



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, January 9, 2020 – 9:30 p.m.

227 W. JEFFERSON BLVD., 1300 SOUTH BEND, INDIANA

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### 1. Roll Call

### 2. Approval of Minutes

- A. Minutes of the Regular Meeting of Monday, November 25, 2019

### 3. Approval of Claims

- A. Claims Submitted January 9, 2020

### 4. Old Business

### 5. New Business

#### A. River West Development Area

- 1. Budget Request (former Salvation Army Building)
- 2. Third Amendment to Real Estate Purchase Agreement (410 W Wayne Street, LLC)
- 3. Development Agreement (South Bend Heritage Foundation, Inc.)
- 4. First Amendment to Development Agreement (112 West Jeff LLC)

#### B. Administrative

- 1. Resolution No. 3514 (2020 Meeting Schedule)

### 6. Progress Reports

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

### 7. Next Commission Meeting:

Thursday, January 23, 2020 9:30 am

## 8. Adjournment

### **NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS**

Auxiliary Aid or Other Services are Available upon Request at No Charge.



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

**SOUTH BEND REDEVELOPMENT COMMISSION  
 REGULAR MEETING**

December 12, 2019  
 4:00 p.m.  
 Presiding: Marcia Jones, President

227 West Jefferson Boulevard  
 South Bend, Indiana

The meeting was called to order at 4:00 p.m.

**1. ROLL CALL**

Members Present:	Marcia Jones, President Quentin Phillips, Secretary Gavin Ferlic, Commissioner	
Members Absent:	Don Inks, Vice-President Lesley Wesley, Commissioner	
Legal Counsel:	Sandra Kennedy, Esq.	
Redevelopment Staff:	David Relos, RDC Staff Mary Brazinsky, Board Secretary - Absent	
Others Present:	Jitin Kain Daniel Buckenmeyer Tim Corcoran Amanda Pietsch Zach Hurst Kyle Silveus Charlotte Brach Conrad Damian Jim Bognar Karl Edmonson Penelope Kilkes Jania Sandoval Mae Kilker Matt Wetzel Marco Mariana Dzeneta Taso Zerina Cardaklija Sue Kesim Rolanda Hughes	DCI DCI DCI DCI Engineering Engineering Engineering 718 E Broadway 807 W Washington 1102 W Jefferson 1221 Sunnymede 112 E Ewing Ave 1221 Sunnymede 108 N Main St 803 Lincolnway West 503 Chamberlin 503 Chamberlin - 1029 Riverside

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, November 14, 2019**

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, November 14, 2019.

- **Approval of Minutes of the Regular Meeting of Thursday, November 25, 2019**

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, November 25, 2019.

## 3. Approval of Claims

- **Claims Submitted December 12, 2019**

	Claims submitted	Explanation of Project	Items added after Agenda Distributed
<b>REDEVELOPMENT COMMISSION</b>			
Redevelopment Commission Claims December 12, 2019 for approval			
<b>324 FUND RIVER WEST DEVELOPMENT AREA</b>			
Midland Engineering Co, Inc.	140,049.00	Vested Unterest Building Roof Repair	
Slatile Roofing & Sheet Metal Co.,	55,812.00	315 & 319 W. Jefferson Exterior Renovations - Div. A	
Abonmarche	8,700.00	Mayflower Rd & Adams Rd Traffic Impact Study	
DLZ		Cleveland S Flouride Tk	4,400.00
<b>422 WEST WASHINGTON FUND DEVELOPMENT AREA</b>			
Riley-Riley Construction Co., Inc.	139,135.72	Gemini Site Improvements	
<b>429 FUND RIVER EAST DEVELOPMENT TIF</b>			
Water Works General Fund	62,694.00	Cascades SDC Charges	
<b>433 FUND REDEVELOPMENT GENERAL</b>			
H3 LLC dba St. Clair Development	14,193.72	510 S. Main St. Building Improvements	
<b>452 FUND TIF PARK BOND</b>			
Smithgroup, Inc.	20,355.00	So. Bend Seltz Parking Prelim & Final Eng.	
Total	440,939.44		4,400.00
Total Both Columns	445,339.44		

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved the claims submitted on Thursday, December 12, 2019.

## 4. Old Business

### A. Permanent Supportive Housing Update

Mr. Kain presented an update on Permanent Supportive Housing. Mr. Kain showed a presentation that presented a change from the Gateway project to the Gemini project. In March 2018 the RDC approved \$1.5m towards the Gateway project. In August 2019 Mayor Pete announced a City strategy to address homelessness. The strategy addressed permanent housing for the homeless population. There were two aspects to this. One was a site project with the other being vouchers for scattered housing sites around the City. The Gateway project was meant to be a short-term means to address immediate concerns. We are reaching out to the Redevelopment Commission to re-allocate the funds from the

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Gateway project to the Gemini project. The Gemini Apartments (or Washington/Colfax Apartments) are within the project boundaries of West Washington and River West TIF areas. The project has proceeded in two phases - the West Washington and Colfax facing buildings. We are asking to re-direct the money from the Gateway project to the second phase of the Gemini project. As part of the second phase that allows South Bend Heritage, the owner, to proceed with six housing vouchers. At the November 14, 2019 meeting we came to RDC and asked the staff to re-allocate the dollars. The Commission, at that time, asked us to go back and look at additional outreach. We have reached out to the Near West Side Neighborhood Organization and shared the plan also to Council members. A commitment from South Bend Heritage is to maintain 6 units for permanent supportive housing out of the 60 total units. South Bend Heritage is proposing to put 6 vouchers in the Gemini project. One of the questions was the use of TIF. This project sits on River West and West Washington Development Areas. This project is an allowable use for those TIF dollars.

Sandra Kennedy, City Attorney states that this is an allowable use of TIF. It serves the area. It is physically connected. Under two statutes we are allowed to use it for the purpose.

