authorization, issuance and sale of said economic development revenue bonds; and (iii) it will use its best efforts to assist the Company in procuring the issuance of additional economic development revenue bonds, if such additional bonds become necessary for refunding or refinancing the outstanding principal amount of the economic development revenue bonds, for completion of the Project and for additions to the Project, including the costs of issuing additional bonds (provided that the financing of such addition or additions to the Project is found to have a public purpose (as defined in the Act) at the time of the authorization of such additional bonds), and that the aforementioned purposes comply with the provisions of the Act.

Section 5. All costs of the Project incurred after the date permitted by applicable federal tax and state laws, including reimbursement or repayment to the Company of moneys expended

by the Company for application fees, planning, engineering, a portion of the interest paid during acquisition, design, construction and equipping of the Project, underwriting expenses, attorney and bond counsel fees, and acquisition, design, construction and equipping of the Project will be permitted to be included as part of the bond issue to finance the Project, and the City will lend the proceeds from the sale of the bonds to the Company for the same purposes. Also, certain indirect expenses, including but not limited to, planning, architectural work and engineering incurred prior to this inducement resolution will be permitted to be included as part of the bond issue to finance the Project.

Section 6. All actions taken and approvals given by the Commission with regard to the Company are based upon the evidence submitted and representations made by the Company. No independent examination, appraisal or inspection of the Project was made, requested, or is contemplated by the Commission or the City.

Section 7. The Commission does not, by this or any other approval or finding, guarantee, warrant or even suggest that the Bonds, coupons or series thereof will be a reasonable investment for any person, firm or corporation.

Section 8. The Commission shall not be obligated, directly or indirectly, to see to the application or use of the proceeds from the sale of the Bonds or to see that the contemplated improvements, if any, are constructed. The Commission is in no way responsible to the holders of any Bonds for any payment obligation created by the Bonds.

Section 9. The Bonds shall be special, limited obligations of the City payable solely from the funds provided therefor as described in the indenture authorizing the Bonds, and shall not constitute an indebtedness of the Commission or the City or a loan of the credit thereof within the meaning of any constitutional or statutory provisions.

Section 10. The Commission hereby approves the form of the Common Council Resolution and recommends that it be adopted by the Common Council in substantially the same form as a resolution, and the Commission hereby directs that copies of this resolution, and the form of the Common Council Resolution be transmitted to the Clerk of the City for presentation to the Common Council with the recommendation that the Common Council Resolution be adopted as a resolution.

Section 11. The Commission hereby authorizes the Secretary of the Commission to cause to be published a notice of public hearing in accordance with Indiana Code 36-7-12-24(a), Indiana Code 5-3-1 and Treas. Reg. §1.147(f) 1 at such time as it is determined to proceed with the financing of a portion of the Project as described herein.

Section 12. This resolution shall be in full force and effect upon adoption.

* * * * *

Adopted this 16 day of April, 2019.

SOUTH BEND ECONOMIC
DEVELOPMENT COMMISSION



Tim Scott, President

ATTEST:



Quentin Phillips, Secretary