



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, February 10, 2022 – 9:30 a.m.

<http://tiny.cc/RDC21022>

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**1. Roll Call**

**2. Approval of Minutes**

A. Minutes of the Regular Meeting of Thursday, January 27, 2022

**3. Approval of Claims**

A. Claims Allowance Request 02.01.22

**4. Old Business**

**5. New Business**

A. River West Development Area

1. Resolution No. 3546 (Amending Special Tax SB Morris Project)

2. Resolution No. 3547 (Amending Special Tax Potawatomi Zoo Project)

B. South Side Development Area

1. Development Agreement (Miami Hills Project)

C. Multiple Development Areas

1. Budget Request (2022 Annual Paving)

**6. Progress Reports**

A. Tax Abatement

B. Common Council

C. Other

**7. Next Commission Meeting:**

Thursday, February 24, 2022, 9:30 am

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

**SOUTH BEND REDEVELOPMENT COMMISSION  
 REGULAR MEETING**

January 27, 2022 – 9:30 am  
<https://tinyurl.com/RDC12722>

Presiding: Marcia Jones, President

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

**1. ROLL CALL**

Members Present:	Marcia Jones, President Don Inks, Vice-President Troy Warner, Secretary Eli Wax, Commissioner Vivian Sallie, Commissioner Leslie Wesley, Commissioner	
Members Absent:		
Legal Counsel:	Sandra Kennedy, Esq. Danielle Campbell-Weiss, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary	
Others Present:	Santiago Garces Tim Corcoran Amanda Pietsch Angelina Billo Andrew Netter Daniel Parker Benjamin Dougherty Zach Hurst Kara Boyles Charlotte Brach Laura Althoff Greg Balsano Randy Rampola Sharon McBride Conrad Damian Katrina Marquardt	DCI DCI DCI DCI DCI Admin & Finance Admin & Finance Engineering Engineering Engineering Building Baker Tilly Barnes & Thornburg Councilwoman Resident Resident

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, January 13, 2022**

Upon a motion by Vice-President Inks, seconded by Commissioner Sallie, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, January 13, 2022.

## 3. Approval of Claims

- **Claims Submitted for January 18 and January 25, 2022**

Upon a motion by Commissioner Sallie, seconded by Vice-President Inks, the motion carried unanimously, the Commission approved the claims for January 18 and January 25, 2022, submitted on Thursday, January 27, 2022.

## 4. Old Business

## 5. New Business

### A. Administrative

#### 1. **Community Tree Nursery Collaboration Amended and Restated Agreement**

Mr. Netter Presented Community Tree Nursery Collaboration Amended and Restated Agreement. We are requesting the Redevelopment Commission's approval on two properties on Euclid. These will be used in conjunction with the Board of Public Works properties for a temporary tree nursery installation which will be managed by the Venue Parks and Arts Department. Notre Dame will provide volunteer assistance.

Commissioner Sallie asked what will happen to the trees once removed from the property.

Mr. Netter states the trees are planted and maintained by the city's Venue, Parks and Arts forester and he has a schedule where the trees will be installed based on the needs within the city. This could be in right of way, streetscape improvements or in parks.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Community Tree Nursery Collaboration Amended and Restated Agreement submitted on Thursday, January 27, 2022.

#### 2. **Resolution No. 3544 (Regarding Special Tax – Potawatomi Zoo)**

Mr. Randy Rampola, Barnes and Thornburg Presented Resolution No. 3544 (Regarding Special Tax – Potawatomi Zoo). This relates to the financing the city is taking on with the Potawatomi Zoo project. The hotel/motel tax board accepted a percentage of tax that will be allocated to the Potawatomi Zoo. The pledge

South Bend Redevelopment Commission Regular Meeting – January 27, 2022

resolution has been adopted and part of the pledge resolution is that the board is required to maintain a deposit in a hotel/motel fund in an amount equal to the manual debt service of the zoo bonds. If there is ever a shortage in hotel/motel tax fund for whatever reason, that it would agree to levy a tax as a backup for the debt service on the bonds. The tax would be used to pay the lease rental, the lease rental would be used to pay the debt service on the bonds. The mechanics of the Resolution are set out in section II as you make the annual look to see if a levy is needed, you would consider any revenues that would be on deposit. We are anticipating always having the maximum annual debt service so there will be no need for an actual levy, but this provides additional security on the bonds at a lower interest rate. Using the special tax backup provides us to sell the bonds at the best possible rate in the market so we can take advantage of the city's good credit rating. It was determined with Baker Tilly to use the city as a backup in a way to reduce borrowing cost with financing.

Secretary Warner asks what portion of the expected hotel/motel tax income will go to the debt service.

Greg Balsano, Baker Tilly stated that the coverage amount structured around is 125%. The bond debt service is structured at 125% around the annual debt revenue. That leaves a 25% cushion above the annual debt service.

Secretary Warner states in theory the income from the tax could drop 25% and there are still sufficient funds.

