



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, January 12, 2022 – 9:30 a.m.

<http://tiny.cc/RDC2023> or **Council Chambers 4th Floor**

### 1. Roll Call

### 2. Election Of Officers

### 3. Approval of Minutes

- A. Minutes of the Regular Meeting of Monday, December 19, 2022

### 4. Approval of Claims

- A. Claims Allowance Request 12.06.22
- B. Claims Allowance Request 12.13.22

### 5. Old Business

- A. Update 300 E. LaSalle (Developer)

### 6. New Business

- A. Redevelopment Fund (aka Pokagon Fund)
  - 1. Budget Request (High Skill Immigration Fund)
- B. South Side Development Area
  - 1. Budget Request (Fire Station No. 8)
  - 2. First Amendment to Development Agreement (Miami Hills)
- C. Admin
  - 1. Resolution No. 3567 (2023 Meeting Schedule RDC)

### 7. Progress Reports

- A. Tax Abatement
- B. Common Council
- C. Other
  - 1. Resolution No. 3566 (Commending Donald E. Inks)

### 8. Next Commission Meeting:

Thursday, January 26, 9:30 am

### **Procedure for Receipt of Public Input.**

If the Redevelopment Commission determines public input should be solicited for a particular agenda item, the following procedures will apply:

1. Any individual wishing to speak (the “Speaker”) must do so from the podium, if in person, or by virtually raising their hand if participating electronically. Accommodation will be made if a speaker is unable to speak from the podium.
2. Before speaking, each Speaker must state their name and address and sign in at the podium if attending in person.
3. Each Speaker will be limited to three (3) minutes to give remarks. The Speaker will be informed when time has run out. The Speaker will be allowed to finish the sentence being spoken, but then will need to return to their seat or return to muted status if online.
4. City personnel and Commission members may, but are not required to, respond to Speaker comments made during the meeting.
5. Any interruptions during the meeting will result in a warning to the interrupting individual(s). If disruption continues, the Commission may ask for those responsible to leave.



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

**SOUTH BEND REDEVELOPMENT COMMISSION  
 RE-SCHEDULED REGULAR MEETING**

December 19, 2022 – 9:30 am  
[http://tiny.cc/RDC\\_\\_\\_](http://tiny.cc/RDC___) or BPW Conference Room 13<sup>th</sup> Floor

Presiding: Marcia Jones, President

The meeting was called to order at 9:30 a.m.

**1. ROLL CALL**

Members Present:	Marcia Jones, President – IP Donald Inks, Vice-President - IP Troy Warner, Secretary – V Eli Wax, Commissioner - IP Vivian Sallie, Commissioner – IP Leslie Wesley, Commissioner - V	IP = In Person V = Virtual
Members Absent:		
Legal Counsel:	Sandra Kennedy, Esq. Danielle Campbell-Weiss, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary Joseph Molnar, RDC Staff	
Others Present:	Caleb Bauer Erik Glavich Laura Althoff Michael Divita Benjamin Dougherty Zach Hurst Charlotte Brach Rachel Tomas Morgan Randy Rampola Emma Adlam Brian McMorrow Matthew Barrett	DCI - IP DCI – IP DCI – V DCI – V Admin & Finance – V Engineering – V Engineering – V Council – V Barnes & Thornburg – IP Baker Tilly – V Resident - V Resident - IP

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, December 8, 2022**

Upon a motion by Commissioner Wax, seconded by Commissioner Sallie, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, December 8, 2022.

## 3. Approval of Claims

- **Claims Submitted for December 6 and December 13, 2022**

Upon a motion by Vice-President Inks, seconded by Commissioner Sallie, the motion carried unanimously, the Commission approved the claims for December 6 and December 13, 2022, submitted on Monday, November 19, 2022.

## 4. Old Business

## 5. New Business

### A. River West Development Area

#### 1. **Resolution No. 3565 (Approving Execution of Lease COSB 2023 Project Financing) – Public Hearing**

Mr. Bauer Presented Resolution No. 3565 (Approving Execution of Lease COSB 2023 Project Financing). This agenda item is considered a public hearing item. Before you today is the Redevelopment Commission's portion of approval for the execution of the lease rental revenue bonds project which was outlined in the previous meeting.

Randy Rampola, Barnes, and Thornburg stated that the Redevelopment Commission adopted the resolution at the previous meeting approving the lease. Since then, a notice was published of the public hearing for today's meeting. The resolution authorizes the execution of the lease. This is subject to commission signing the lease. It will go to the Common Council for approval of the release. That approval is anticipated for January 2023. The second step in this series with the commission is to approve the lease and, authorize the execution of the rental resolution not to exceed \$10.5M for 20 years. The lease does have provisions that the actual lease rental term will be modified following the sale of the bonds returned in April 2023. The Redevelopment Authority is meeting later today to approve the form of relief.