Mr. Kain states that we are asking for the use of \$1M towards the infrastructure of Gemini Phase II. This is for roof, masonry and fire stairs. The way TIF allocations work is the money is allocated towards a project and is not allocated to an owner. The money goes to a City project manager who then contracts the work out and works with the contractor until the job is complete. That is the intention of this project. The \$500,000 left will go to the Single Site Project. The site has run into a few issues. The site that the City was pursuing was not approved for re-zoning by the Common Council. The City has had additional conversations about outreach. No progress has been made at this time, but we will work with the correct organizations in the first quarter of 2020. Once Commission acts today, we will work with South Bend Heritage Foundation on an amendment to the Development Agreement of Phase I.

A letter was received from South Bend Heritage where they have committed within the Development Agreement yet to come that no more than 6 permanent supportive housing vouchers will be distributed through the entire Gemini complex.

President Jones opened the floor for public comment.

Jim Bognar, 807 West Washington Street, South Bend: Mr. Bognar states that he neither supports or has any opposition towards South Bend Heritage. He has a problem with the funds coming out of certain TIF funds. This is a directed transfer from one TIF area to another with no issue of repayment. It sets a difficult precedent and he refuses to believe that the Commission wants to approve. Each TIF area has a yearly review of funds. At that review there can be changes. All the TIF have this review and were approved in early summer. These did not include servicing in different areas. This includes TIF funds for outside TIF projects. If this was such an important issue for DCI this should have been discussed and changed. The second direction is to adjust the TIF boundaries the TIF areas to include these areas. The City has just adjusted those boundaries. The City has worked for years with TIF districts to redact areas such as the City Cemetery and around River West. DCI has a funding request in this meeting for a first phase of the City Cemetery. I believe it is a serious matter to move TIF from one area to the other. He questions the strength of the legal standing. If legal feels the law is on their side, the need to issue both chapter and verse of what gives the Commission ability to do this. If this was a policy change, this needs to be presented to City Council at a minimum we must accept

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that this is not a simple action. The Commission must view this as a change in TIF funding procedures and it needs to be fully vetted by the Administration and City Council. It does not matter if you are a Mayoral City appointment, your service is to the City of South Bend and actions like this make folks cynical and ruins public moral and makes people think why try when the system is rigged at times; I felt this and so have my neighbors. Members of the Commission, DCI believes the proper direction is to finance this project, then let them bring Washington/Colfax into the River West TIF district and give both Council and the public the ability to voice opposition. We will all be better off if time is taken to do it properly. If after all of that come back to the Commission. I am asking that the President of this Commission take accurate roll call so it will be officially documented the vote on these proceedings. I thank you for the privilege of your time and wish you a happy and healthy holiday season.

Rolanda L. Hughes, 1029 Riverside Drive speaks in support of the \$1M to the Gemini apartments. She applauds the fact that South Bend Heritage stepped up to save the historic building and she has lived there herself. It would have been a huge loss to the neighborhood. A lot of people in the neighborhood were looking for a way to save this building as it has fallen into disrepair. Now its being saved. We have a huge shortage of low to moderate housing in our community. Six units in this apartment will make a huge difference. Six is a non-problematic number and I am in hopes the Commission finds a way to support that. If in fact the City finds its way to do a Gateway center after all, I hope the City community foundation helps to find the dollars that may be needed for that allocation. Thank you very much.

Sue Kesim, 422 Kennedy Drive her two concerns that the Gateway is actually needed and hates to see the money go away. The purpose was to bring people in and figure out the proper resources for them. It still isn't being done very well. She feels like we discounted something that was on a positive path. She doesn't like seeing the Gateway not funded. The second thing is she wants to know the cost of these units because it seems extremely high. For the same amount of money other things could have been built and more things could be serviced. Gateway is still needed, and it seems like a high cost per unit. Thank you.

John Nagy and his wife Alicia live with their 8 children at 705 W Washington Street, two doors west of the W Washington side of the apartments and he thanks you for your time. He is not sure what he has heard of the actual technical way of how this works. Forgive him if he revisits the way it works. Today he is asking the Commission to ensure the City and South Bend Heritage commit in writing to a permanent binding amendment of no more than six vouchers in the entire Gemini complex for the condition of the work that the City proposes to undertake to complete the building rehabilitation. We ask that this should be written in for any entity that South Bend Heritage might sell or otherwise transfer ownership of the complex to. We are worried without a legal commitment being placed that the deal will take shape without it. Gemini Apartments being a place of more than 10% of the units occupied by voucher benefits will be damaging for the Near West Side, crushing its fragile hopes for the long-term revival of South Bend Heritage in the past. We would like for our intentions be clear to be the best neighbors to the tenants that reside there. Like all our neighbors on the Near West Side, we encourage the City's investment in our neighborhood, which has a unique Chicago style with the brick buildings such as the Gemini Apartments and buildings that are really preserved. We hope we will soon be discussing other amenities for our neighborhood that are found in other parts of the neighborhoods. Neighborhood parks, well lit streets, basic road repair for the west side and enticements to creation of new small businesses. These things came up in August and were articulated by members of the community of every economic background. While

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the City is investing in Gemini, we would like them to know all home and business owners throughout the Near West Side are investing in the future as well. While we acknowledge the City's effort in housing the chronically homeless, we count ourselves as a family, that are ready to do our part. We are disappointed that South Bend Heritage has forgotten us and the neighborhood. One of the parents in the neighborhood organization meeting in the past year has conveyed that they fail to understand something fundamental. While they try to find housing for the homeless, people and not organizations are the most important stake holders of all. There was no dialog back in June and no dialog with neighbors this time around. No fact finding about who we are or our needs or concerns. What's more South Bend Heritage has forgot once the bills are paid and the bricks are snug the true success or failure of this social experiment is going to depend on relationships. South Bend Heritage in the real estate business should be in the relationship business. The business of making sure the neighborhood works for all those who live there. Does the leadership of South Bend Heritage or the City know how many children live in a two-block radius of these apartments? I know antidotally that kids walk by these apartments every day. They roller blade on the sidewalk and should feel the same level of comfort as kids feel playing on their blocks every day. It would be an enormous benefit if South Bend Heritage and partners would come into the neighborhood and train us, reassure us how to be the best possible new neighbors to new people coming in. What's been thought, written or done with people who have created this kind of arrangement in their communities. In 19 days, we will begin a new year and I've heard incoming Council members articulate a need for a new plan and responsibilities. Members of the west side, Rum Village neighborhood and the 6<sup>th</sup> district are stepping forward and would like to see people stepping up in the other districts in the City. Thank you for your time.