Mr. Rampola added the financing was structured on the 2019 collection of revenue assuming no growth.

Mr. Balsano states that is correct. It is structured on the ½ percent hotel/motel innkeepers tax rate which is what the financing is structured around based on 2019 collections with no growth.

Secretary Warner asks about the potential surety on the income tax and how we determine whether to proceed with that.

Mr. Rampola states there will be a reserve fund with the trustees so there is an additional cushion of revenue funds. The reserve fund comes from either cash or bonds proceeds.

Secretary Warner asked if there is a plan for the hotel/motel tax revenue cushion.

Mr. Rampola states that each of the ½ percent can only be used for the Zoo. May be used as pay as you go expenses.

Mr. Parker, Admin & Finance states that the zoo has expressed interest in that and will use is potentially in the 30-year plan for the zoo. On the Morris side there are no plans currently. There is a minimum balance to be kept of debt service on hand, which is the 25%.

Vice-President Inks asked how have the revenues fared in 2020/2021.

Mr. Parker states the revenues were down in 2020. The hotel industry took about a 50% hit due to the pandemic. That came back strong in 2021 at a 25% to 35% increase from 2020 on the revenue side. 2022 should be back to 2019 numbers or higher.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Resolution No. 3544 (Regarding Special Tax – Potawatomi Zoo) submitted on Thursday, January 27, 2022.

**3. Resolution No. 3545 (Regarding Special Tax – South Bend Morris)**

Mr. Randy Rampola, Barnes and Thornburg Presented Resolution No. 3545 (Regarding Special Tax –South Bend Morris). This relates to the financing the city is taking on with the SB Morris project. The hotel/motel tax board accepted a percentage of tax that will be allocated to the SB Morris. The pledge resolution has been adopted and part of the pledge resolution is that the board is required to maintain a deposit in a hotel/motel fund in an amount equal to the manual debt service of the zoo bonds. If there is ever a shortage in hotel/motel tax fund for whatever reason, that it would agree to levy a tax as a backup for the debt service on the bonds. The tax would be used to pay the lease rental, the lease rental would be used to pay the debt service on the bonds. The mechanics of the Resolution are set out in section II as you make the annual look to see if a levy is needed, you would consider any revenues that would be on deposit. We are anticipating always having the maximum annual debt service so there will be no need for an actual levy, but this provides additional security on the bonds at a lower interest rate. Using the special tax backup provides us to sell the bonds at the best possible rate in the market so we can take advantage of the city's good credit rating. It was determined with Baker Tilly to use the city as a backup in a way to reduce borrowing cost with financing.

President Jones asked if they will be replacing the seating at the Morris.

Mr. Parker stated that a portion will go to replacing the seating and the HVAC system.

Upon a motion by Secretary Warner, seconded by Commissioner Sallie, the motion carried unanimously, the Commission approved Resolution No. 3545 (Regarding Special Tax – South Bend Morris) submitted on Thursday, January 27, 2022.

**6. Progress Reports**

**A. Tax Abatement**

1. Mr. Garces presented a tax abatement for Pure Green Farms that went in front of the city council with a 2-phase expansion. This is for a real and personal property tax abatement. There will be 185 new jobs on a \$260M project. We currently have a development agreement that was extended this past year.

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Secretary Warner states that the council was excited about the progress of this project. Joe McGuire is very passionate about growing fresh produce. He is also supplying food to the food banks and to cultivate. It is amazing stuff.

Commissioner Wax stated that he backs what Secretary Warner has said that council is excited and hopes everything comes about as planned.

B. Common Council

C. Other

**7. Next Commission Meeting:**

Thursday, February 10, 2022, 9:30 a.m.

**8. Adjournment**

Thursday, January 27, 2021, 9:46 a.m.

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Troy Warner, Secretary

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Marcia Jones, President



**City of South Bend**  
**Department of Administration & Finance**  
**Claims Allowance Request**

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Tuesday, February 1, 2022

Pursuant to Indiana Code 36-4-8-7, I have audited and certified the attached claims and submit them for allowance in the following amounts:

GBLN-0030704	\$419,594.00
GBLN-0000000	\$0.00

Total: \$419,594.00

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Daniel Parker, City Controller

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The attached claims described above were allowed in the following  
total amount at a public meeting on the date stated below: \$ 419,594.00

By: \_\_\_\_\_  
South Bend Redevelopment Commission  
Name:

Date:

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Name:

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Name:

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Name:

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Name:

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Name:



**Expenditure approval**  
 2022-01-31 Debt Service Wire Payments - RDC  
 GBLN-0030704

**Payment method:** Wire-Total  
**Voucher:** RDCP-00002815  
**Payment date:** 1/31/2022  
**Payment reference:** DS0005 & DS0006

