

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “Second Amendment”) is made on August 22, 2019, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Greater Lowell Holdings LLC, an Indiana limited liability company (the “Developer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. The Commission and the Developer entered into a Development Agreement dated effective December 14, 2017, which was amended on June 13, 2019 by a First Amendment to Development Agreement (together, the “Development Agreement”), for the development of a Project in the River East Development Area.

B. The Commission agreed to expend the Funding Amount to complete the Local Public Improvements (“LPI”) in support of the Project in accordance with the Project Plan, as the same LPI are set forth on Exhibit C to the Development Agreement.

C. Pursuant to Section 5.2(c) of the Development Agreement, bids were received for the Local Public Improvements (“LPI”) 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. The Commission has agreed to pay a portion of the overage, and the Developer has agreed to pay the remainder of the overage and any further change orders needed to complete the LPI; in consideration therefor, the Commission is willing to increase the Funding Amount, thereby permitting the Board’s award of the contracts for the LPI.

E. 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 Second 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 Four Hundred Sixty-Seven Thousand Seven Hundred Twenty-Five and 38/100 Dollars (\$467,725.38) 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 (inclusive of the Developer’s improvements to both the LaSalle Property and the Colfax Property). The Parties acknowledge and agree that Developer shall expend Four Hundred Thousand Dollars (\$400,000.00) on Local Public Improvements in accordance with Exhibit C, and an amount not to exceed Sixty Thousand

Dollars (\$60,000.00) is specifically to be applied to the infrastructure cost of water taps for the sprinkler system of the Colfax Property (“Sprinkler Funds”). The remaining Seven Thousand Seven Hundred Twenty-Five and 38/100 Dollars (\$7,725.38) shall be reimbursed to the Commission by the Developer in accordance with Section 5.2(d).

2. Section 5.2(d) of the Development Agreement shall be deleted in its entirety and replaced with the following:

(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. In such case, the Developer shall provide the Commission with payment in immediately available funds within five (5) business days of its determination, and, in any event, before a notice to proceed will be provided by the Commission, or an agent of the Commission, to any contractor. 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 Project.

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.

Signature Page Follows

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: _____
Quentin Phillips, Secretary

DEVELOPER:

GREATER LOWELL HOLDINGS LLC

By: _____
Frank Perri, Manager