Alicia Nagy, John Nagy's wife 705 W Washington, states this is something from her heart. She is a Catholic and what Pope Francis talked about the deserted vacation of the cities when there aren't families there. When we moved to West Washington, I was very scared because I had small children that needed to play outside. My friends said I was crazy for moving to this neighborhood. I wanted to help put the smile back in the City. There aren't children in the downtown area. Then you don't have long term investment or life in the City. I've known people in the area for a long time and I have no reason to be afraid. When I see that the City wants to not be transparent but underhandedly taking some issue and have us support them, which I've heard has been in the past, I heard there was a lot of community investment and dialog. I feel nervous and scared about the heritage of these older places. Many 21<sup>st</sup> Century City's feel like we have brought smiles back into the City by bringing children in. We should make investment in the City with the whole City of South Bend. Thank you very much.

Karl Edmonson 1102 W Jefferson Blvd. He is in the unique position of living in the Near West Side neighborhood and being a member of the Board of South Bend Heritage. He would like to rebut a lot of what was just said. The idea that we should start discriminating against low income people who in a project that has no obligation to actually disclose the financial or personal information of their tenants. Sets a very dangerous precedent in his mind. The idea that this is not supporting the community and trying to solve a problem in the community is something he doesn't understand. He understands people fearing something they don't know but that doesn't make it a bad idea. He owns property in the City and neighborhood and can rent his property to whoever he wants. Rich people, poor people, felons and whatever he wants, and he doesn't have to tell anyone. South Bend Heritage

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has been transparent on who they want to be in their apartments to many more than one neighborhood association. He gets upset of the idea that somehow South Bend Heritage has been trying to pull one over on everybody. They have allowed these processes to happen. We are sitting here right now because everyone is involved in the situation. This idea that South Bend Heritage or the City is trying to do all these things without anyone having any say is ridiculous because we are here right now talking.

Jitin Kain answered questions.

The TIF question was answered by legal who clearly said the use of TIF adjacent to a TIF area is allowed.

Sandra Kennedy stated Indiana Code Section 36-7-14-39, Section E3G and B3J specifically states reimburse the unit for expenditures made by or for local public improvements which include buildings, parking facilities and other items that are physically located in or physically connected to that allocation area.

Mr. Kain pointed out this is physically connected to the River West allocation area.

Mr. Kain states we are allowed to pay for expenses incurred by the Redevelopment Commission for local public improvements that are in the allocation area or serving the allocation area. The consensus is this will serve the entire City. It will serve all the TIF districts. The legal opinion is that this will serve a proper use, under the statute of TIF funds.

Mr. Kain addressed the next question of the Gateway being needed. His understanding Gateway was two things. A physical building or pods donated to the City and also the coordinated entry process which allowed any agency to look at the needs of the population and direct resources to them. The process is still in place, it's the physical portion of that process that is not proceeding, which is the pods. As we shift the funding it will go to Gemini and the entry process is still in place.

The TIF resources will not go to the six vouchers. They are going to the infrastructure of the building. They are not going to rehab an individual unit. The thought of the per unit cost is extremely high is inaccurate as the money is going towards the actual structure of the building as a whole.

Regarding the commitment of no more than six vouchers. There is a commitment letter that has been discussed previously. The Redevelopment Commission will pass an Amendment to the Development Agreement with South Bend Heritage which will spell out the commitment.

Discussion amongst Commission and staff is to make sure once the document is in place, to make sure it is recorded.

Commissioner Ferlic thanked everyone for coming out and participating. He remembers when the Gemini wasn't the best property and is thankful that South Bend Heritage has stepped up and the City is participating as well. Mr. Ferlic also



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notes that regarding permanent supportive housing that this is a Council priority and the City will be addressing this. Six units is reasonable, and every area needs to address this issue. This building and neighborhood need a good partner and landlord and South Bend Heritage will be that.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved the Permanent Supportive Update project submitted on Thursday, December 12, 2019.

### 5. Public Hearing

#### A. Public Hearing 2019 Additional Appropriations

##### 1. Resolution No. 3511 (Airport Bond Debt Service)

Ms. Pietsch presented Resolution No. 3511 (Airport Bond Debt Service). This first Resolution is to transfer funds from our debt service reserve Fund 315 into River West Fund 324. We have continued to earn interest, and this transfers that \$7,000. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved Resolution No. 3511 (Airport) submitted on Thursday, December 12, 2019.

##### 2. Resolution No. 3512 (RWDA)

Ms. Pietsch presented Resolution No. 3512 (RWDA). This Resolution gives an additional appropriation of \$5,080. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved Resolution No. 3512 (Airport) submitted on Thursday, December 12, 2019.

### 6. New Business

#### A. River West Development Area

##### 1. Budget Request (City Cemetery Improvements)

Mr. Corcoran presented a Budget Request (City Cemetery Improvements). Staff is requesting an additional \$75,000 budgeted for the next phase of City Cemetery entrance as part of the master plan. It's anticipated the project will commence in Spring 2020. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was

made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved Budget Request (City Cemetery Improvements) submitted on Thursday, December 12, 2019.

**2. Development Agreement (SBCC Development Corp)**

Mr. Buckenmeyer presented a Development Agreement (SBCC Development Corp). This is for phase I of the South Bend Chocolate Company. This is an 81,000 square foot building with a factory and dinosaur museum. It will later have a farmer's market, winery and hotels. This is for the commitment of \$1.4 TIF for infrastructure for sewer and water, which will also benefit the area, along with the SDC charge. It is a \$7.4M private investment in phase I with 54 jobs being retained and 70 new jobs. Mr. Turner sends his regrets as he is travelling and cannot be here. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved Development Agreement (SBCC Development Corp) submitted on Thursday, December 12, 2019.