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000187	BANK OF NEW YORK MELLON	INV 11/15/21	IBB Special Program Bonds, Series 2011A (TIF A)	2/1/2022	\$825,000.00	324-10-102-121-438100-DS0005-	
V-00000187	BANK OF NEW YORK MELLON	INV 11/15/21	IBB Special Program Bonds, Series 2011A (TIF A)	2/1/2022	\$134,921.50	324-10-102-121-438200-DS0005-	
V-00000187	BANK OF NEW YORK MELLON	INV 11/15/21	IBB Special Program Bonds, Series 2011A (TIF B)	2/1/2022	\$470,000.00	324-10-102-121-438100-DS0006-	
V-00000187	BANK OF NEW YORK MELLON	INV 11/15/21	IBB Special Program Bonds, Series 2011A (TIF B)	2/1/2022	\$76,877.50	324-10-102-121-438200-DS0006-	

**Payment method:** Wire-Singl  
**Voucher:** RDCP-00002816  
**Payment date:** 1/31/2022  
**Payment reference:** DS0054

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	15896	2015 Eddy St Commons Bonds Lease Rental Payment - Transfer to Fund 752	2/1/2022	\$1,233,000.00	436-10-102-121-452000-DS0054-	

**Payment method:** Wire-Singl  
**Voucher:** RDCP-00002817  
**Payment date:** 1/31/2022  
**Payment reference:** DS0163

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	1889799	2017 Eddy St Commons Bonds - Transfer to Fund 760	2/1/2022	\$962,625.00	436-10-102-121-452000-DS0163-	

**Payment method:** Wire-Total  
**Voucher:** RDCP-00002818  
**Payment date:** 1/31/2022  
**Payment reference:** DS0169

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	1890080	2018 TIF Parks Bond	2/1/2022	\$350,000.00	324-10-102-121-438100- DS0169-	
V-00001743	US BANK	1890080	2018 TIF Parks Bond	2/1/2022	\$143,550.00	324-10-102-121-438200- DS0169-	

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## **RESOLUTION NO. 3546**

### **A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION AMENDING RESOLUTION NO. 3545 DETERMINING TO PROVIDE FOR A SPECIAL TAX IF NECESSARY TO PAY LEASE RENTALS IN CONNECTION WITH THE LEASE DATED AS OF DECEMBER 1, 2021, BETWEEN THE SOUTH BEND REDEVELOPMENT COMMISSION AND THE SOUTH BEND REDEVELOPMENT AUTHORITY RELATING TO THE MORRIS PERFORMING ARTS CENTER PROJECT AND OTHER RELATED MATTERS**

**WHEREAS**, the South Bend Redevelopment Commission (the “Commission”), the governing body of the South Bend Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana (the “District”), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the “Act”); and

**WHEREAS**, the City of South Bend, Indiana (the “City”) has determined to undertake certain improvements to the Morris Performing Arts Center (the “Performing Arts Center”) consisting of certain energy savings improvements, renovations of the floor and seating, and certain other improvements at the Performing Arts Center (collectively, the “Project”); and

**WHEREAS**, the Commission has given consideration to (i) financing the cost of all or a portion of the Project; (ii) funding a debt service reserve fund, if necessary in connection with the issuance of the Bonds (defined herein); and (iii) paying costs incurred in connection with the issuance of the Bonds; and

**WHEREAS**, the South Bend Redevelopment Authority (the “Authority”) has been created pursuant to IC 36-7-14.5 as a separate body, corporate and politic, and as an instrumentality of the City, to finance local public improvements for lease to the Commission; and

**WHEREAS**, the Authority intends to lease the Performing Arts Center (the “Leased Premises”) to the Commission pursuant to a lease dated as of December 1, 2021 (the “Lease”), which form of Lease was heretofore approved by this Commission, the Authority and the Common Council of the City in order to provide for the financing of the Project; and

**WHEREAS**, the Authority and the Commission have given consideration to (i) financing the cost of funding a portion of the cost of the Project; (ii) funding a debt service reserve fund, if necessary in connection with the issuance of the Bonds (defined herein); and (iii) paying costs incurred in connection with the issuance of the Bonds; and

**WHEREAS**, the Authority intends to issue bonds pursuant to IC 36-7-14.5-19 and a trust agreement (the “Trust Agreement”) between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), to be known as the “South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2022 (Morris Performing Arts Center Project)” in an aggregate principal amount not to exceed Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000) (the “Bonds”), the proceeds of which are to be used to finance all or any portion of the costs of (i) a

portion of the Project; (ii) funding a debt service reserve fund, if necessary, in connection with the issuance of the Bonds; and (iii) issuing the Bonds; and

**WHEREAS**, the Commission intends to pay rent to the Authority pursuant to the terms of the Lease, at a rate not to exceed Four Hundred Twenty Thousand Dollars (\$420,000) per year, in semiannual installments, with a term no longer than twenty-five (25) years beginning on the date the Authority acquires an interest in the Leased Premises, and ending on the day prior to a date not later than twenty-five (25) years after such date of acquisition by the Authority (the “Lease Rental Payments”); and