Secretary Warner asked once Redevelopment Authority approves, we go to Council, does it come back to RDC or is this the final step.

Mr. Rampola stated this is the final step on this resolution. Later in the Spring 2023 the commission would indicate their intent to pay the lease rentals from TIF REDA and RWDA and provide for the tax back. That will be the last action. The

## South Bend Redevelopment Commission Regular Meeting – December 19, 2022

market knows that the Redevelopment Commission is sensibly using TIF and is structured through Baker Tilly. With this knowledge, they note that there is sufficient increment to pay the bonds to be able to get the best interest rate in the market. We would pledge to levy that tax if need be.

Secretary Warner asked when taking on this lease rental, would it affect the city's bond rating.

Mr. Rampola states that it shouldn't; the city is structured so this won't put us at risk financially. The city has sufficient coverage even after the debt is issued. The city has more than sufficient coverage and the coverage is the TIF revenue that is remaining after you pay all of the debts. The city will go through the credit process, but it should not negatively impact as the purpose for the bond is to improve the city.

Commissioner Wax asked what is the total bond amount?

Mr. Rampola states that it is \$64M but it will be slightly less. This includes both REDA and RWDA improvements.

Commissioner Wax asked what the estimated payback amount will be.

Emma Adlam from Baker Tilly states that it will be a little over \$100M combined with both the Beacon project and the public improvements in REDA and RWDA.

Mr. Bauer introduced a PowerPoint presentation (this was previously presented). This is the neighborhood improvement bond with \$34M bond funded with River West and River East TIF revenues to fund transformative infrastructure and park improvements. The ongoing annual debt service of approximately \$1.5 to \$2M for River West TIF and \$2M for River East TIF Districts. In 2023 our revenue projections are roughly \$18.3M in RW and just shy of \$10M in RE. The past few years, we have exceeded these revenues.

River West project improvements include Walker field with pedestrian connection to Rum Village. SE park upgrades with a splash pad installation and resurfacing with playgrounds. Then \$5M to match a potential \$5M grant award for Kennedy Park improvements with a possible aquatic facility. \$2M Portage/Elwood project for a streetscape update. \$3M for River bridge pedestrian connection bridge crossing St Joseph River south of Leeper Park and connecting to the broader trail system. \$2M for Linden streetscape project to accompany \$3M for the Martin Luther King Jr. Dream Center Park improvements. \$3M Mishawaka Avenue streetscape improvements including a road diet to include pedestrian and bicycle safety. \$300k for splash pad upgrades and modernization of the splash pad and Coquillard Park with \$2M for Hill Street trail project and \$2M for South Bend Avenue streetscape improvements to include the addition of a multi-use trail. We are working with Notre Dame as an interested partnership to fund a portion of the multi-use trail. Those are the ongoing projects.

The taxable lease rental revenue bond is for the construction of two structured parking garages to support the Beacon integrative health and lifestyle district which is to the south of existing Memorial Hospital. The two surface parking lots that you see to the south would be where this project will be located. This would add more than 900 structured public parking spaces and the project includes more than \$140M in private investment as well as supporting Beacon Health Systems' \$232M tower expansion project which recently broke ground. Permits were issued on the project and Walsh construction is moving forward with a completion set 2027/2028. The health and lifestyle district includes just shy of 150 market rate apartment units and 92 income qualified department units. This will be a use of the 4% low income housing tax credits we often hear about and 9% tax credit deals which are competitive.

There are 4% tax credits available through the Indiana Housing and Community Development Authority in a non-competitive process. We are excited to see the developer take a look at those for this project 105 Bed Hotel, 50,000 square foot Beacon Health and Fitness Center and then 35,000 square feet of medical office space and the structured parking spaces including 8500 square feet of retail. The structured parking spaces would additionally serve to house the vehicles for the new 550 full-time employees at Memorial Hospital that will be added with the new tower project. These items will come before the Common Council on January 23rd and then would come back before you in February for that tax backup authorization.

Commissioner Wax asked what amount the third-party grants amount to.

Mr. Bauer states they would be in excess of \$10M between all of the different projects.

Commissioner Wax asked if there is an early re-payment on the lease.

Mr. Rampola states that will be structured. Typically, it is a 10-year period.

President Jones opened this up for the public hearing portion of the meeting. President Jones closed the public comment portion.

Commissioner Sallie commented that this is a very exciting and tremendous change for both River West and River East, and it is long overdue. This is absolutely wonderful.