**3. Temporary Access Agreement (United Way St. Joseph County)**

Ms. Maradik presented a Temporary Access Agreement (United Way St. Joseph County). This is an access agreement so they can work on development of the neighborhood center they would like to place there. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved a Temporary Access Agreement (United Way St. Joseph County) submitted on Thursday, December 12, 2019.

**4. Second Amendment to Development Agreement (Jefferson 315, LLC)**

Mr. Hurst presented a Second Amendment to Development Agreement (Jefferson 315, LLC). This is a minor amendment. \$1,150 to fund the brick repair. There will be one more final change order. The increase is on the private side. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved a Second Amendment

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to Development Agreement (Jefferson 315, LLC) submitted on Thursday, December 12, 2019.

### **5. Second Amendment to Development Agreement (Bald Mountain)**

Mr. Hurst presented a Second Amendment to Development Agreement (Bald Mountain). This is the new Barnes and Thornburg building at Jefferson & Main. They would like to use the remaining public investment to reconstruct the public right away that they have disturbed. This gives us the feature of a performance bond which gives us a proper record and commitment of replacing the right of way. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved Second Amendment to Development Agreement (Bald Mountain) submitted on Thursday, December 12, 2019.

### **6. Fourth Amendment to Development Agreement (Ziker)**

Mr. Silveus presented Fourth Amendment to Development Agreement (Ziker Sample Street LLC). This is for roof repair on Vested Interest of \$22,000 and paid by the owner. Commission approval is requested.

President Jones opened the floor for public comment. No public comment was made. The floor was closed to public comment.

Upon a motion by Commissioner Ferlic, seconded by Secretary Phillips, the motion carried unanimously, the Commission approved Fourth Amendment to Development Agreement (Ziker) submitted on Thursday, December 12, 2019.

## **7. Progress Reports**

### **A. Tax Abatement**

1. Confirming resolutions on four tax abatements, all on the westside of town. This year we did 18 tax abatements vs. 6 in 2018. The incentives and support encouraged \$86.5M in new private investment and created 954 new and retained jobs with 830,000 sf of new construction under roof. This is just tax abatements. \$2.1 TIF towards private projects that resulted in \$12M in private investment. We've done \$14.7M in TIF infrastructure projects. This shows what we are putting back into the City.

### **B. Common Council**

### **C. Other**

1. Update on the Double Tracking Bonds. They were sold on the fourth and went out to the open market. We received six bids with 5 within 10 basis points. We only had to issue \$7.9M vs. an anticipated not to exceed \$11M. There was \$1.4M in premium about 50 basis points of what we anticipated. We anticipate closing on December 18, 2019.

**8. Next Commission Meeting:**

Thursday, January 9, 2020, 9:30 a.m.

**9. Adjournment**

Thursday, December 12, 2019, 4:52 p.m.

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David Relos, Property Development Manager

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Marcia Jones, President

	Claims submitted	Explanation of Project
<b>REDEVELOPMENT COMMISSION</b>		
Redevelopment Commission Claims January 9, 2020 for approval		
<b><u>324 FUND RIVER WEST DEVELOPMENT AREA</u></b>		
South Bend Chocolate Factory	446,148.00	Wastewater inside and outside City Limits
Peerless Midwest, Inc.	48,598.00	315 & 319 W. Jefferson Exterior Renovations - Div. A
Precision Wall Systems	33,288.00	Three Twenty at The Cascade-Glazed Assemblies
Precision Wall Systems	31,255.00	Precision Wall Systems, Inc.
Aecom	9,466.11	South Shore Line Station
Majority Builders, Inc.	54,146.83	Technology Resource Center @ Catalyst 2
DLZ	4,400.00	Cleveland S Fluoride Tk
City of South Bend	145,543.76	Engineering Services
Epoch	16,000.00	Technology Resource Center
HWC Engineering	17,611.46	Western Ave
Kolata Enterprises LLC	180.00	Professional Services
Troyer Group	660.00	Brick Pvmt
<b><u>429 FUND RIVER EAST DEVELOPMENT TIF</u></b>		
High Concrete Group LLC	212,562.00	Commerce Center Architectural Precast Panels
Precision Wall Systems	32,965.00	Three Twenty at The Cascade-Glazed Assemblies
Christopher B. Burke Engineering, LLC	933.50	East Race Sewer Analysis Amendment
<b><u>430 FUND SOUTH SIDE TIF AREA #1</u></b>		
Arcadis US Inc.	37,608.40	On Call Services Utility Asset Management GIS/Engineering Assistance
Danch, Harner & Associates, Inc.	6,951.00	Drainage Plan & Repair
<b><u>452 FUND TIF PARK BOND</u></b>		
Smithgroup, Inc.	20,355.00	So. Bend Seltz Parking Prelim & Final Eng.
Lawson-Fisher Associates	8,128.52	West Bank Corridor Improvements Final Design
<b>Total</b>	<b>1,126,800.58</b>	



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: January 9, 2020

FROM: David Relos, Property Development Manager *DR*

SUBJECT: Budget Request (former Salvation Army Bldg)

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

This budget request is for the replacement of the former Salvation Army building's boiler. Over the holidays this boiler system failed because of sediment buildup in its heat exchanger. The part of the building heated by the boiler system contains the water supply for the City's Weather Amnesty program, which is in a separate part of the building. It is critical the water supply for this other part of the building be in service.

Staff requests approval of a budget in the amount of \$55,000 for the replacement of the boiler and related work to ensure the system is operational.