**WHEREAS**, the Commission anticipates that sufficient funds will be available to the Commission to make the required Lease Rental Payments with such funds being derived from the St. Joseph County hotel-motel tax revenues (the “Morris Hotel-Motel Tax Revenues”) deposited into the Morris Performing Arts Center Fund (the “Morris Hotel-Motel Tax Fund”) established pursuant to Indiana Code 6-9-1-6.4 and pledged for such purpose pursuant to a resolution adopted on November 4, 2021 (the “Pledge Resolution”) by the St. Joseph County Hotel-Motel Tax Board of Managers (the “Board of Managers”); and

**WHEREAS**, pursuant to the Pledge Resolution, the Board of Managers will pay sufficient Morris Hotel-Motel Tax Revenues to the Trustee as payment of the Lease Rental Payments when due under the Lease; and

**WHEREAS**, because the Commission anticipates that sufficient Morris Hotel-Motel Tax Revenues will be available to make the Lease Rental Payments, the Project does not constitute a “controlled project” as such term is defined by Indiana Code 6-1.1-20-1.1; and

**WHEREAS**, the Commission adopted Resolution No. 3545 on January 27, 2021 (“Resolution No. 3545”) determining to provide for the levy of a special tax pursuant to Section 27 of the Act (the “Special Tax”) in the event it becomes necessary to levy the Special Tax for the payment of the Lease Rental Payments owed by the Commission pursuant to the Lease and to authorize the establishment of certain funds and accounts in connection thereto; and

**WHEREAS**, the Commission desires to amend Resolution No. 3545 to provide that, in considering revenues available to the Commission in order to avoid the need to levy the Special Tax, the Commission will take into account only cash amounts on deposit in the debt service reserve fund established in the Trust Indenture;

**NOW, THEREFORE, BE IT RESOLVED, BY THIS SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:**

**SECTION 1.** The Commission hereby amends and restates Section 2 of Resolution No. 3544 in its entirety as follows:

**SECTION 2.** The Commission agrees that it shall levy in each calendar year pursuant to Section 27 of the Act during the term of the Lease the Special Tax upon all of the taxable property in the District in a total amount necessary, together with all other funds (other than special taxes), including, without limitation, the Morris Hotel-Motel Tax Revenues then on deposit in the Morris Hotel-Motel Tax Fund as

of August 1 of such calendar year, to pay all Lease Rental Payments payable in the 12-month period beginning on July 1 of the year following such calendar year pursuant to Section 4 of the Lease. The Controller of the City (the "Controller") is hereby authorized to create a fund (the "Lease Fund") for the purpose of depositing such taxes into and such taxes and any other funds deposited in the Lease Fund shall be irrevocably pledged for the purposes set forth in this Resolution, such pledge being effective as set forth in IC 5-1-14-4 without the necessity of filing or recording this resolution or any instrument except in the records of the Commission. In addition to any amounts then on deposit in the Lease Fund, if any, and in the Morris Hotel-Motel Tax Fund, the Commission may also take into account when determining whether it is necessary to levy the Special Tax as described herein, cash amounts available in the debt service reserve fund which may be established under the Trust Agreement to provide additional security for the Bonds, all based upon the advice and recommendation of the Controller. Notwithstanding the foregoing, the Commission expects that the Morris Hotel-Motel Tax Revenues will be sufficient to pay the Lease Rental Payments when due without the need for the Special Tax.

SECTION 2. Except as amended herein, Resolution No. 3545 is hereby ratified and confirmed and shall remain in full force and effect.

SECTION 3. This Resolution shall be in full force and effect after its adoption by the Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on February 10, 2022, as authorized by Executive Order 20-09 issued by the Governor of the State of Indiana, as subsequently renewed.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

\_\_\_\_\_  
Troy Warner, Secretary

**RESOLUTION NO. 3547**

**A RESOLUTION OF THE SOUTH BEND  
REDEVELOPMENT COMMISSION AMENDING RESOLUTION NO. 3544  
DETERMINING TO PROVIDE FOR A SPECIAL TAX IF NECESSARY TO PAY  
LEASE RENTALS IN CONNECTION WITH THE LEASE DATED AS OF  
DECEMBER 1, 2021, BETWEEN THE  
SOUTH BEND REDEVELOPMENT COMMISSION AND  
THE CITY OF SOUTH BEND BUILDING CORPORATION  
RELATING TO THE POTAWATOMI ZOO PROJECT  
AND OTHER RELATED MATTERS**

**WHEREAS**, the South Bend Redevelopment Commission (the “Commission”), the governing body of the South Bend Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana (the “District”), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the “Act”); and

**WHEREAS**, the City of South Bend Building Corporation (the “Building Corporation”) has been incorporated as an Indiana nonprofit corporation operating pursuant to Indiana Code 23-17 in order to finance buildings and other capital improvements in the City; and

**WHEREAS**, the City of South Bend, Indiana (the “City”), has previously entered into a Lease and Management Agreement, dated as of January 1, 2019 with the Potawatomi Zoological Society, Inc. (the “PZS”), an Indiana nonprofit corporation, to provide for the PZS to operate the Potawatomi Zoo located in the City (the “Zoo”); and