INTERNAL USE ONLY: Project Code: 20J012;  
Total Amount **new**/change (inc/dec) in budget: \_\_\_\_\_; Breakdown:  
Costs: Demolition Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \$55,000; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
Going to BPW for Contracting? **Y**  
Is this item ready to encumber now? N Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

**THIRD AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT**

This Third Amendment to Real Estate Purchase Agreement (“Third Amendment”) is entered on January \_\_\_\_, 2020 (the “Effective Date”) by the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Seller”) and 410 W. Wayne Street, LLC (“Buyer” and collectively with the Seller, the “Parties”). Each of the Parties may be referred to in this Amendment as a “Party.”

**Recitals**

- A. The Parties entered into a Real Estate Purchase Agreement, dated August 25, 2016, as the same was amended by a First Amendment to Real Estate Purchase Agreement, dated October 27, 2016, and a Second Amendment to Real Estate Purchase Agreement, dated December 15, 2016 (collectively, the “REPA”), in which the Seller agreed to sell and the Buyer agreed to purchase certain real property located at 331 W. Wayne St., South Bend, Indiana (the “Property”).
- B. The sale of the Property closed for the purchase price of One Dollar (\$1.00), and a Special Warranty Deed was recorded on March 2, 2017 in the St. Joseph County Recorder’s Office as Document No. 170897 (the “Deed”).
- C. The Parties desire to modify certain portions of the REPA.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained in this Amendment and the REPA and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

- 1. Section 11.C. of the REPA shall be deleted in its entirety.
- 2. Section 12.A. of the REPA shall be deleted in its entirety and replaced with the following:
  - A. Development of Property.
    - i. *Buyer’s Expenditure*. Buyer shall expend no less than Four Hundred Fifty-Five Thousand Eight Hundred Twenty-Eight Dollars (\$455,828.00), or such other reasonable amount that the Parties may agree to in writing, on improvements to the Property, including the interior and exterior improvements of the existing structure on the Property and permanent fixtures affixed thereto, with no more than Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) of such amount to be expended on plans for development of the Property, including but not limited

to architectural and engineering plans ("Buyer's Expenditure"). Buyer's Expenditure shall not include brewing equipment or chattel.

- ii. *Project Plan.* Buyer shall develop the Property, to the extent reasonably practicable, in accordance with the materials attached as Exhibit C (the "Project Plan"), which the Parties acknowledge is subject to standard acceptances as required for the Buyer to obtain a building permit and other licenses and permits for the operation of a brewpub. Further authorizations may be required by other departments within the City of South Bend (the "City") in order for the Buyer to obtain other permits or allowances, such as connection to the City's water and sewer systems and occupancy. Notwithstanding the foregoing, the Seller has accepted the brewhouse and brewpub concept, with a full-service restaurant, as set forth by the Project Plan and shall also review and accept the final site plan and building façade treatments prior to construction.
  - iii. *City Regulations for Central Business District.* In its development of the Property, Buyer shall comply with all applicable federal, state, and local laws, including, but not limited to, the applicable requirements of the City of South Bend Zoning Ordinance, including variances as necessary.
  - iv. *Access to Property.* During its development of the Property, Buyer shall allow the City, as often as is reasonably required, to perform inspections of the Property.
  - v. *Commencement of Development.* Buyer shall use its good faith effort to commence construction at the Property within six months of the date this Amendment is executed by the last signatory hereto (the "Project Commencement Date").
  - vi. *Completion of Development.* Buyer shall complete the improvements to the Property, which are referred to in Section 12.A.i., of the REPA, by the last day of the 18<sup>th</sup> month from the date this Amendment is executed (the "Project Completion Date").
3. Section 12.B. of the REPA shall be deleted in its entirety and replaced with the following:
- B. Certificate of Completion.
- i. *Issuance.* Within 30 days after Buyer completes Buyer's Expenditure, Buyer can request from the Seller a certificate acknowledging completion of Buyer's Expenditure and releasing the Seller's reversionary interest in the Property, which is described in Section 12.C. of the REPA.



- ii. *Recordation.* The Parties shall promptly record the Certificate of Completion upon issuance. Buyer shall pay the cost of recordation.
4. Section 12.C. of the REPA shall be deleted in its entirety and replaced with the following:
- iii. Reversion. The Parties acknowledge that the sale price of the Property does not reflect the fair market value thereof as of the date of the Property's transfer to the Buyer. In consideration for the reduced purchase price, the Buyer agreed to develop the Property, which agreement was secured by a reversionary clause in the deed. Therefore, if Buyer breaches its obligations stated in Sections 12.A.i., 12.A.v. or 12.A.vi. of the REPA, Buyer shall convey all its rights and interests in the Property to the Seller, free of all liens and encumbrances, subject to the Seller's payment to the Buyer of the actual cost of the Buyer's improvements to the Property documented by sufficient invoices or receipts for such repairs, less the value of any existing liens and encumbrances, including unpaid taxes, outstanding on the Property. In no event shall Seller's payment to the Buyer exceed Buyer's Expenditure. If the Seller does not pay Buyer the documented value of the improvements, Buyer shall not be obligated to convey its rights and interests in the Property to the Seller.
6. A new Section 21 shall be added to the Agreement as follows:

**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 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.

7. A new Section 22 shall be added to the Agreement as follows:

**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.

4. Unless expressly modified by this Third Amendment, the terms and provisions of the REPA remain in full force and effect.

5. Capitalized terms used in this Third Amendment will have the meanings set forth in the REPA unless otherwise stated herein.

*Signature Page Follows*

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the Effective Date.

**SOUTH BEND REDEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST: \_\_\_\_\_  
Quentin Phillips, Secretary

**410 W. WAYNE STREET, LLC**

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

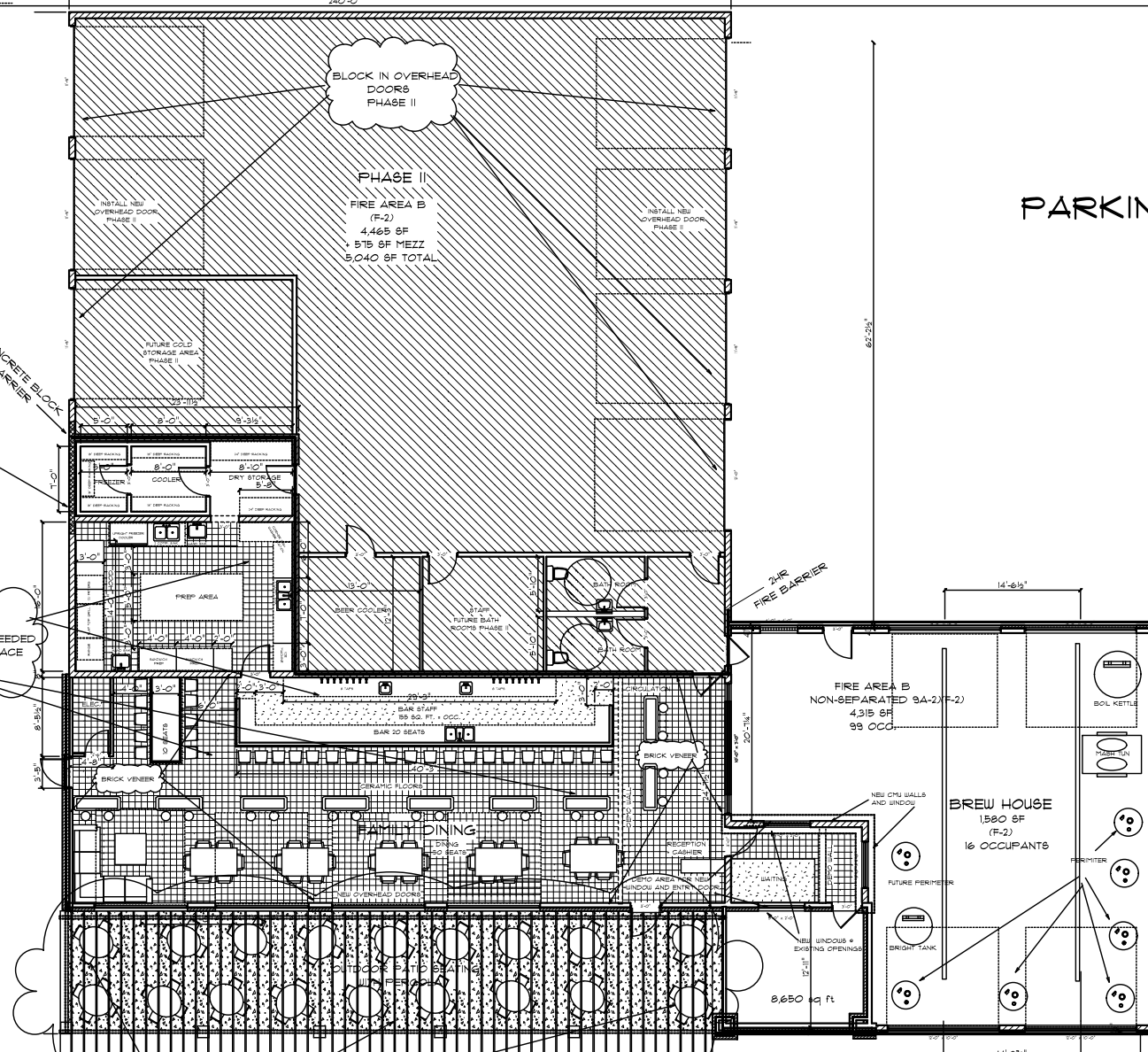
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C**  
**Project Plan**  
(Attached)