**WHEREAS**, the PZS desires to undertake certain capital improvements at the Zoo (the “Project”); and

**WHEREAS**, the Common Council of the City has adopted Ordinance No. 10835-21 (the “Ordinance”) at a meeting held on December 13, 2021, authorizing the issuance of economic development lease rental revenue bonds in an aggregate principal amount not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000) (the “Bonds”) pursuant to the terms of the Ordinance and a trust agreement (the “Trust Agreement”) between the City and U.S. Bank National Association, as trustee (the “Trustee”), to be known as the “City of South Bend, Indiana, Economic Development Lease Rental Revenue Bonds, Series 2022 (Potawatomi Zoo Project)” for the purpose of (i) financing the cost of funding a portion of the cost of the Project by providing a portion of the proceeds of the Bonds to the PZS to pay for the Project pursuant to a Financing Agreement by and among the City, the PZS and the Building Corporation; (ii) funding a debt service reserve fund, if necessary, in connection with the issuance of the Bonds; and (iii) paying costs incurred in connection with the issuance of the Bonds; and

**WHEREAS**, in order to provide a source of funding to pay the principal of and interest on the Bonds when due, the Building Corporation and the Commission have entered into a Lease dated as of December 1, 2021 (the “Lease”) providing for the lease of certain property in the City as more fully described in the Lease (the “Leased Premises”); and

**WHEREAS**, the Commission intends to pay rent to the Building Corporation pursuant to the terms of the Lease, at a rate not to exceed Four Hundred Twenty Thousand Dollars (\$420,000) per year, in semiannual installments, with a term no longer than twenty-two (22) years beginning on the date the Building Corporation acquires an interest in the Leased Premises, and ending on the day prior to a date not later than twenty-two (22) years after such date of acquisition by the Building Corporation (the “Lease Rental Payments”); and

**WHEREAS**, the Commission anticipates that sufficient funds will be available to the Commission to make the required Lease Rental Payments with such funds being derived from the St. Joseph County hotel-motel tax revenues (the “Zoo Hotel-Motel Tax Revenues”) deposited into the Potawatomi Zoo Fund (the “Zoo Hotel-Motel Tax Fund”) established pursuant to Indiana Code 6-9-1-6.3 and pledged for such purpose pursuant to a resolution adopted on November 4, 2021 (the “Pledge Resolution”) by the St. Joseph County Hotel-Motel Tax Board of Managers (the “Board of Managers”); and

**WHEREAS**, pursuant to the Pledge Resolution, the Board of Managers will pay sufficient Zoo Hotel-Motel Tax Revenues to the Trustee as payment of the Lease Rental Payments when due under the Lease; and

**WHEREAS**, because the Commission anticipates that sufficient Zoo Hotel-Motel Tax Revenues will be available to make the Lease Rental Payments, the Project does not constitute a “controlled project” as such term is defined by Indiana Code 6-1.1-20-1.1; and

**WHEREAS**, the Commission adopted Resolution No. 3544 on January 27, 2021 (“Resolution No. 3544”), determining to provide for the levy of a special tax pursuant to Section 27 of the Act (the “Special Tax”) in the event it becomes necessary to levy the Special Tax for the payment of the Lease Rental Payments owed by the Commission pursuant to the Lease and to authorize the establishment of certain funds and accounts in connection thereto; and

**WHEREAS**, the Commission desires to amend Resolution No. 3544 to provide that, in considering revenues available to the Commission in order to avoid the need to levy the Special Tax, the Commission will take into account only cash amounts on deposit in the debt service reserve fund established in the Trust Indenture;

**NOW, THEREFORE, BE IT RESOLVED, BY THIS SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:**

**SECTION 1.** The Commission hereby amends and restates Section 2 of Resolution No. 3544 in its entirety as follows:

**SECTION 2.** The Commission agrees that it shall levy in each calendar year pursuant to Section 27 of the Act during the term of the Lease the Special Tax upon all of the taxable property in the District in a total amount necessary, together with all other funds (other than special taxes), including, without limitation, the Zoo Hotel-Motel Tax Revenues then on deposit in the Zoo Hotel-Motel Tax Fund as of August 1 of such calendar year, to pay all Lease Rental Payments payable in the 12-month period beginning on July

1 of the year following such calendar year pursuant to Section 4 of the Lease. The Controller of the City (the "Controller") is hereby authorized to create a fund (the "Lease Fund") for the purpose of depositing such taxes into and such taxes and any other funds deposited in the Lease Fund shall be irrevocably pledged for the purposes set forth in this Resolution, such pledge being effective as set forth in IC 5-1-14-4 without the necessity of filing or recording this resolution or any instrument except in the records of the Commission. In addition to any amounts then on deposit in the Lease Fund, if any, and in the Zoo Hotel-Motel Tax Fund, the Commission may also take into account when determining whether it is necessary to levy the Special Tax as described herein, cash amounts available in the debt service reserve fund which may be established under the Trust Agreement to provide additional security for the Bonds, all based upon the advice and recommendation of the Controller. Notwithstanding the foregoing, the Commission expects that the Zoo Hotel-Motel Tax Revenues will be sufficient to pay the Lease Rental Payments when due without the need for the Special Tax.