WAYNE STREET

WILLIAM STREET



DEMO AREA  
REMOVE DAMAGED  
PAVING AND REPLACE AS NEEDED

REMOVE EXISTING OVERHEAD  
DOOR AND REPLACE WITH  
CONCRETE BLOCK FOR NEW KITCHEN AREA

PARKING

\* NOTE  
AFTER REPAIRS ON EXISTING  
PAVEMENT A SEAL COAT WILL BE  
APPLIED TO ALL PAVED AREAS

DEMO CONCRETE FLOOR AS NEEDED  
FOR NEW PLUMBING AND REPLACE

DEMO AREA  
REMOVE DAMAGED  
PAVING AND REPLACE AS NEEDED

PARKING

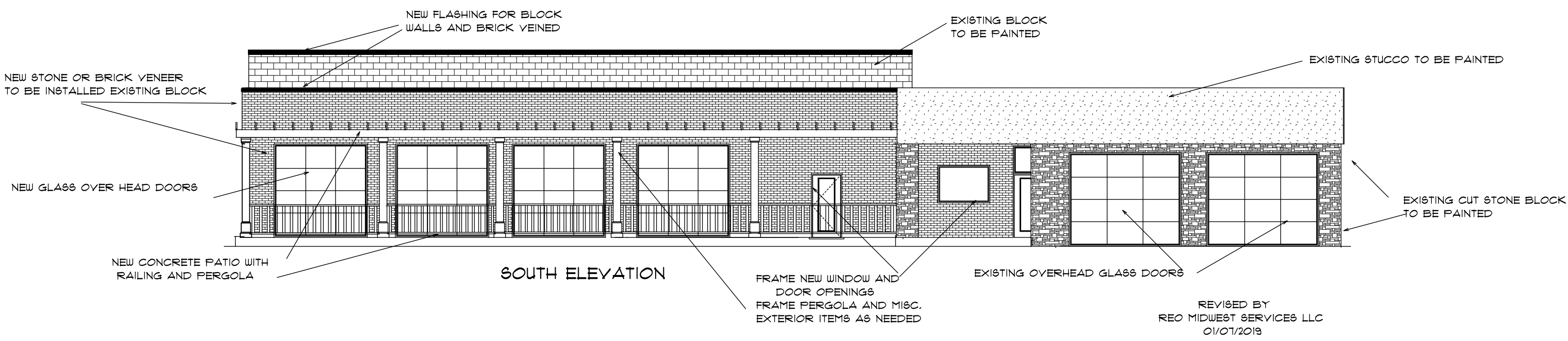
DEMO AREA - REMOVE PAVEMENT  
AND REPLACE WITH CONCRETE

PARKING  
45 parking spaces

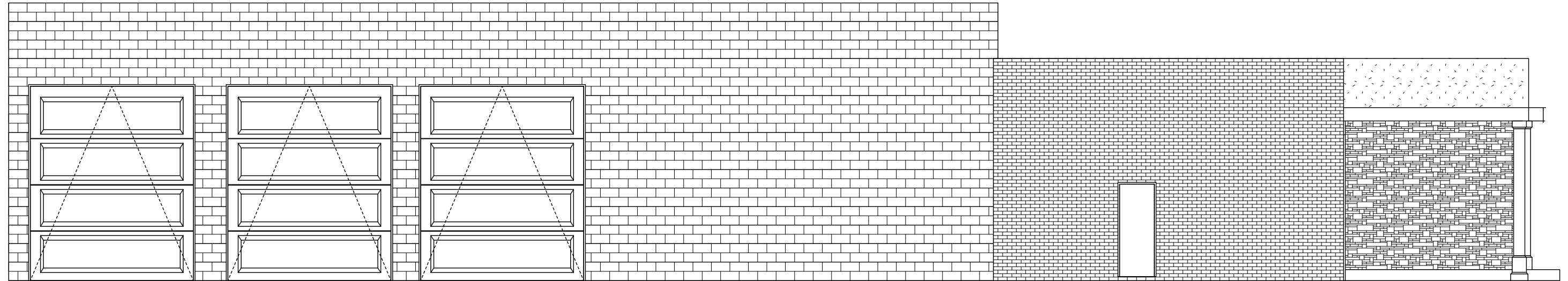
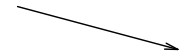
PARKING

REMOVE OR REPAIR  
DAMAGED SIDEWALKS  
AS NEEDED

DEMO AREA - REMOVE EXISTING  
LANDSCAPING AND DEBRIS  
PREP FOR FUTURE LANDSCAPING  
AND IRRIGATION



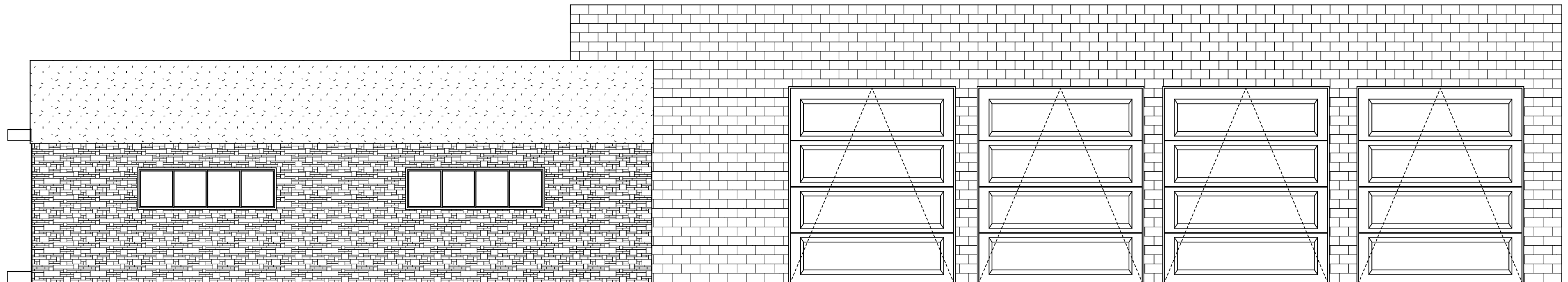
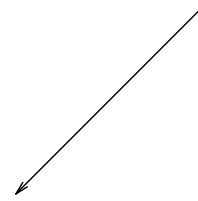
PHASE II  
RE PAINT ALL  
EXTERIOR BLOCK



WEST ELEVATION

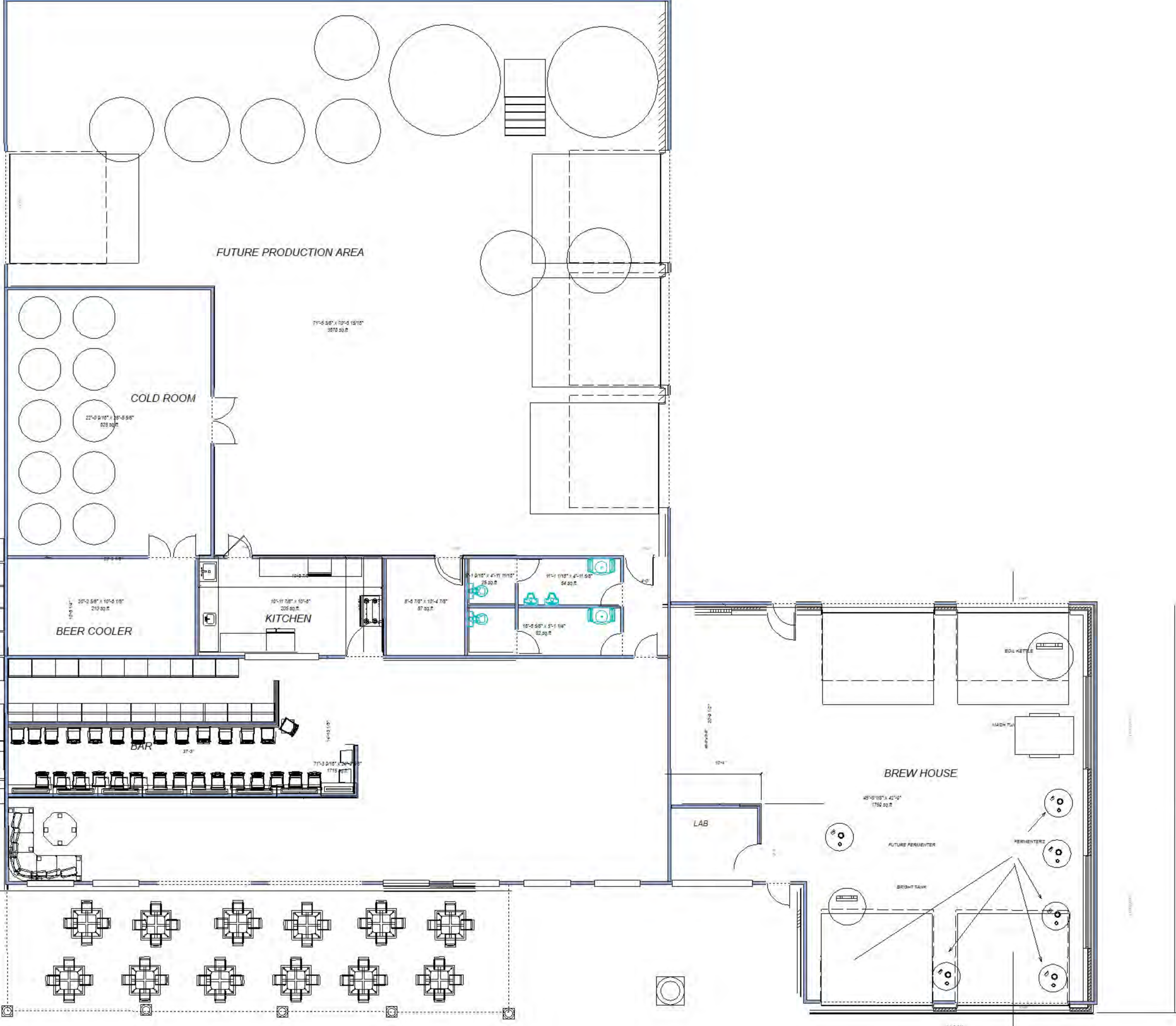
PAINT EXISTING  
SURFACE EXTERIOR  
PHASE I

RE PAINT BLOCK ON WAREHOUSE  
PHASE II



EAST ELEVATION

REVISED BY  
REO MIDWEST SERVICES LLC  
01/07/2019





**DEVELOPMENT AGREEMENT**

This Development Agreement (this “Agreement”), is effective as of January 9, 2020 (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 (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 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 and immediately adjoining the River West Development Area (together, the “Area”); and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) development plans, which contemplate development of the Area consistent with the Project; and

WHEREAS, at its meeting on December 12, 2019, the Commission approved the reallocation of tax increment financing ("TIF") funds from the Gateway project to the second unit of Developer's Project on Colfax Street, provided that the permanent supportive housing ("PSH") units for the entirety of both buildings of Developer's Project be limited to six (6) so long as the buildings are used for housing; 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 TIF revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

## **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. 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 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.

(b) Further, the Developer will ensure that no more than six (6) PSH units will be located on the Developer Property at any time, and Developer will include such a restriction in any deed transferring the Developer Property to a third party. This provision will survive the termination 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 December 31, 2021 (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 June 30, 2020, December 31, 2020, June 30, 2021, and December 31, 2021 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 and (ii) an update on the project schedule.

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.

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 to complete the Project 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.

9.10 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]

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:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

SOUTH BEND HERITAGE FOUNDATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

SOUTH BEND HERITAGE FOUNDATION, INC.

By: Marco J. Mariani  
Name: MARCO J. MARIANI  
Title: EXECUTIVE DIRECTOR  
Date: 1.8.20

## 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 second unit of the Developer Property located on Colfax Street, including the construction of a total of no less thirty (30) units therein 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. Further, no more than six (6) units may be used for permanent supportive housing.
- 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, and safety lighting.

## **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, repairs, renovations, and/or improvements to the roof, masonry, and fire stairs of the second unit (on Colfax Street) of the Developer Property.

**EXHIBIT D**

**Form of Easement**



## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Effective Date”), by and between South Bend Heritage Foundation, Inc., an Indiana non-profit corporation with offices at 803 Lincoln Way West, South Bend, Indiana 46616 (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 January 9, 2020, 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:

South Bend Heritage Foundation, Inc.,  
an Indiana non-profit corporation

Marco J. Mariani

Printed: 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 Mariani, 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 8<sup>th</sup> day of January, 2020.



Alisa Simpson  
Alisa Simpson, Notary Public  
Residing in St. Joseph County, IN

My Commission Expires: 12.16.2024

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

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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 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<br>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                                      |

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made on January 9, 2020, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and 112 West Jeff LLC (the “Developer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. The Commission and the Developer entered into a Development Agreement dated September 13, 2019 (the “Development Agreement”), pertaining to certain local public improvements to a parking garage adjacent to and serving Robertson's Senior Apartments in the River West Development Area (the "Project").

B. As part of the Project, the Developer desired to use a portion of the Funding Amount for architectural services (the "Services") for the designing of the Local Public set forth in the Development Agreement (the “LPI”), which services were not set forth in the definition of the LPI.

C. Additionally, due to an administrative oversight, the Services were provided and paid for partially by reimbursement to the Developer.

D. In order to correct the administrative oversight, the Parties desire to modify the Development Agreement to include the Services as a part of the LPI and to allow for the reimbursement of the expenses for the Services by the Commission to the Developer.

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 4.9, Costs and Expenses of Construction of Project, shall be deleted in its entirety and replaced with the following:

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 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. The Commission may reimburse the Developer for architectural service fees, provided that the Developer timely submits true and accurate copies of the invoices received from the architect, as well as proof of Developer's payment therefor, to the Commission.

2. Exhibit C, Description of Local Public Improvements, shall be deleted in its entirety and replaced with the attached Exhibit C.

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.

SOUTH BEND REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

By: \_\_\_\_\_  
Quentin M. Phillips, Secretary

112 WEST JEFF LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT C**

### **Description of Local Public Improvements**

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations: Architectural design services related to the Project; repairs to the elevator, tower, and/or roof; and/or renovations to the façade, lighting, and/or paint.