SECTION 2. Except as amended herein, Resolution No. 3544 is hereby ratified and confirmed and shall remain in full force and effect.

SECTION 3. This Resolution shall be in full force and effect after its adoption by the Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on February 10, 2022, as authorized by Executive Order 20-09 issued by the Governor of the State of Indiana, as subsequently renewed.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

\_\_\_\_\_  
Troy Warner, Secretary



## **DEVELOPMENT AGREEMENT**

This Development Agreement (this “Agreement”), is effective as of February \_\_, 2022 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Miami Hills MF II, LLC, a Delaware limited liability company, with offices at c/o Infinity Real Estate Advisors, LLC, 3475 Piedmont Road NE, Suite 1525, Atlanta, Georgia 30305 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

### **RECITALS**

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the “Act”); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the Developer or a company related to 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 currently has private financing and 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 South Side Development Area (the “Area”); and

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

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in **Exhibit C** (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

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

### **SECTION 1. DEFINITIONS.**

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed One Million Dollars (\$ 1,000,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means an amount no less than Two Million Six Hundred Thousand Dollars (\$ 2,600,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property.

## **SECTION 2. INTERPRETATION, TERMS, AND RECITALS.**

### **2.1 Interpretation.**

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

## **SECTION 3. ACCESS.**

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the “Easement”) in the form attached hereto as **Exhibit D**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) inure to the benefit of the Commission

and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works in its reasonable discretion. Upon termination of the Easement, the Commission agrees to execute and deliver to Developer a termination of easement in recordable form.

#### **SECTION 4. DEVELOPER'S OBLIGATIONS.**

4.1 Generally. The Parties acknowledge and agree that the Commission's agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

##### 4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the City Planner, or his designee, pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the Commission's efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to use commercially reasonable efforts to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems reasonably 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 the date that is seventeen (17) months after the Effective Date of this Agreement (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 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, and (iii) an itemized accounting generally identifying the Private Investment to date.

4.7 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, and prior to the Commission's expenditure of the Funding Amount, the Developer shall deliver a complete set thereof to the City Planner, or his designee, who will review the plans and specifications in relation to any area or neighborhood development plans and may approve or disapprove said plans and specifications for the Project in his or her reasonable discretion and may request revisions or amendments to be made to the same.

4.8 Costs and Expenses of Construction of Project. 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 will review the bid specifications in accordance with existing City standards, may approve or disapprove said bid specifications for the Project in its reasonable discretion, and may request revisions or amendments to be made to the same. The Commission shall not be required to expend the Funding Amount unless the Engineering Department has approved of all bid specifications.

4.10 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Project.

4.11 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).

4.12 **Information.** The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission in connection with the construction of the Project.

4.13 **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 diligently and in good faith pursue to completion (or cause to be completed) the Local Public Improvements described in Exhibit C attached hereto on a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

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

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

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such

purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount. In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

## **SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

## **SECTION 7. DEFAULT.**

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party (such period to be extended for up to an additional 60 days if the defaulting party is diligently pursuing said remedy, but the cure cannot be effectuated in the initial 30 day period), 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 (as such period may be extended as set forth above), then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of

the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, a pandemic or pandemic response, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

**SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.**

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

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

## **SECTION 9. MISCELLANEOUS.**

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

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

9.3 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.4 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

9.5 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.6 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:



(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.7 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.8 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: Miami Hills MF II LLC  
c/o Infinity Real Estate Advisors, LLC  
3475 Piedmont Road NE  
Suite 1525  
Atlanta, GA 30305  
Attn: Gregory B. Jones

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

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

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

9.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this

Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

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

9.13 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

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

9.15 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

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

[SIGNATURE PAGE FOLLOWS]

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

SOUTH BEND REDEVELOPMENT  
COMMISSION

---

Marcia I. Jones, President

ATTEST:

---

Troy Warner, Secretary

MIAMI HILLS MF II LLC,  
a Delaware limited liability company

By:

A handwritten signature in blue ink, appearing to be "RJBJ", written over a horizontal line.

Authorized Signatory

**EXHIBIT A**

**Description of Developer Property**

The Land referred to herein below is situated in the County of St Joseph, State of Indiana, and is described as follows:

**A PART OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 2 EAST AND A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 2 EAST IN THE CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHEAST CORNER OF SOUTHMORE HEIGHTS AS SHOWN ON THE SOUTHMORE HEIGHTS STREET LAYOUT DEDICATION PLAN AS RECORDED IN PLAT BOOK 15, PAGE "S" IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, SAID POINT ALSO BEING ON THE WEST LINE OF THE PLAT OF MIAMI HILLS ADDITION, A PLAT RECORDED IN PLAT BOOK 17, PAGE "M" IN SAID RECORDER'S OFFICE OF ST. JOSEPH COUNTY, INDIANA; THENCE SOUTH 1 DEGREE 39 MINUTES EAST ALONG SAID WEST LINE OF MIAMI HILLS ADDITION, 1269.25 FEET; THENCE SOUTH 88 DEGREES 21 MINUTES WEST, 113.5 FEET; THENCE NORTH 1 DEGREE 39 MINUTES WEST, 30 FEET; THENCE SOUTH 88 DEGREES 21 MINUTES WEST, 80 FEET; THENCE NORTH 55 DEGREES 32 MINUTES 36 SECONDS WEST, 302.05 FEET; THENCE NORTH 34 DEGREES 27 MINUTES 24 SECONDS EAST, 407.83 FEET; THENCE NORTH 2 DEGREES 32 MINUTES 36 SECONDS WEST, 131.00 FEET; THENCE NORTH 40 DEGREES 42 MINUTES 36 SECONDS WEST, 34.90 FEET; THENCE NORTH 10 DEGREES 17 MINUTES 36 SECONDS WEST, 168.10 FEET; THENCE NORTH 34 DEGREES 47 MINUTES 36 SECONDS WEST, 145.00 FEET; THENCE NORTH 59 DEGREES 17 MINUTES 36 SECONDS WEST, 53.23 FEET; THENCE NORTH 37 DEGREES 31 MINUTES 36 SECONDS WEST, 165.84 FEET; THENCE NORTH 3 DEGREES 15 MINUTES 36 SECONDS WEST, 110.00 FEET TO THE NORTHERLY LINE OF SAID SOUTHMORE HEIGHTS; THENCE NORTH 86 DEGREES 44 MINUTES EAST ALONG SAID NORTHERLY LINE OF SOUTHMORE HEIGHTS, 470.71 FEE TO THE PLACE OF BEGINNING.**

Commonly known as 3534 High Street, South Bend, Indiana 46614.

Tax Id. No. 018-7138-493301

## **EXHIBIT B**

### **Project Plan**

The Developer confirms that it is working with and being funded in part by the United States Department of Housing and Urban Development (“HUD”) through HUD’s Housing Assistance Payment Contracts IN36M000186 and IN36L000014 and will maintain compliance with such agreements at least during the duration of this Agreement. Further, the Developer has completed or 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. Full interior renovation has been completed.
- B. Inherited City RSVP compliance issues have been satisfactorily addressed.
- C. Security lighting and cameras have been installed.
- D. Roughly 50% of the unit HVAC have been replaced, with the remaining to be replaced on an “as needed” basis; water heater systems have also been replaced on an “as needed” basis.
- E. Community Room has been renovated and is available to tenants.
- G. Resident services coordinator has been identified and hired.
- H. New playground has been completed.

## **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:

- A. New exterior vinyl siding on all buildings.
- B. Replace all damaged fascia and soffits throughout the property with new wood fascia and soffits.
- C. Replace all windows throughout the property with new vinyl windows.

**EXHIBIT D**

**Form of Easement**

## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between Miami Hills MF II LLC, a Delaware limited liability company with offices at c/o Infinity Real Estate Advisors, LLC, 3475 Piedmont Road NE, Suite 1525, Atlanta, GA 30305 (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 February \_\_\_\_, 2022 (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; (c) February \_\_\_\_, 2024; or (d) 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:

MIAMI HILLS MF II LLC

By: *[Signature]*  
Gregory B. Jones  
Authorized Signatory

STATE OF GEORGIA                    )  
  ) SS:  
COUNTY OF FULTON                )

Before me, the undersigned, a Notary Public in and for said State, personally appeared GREGORY B. JONES, to me known to be the Authorized Signatory 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 7th day of February, 2022.

*[Signature]*  
*Carter Ryan Sechrest*, Notary Public  
Residing in Fulton County, GA

My Commission Expires: 02-12-2022

This instrument was prepared by \_\_\_\_\_

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *[Signature]*

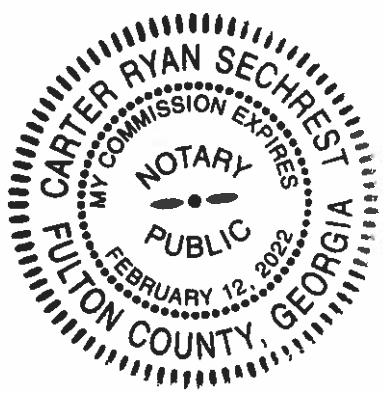


EXHIBIT 1

Description of Property

The Land referred to herein below is situated in the County of St Joseph, State of Indiana, and is described as follows:

A PART OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 2 EAST AND A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 2 EAST IN THE CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SOUTHMORE HEIGHTS AS SHOWN ON THE SOUTHMORE HEIGHTS STREET LAYOUT DEDICATION PLAN AS RECORDED IN PLAT BOOK 15, PAGE "S" IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, SAID POINT ALSO BEING ON THE WEST LINE OF THE PLAT OF MIAMI HILLS ADDITION, A PLAT RECORDED IN PLAT BOOK 17, PAGE "M" IN SAID RECORDER'S OFFICE OF ST. JOSEPH COUNTY, INDIANA; THENCE SOUTH 1 DEGREE 39 MINUTES EAST ALONG SAID WEST LINE OF MIAMI HILLS ADDITION, 1269.25 FEET; THENCE SOUTH 88 DEGREES 21 MINUTES WEST, 113.5 FEET; THENCE NORTH 1 DEGREE 39 MINUTES WEST, 30 FEET; THENCE SOUTH 88 DEGREES 21 MINUTES WEST, 80 FEET; THENCE NORTH 55 DEGREES 32 MINUTES 36 SECONDS WEST, 302.05 FEET; THENCE NORTH 34 DEGREES 27 MINUTES 24 SECONDS EAST, 407.83 FEET; THENCE NORTH 2 DEGREES 32 MINUTES 36 SECONDS WEST, 131.00 FEET; THENCE NORTH 40 DEGREES 42 MINUTES 36 SECONDS WEST, 34.90 FEET; THENCE NORTH 10 DEGREES 17 MINUTES 36 SECONDS WEST, 168.10 FEET; THENCE NORTH 34 DEGREES 47 MINUTES 36 SECONDS WEST, 145.00 FEET; THENCE NORTH 59 DEGREES 17 MINUTES 36 SECONDS WEST, 53.23 FEET; THENCE NORTH 37 DEGREES 31 MINUTES 36 SECONDS WEST, 165.84 FEET; THENCE NORTH 3 DEGREES 15 MINUTES 36 SECONDS WEST, 110.00 FEET TO THE NORTHERLY LINE OF SAID SOUTHMORE HEIGHTS; THENCE NORTH 86 DEGREES 44 MINUTES EAST ALONG SAID NORTHERLY LINE OF SOUTHMORE HEIGHTS, 470.71 FEE TO THE PLACE OF BEGINNING.

Commonly known as 3534 High Street, South Bend, Indiana 46614.

Tax Id. No. 018-7138-493301

**EXHIBIT E**

**Minimum Insurance Amounts**

- A. Worker's Compensation
  - 1. State Statutory
  - 2. Applicable Federal Statutory
  - 3. Employer's Liability \$100,000.00
  
- B. Commercial General Liability insurance, including coverage for bodily injury and property damage liability written on an occurrence basis in amounts not less than:
  - 1. \$1,000,000 Per Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products & Completed Operations Aggregate
  
- C. Commercial Umbrella / Excess Liability insurance excess of the primary Commercial General Liability insurance in amounts not less than:
  - 1. \$5,000,000 Each Occurrence
  - \$5,000,000 Annual Aggregate
  
- D. Automobile Liability insurance for all hired and non-owned vehicles with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage liability.



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: February 10, 2022

FROM: Kara Boyles, City Engineer

SUBJECT: 2022 Annual Paving Program

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

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

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) River West; River East; South Side; West Washington; Douglas Road; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

### Purpose of Request:

The request would provide funding for implementation of the 2022 Annual Paving Program, which is part of our three (3) year strategic plan, also known as "Rebuilding Our Streets". The utilization of TIF funds in addition to our other road funding mechanisms (i.e., MVH, LRS, and Community Crossing Grants) will all for continued investment in city streets.

The overall request is as follows:

TIF District	Requested Amount (based on Estimated Cost of Construction)
River West	\$ 2.5M
River East	\$ 55,000
Southside Development	\$ 1.13M
West Washington	\$ 118,000
<b>Total</b>	<b>\$ 3,803,000</b>

This request will help fund the paving and reconstruction of streets in all four (4) TIF districts as identified above. These funds will contribute to every aspect of this year's plan (i.e., contractor bids for paving, community crossings, etc.).

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

1400S County-City Building | 227 W. Jefferson Blvd. | South Bend, Indiana 46601 | p 574.235.9371 | f 574.235.9021 | www.southbendin.gov

CITY OF SOUTH BEND | REDEVELOPMENT COMMISSION

INTERNAL USE ONLY: Project ID: PROJ \_\_\_\_\_ 122-multiple \_\_\_\_\_ ;  
Total Amount – New Project Budget Appropriation \$3,803,000 \_\_\_\_\_ ;  
Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_ ;

Funding Limits: Engineering: \$ \_\_\_\_\_ ; Other Prof Serv Amt \$ \_\_\_\_\_ ;  
Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_ ; Street Const Amt \$ \_\_\_\_\_ ;  
Building Imp Amt \$ \_\_\_\_\_ ; Sewers Amt \$ \_\_\_\_\_ ; Other (specify) Amt \$ \_\_\_\_\_