Secretary Wax states that it is exciting to see these things come to fruition; there were things from 20 years ago but nothing ever happened. This is part of the neighborhood plans, and we need private investors to come in and build the housing and some businesses. We've seen both Howard Park and other areas of the city on Western as we develop in our infrastructure and parks. I think since we are getting leverage with some of the dollars and we are not raising taxes; we have got the TIF revenue to do this.

Commissioner Sallie stated that we heard about community pride in almost every meeting previously, but this will certainly bring back community pride. This emphasizes that the city is interested in improving our community and we will become more of a destination.

President Jones asked when people will begin to see things happening.

Mr. Bauer stated that it will depend on the project, however, a number of the projects will begin next construction season. The larger projects will begin in 2024.

Upon a motion by Secretary Warner, seconded by Commissioner Sallie, the motion carried unanimously, the Commission approved Resolution No. 3565 (Approving Execution of Lease COSB 2023 Project Financing) submitted on Monday, November 19, 2022.

## **B. South Side Development Areas**

### **1. Budget Request (South Main Street)**

Ms. Brach Presented a Budget Request (South Side Main Street). This is a budget request for Main Street South between Dean and Sherwood. This came to the commission in June 2022 for original request of \$300k. This project will reconfigure the parking and realign the travel lane so it goes straight through and protect park cars. The bids came in over budget. We are requesting an additional \$100k for a total of \$400k.

Commissioner Wax stated this was one where they needed to re-adjust so parking was consistent. The parked cars were frequently hit there. We tried a temporary solution of putting delineators up and those were hit.

Secretary Wax asked what the solution for that is.

Ms. Brach states a wider tree lawn so we are basically bumping in the parking and re-aligning the travel lanes, so it goes straight through without a job.

Upon a motion by Vice-President Inks, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Budget Request (South Side Main Street) submitted on Monday, November 19, 2022.

South Bend Redevelopment Commission Regular Meeting – December 19, 2022

**6. Progress Reports**

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

**7. Next Commission Meeting:**

Thursday, January 12, 2023

**8. Adjournment**

Monday, December 19, 2022, 9:58 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: Thursday, January 5, 2023

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-0049927	\$45,315.10
GBLN-0000000	\$0.00
GBLN-0000000	\$0.00
Total:	<u>\$45,315.10</u>

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 Daniel Parker, City Controller

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

\$ 45,315.10

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**RDC Payments-1/4/23 Pymt Run  
GBLN-0049927**Payment method:** CHK-Total  
**Voucher:** RDCP-00013016  
**Payment date:** 1/4/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001212	NORFOLK SOUTHERN RAILWAY COMPANY	92981453	NS- Olive Xing CN	1/12/2023	\$2,694.27	324-10-102-121-442001-- PROJ00000059	PO-0013272

**Payment method:** CHK-Total  
**Voucher:** RDCP-00013017  
**Payment date:** 1/4/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001789	Milestone Contractors North, Inc	APP #3	Potawatomi Zoo Parking Expansion	1/12/2023	\$465,152.47	429-10-102-121-444000-- PROJ00000304	PO-0013320
V-00001789	Milestone Contractors North, Inc	APP #3	Potawatomi Zoo Parking Expansion	1/12/2023	(\$438,265.82)	429-10-102-121-444000-- PROJ00000304	PO-0013320
V-00001789	Milestone Contractors North, Inc	APP #3	Change Order #1B	1/12/2023	\$11,734.18	429-10-102-121-444000-- PROJ00000304	PO-0013320

**Payment method:** CHK-Total  
**Voucher:** RDCP-00013018  
**Payment date:** 1/4/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00008551	Engineering Resources, Inc.	577601	Pure Green Farms PSA	1/13/2023	\$4,000.00	324-10-102-121-431002-- PROJ00000211	PO-0018948



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

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Wednesday, December 28, 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-0049234	\$1,108,132.20
GBLN-0049701	\$298,335.42
GBLN-0000000	\$0.00
Total:	<u>\$1,406,467.62</u>

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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: \$ 1,406,467.62

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**

RDC Payments-12/20/2022 Pymt Run

GBLN-0049234

**Payment method:** CHK-Total  
**Voucher:** RDCP-00012622  
**Payment date:** 12/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000191	BARNES & THORNBURG LLP	3033800	Legal Services Barnes & Thornburg - South Well Field	12/30/2022	\$7,027.50	430-10-102-121-431001-- PROJ00000082	PO-0015761

**Payment method:** ACH-Total  
**Voucher:** RDCP-00012623  
**Payment date:** 12/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000243	BOWEN ENGINEERING CORP	APP #2	North WTP Imp	12/3/2022	\$303,952.50	324-10-102-121-443001-- PROJ00000056	PO-0016353

**Payment method:** CHK-Total  
**Voucher:** RDCP-00012624  
**Payment date:** 12/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000618	FORUM ARCHITECTS LLC	2212801	MarMain Roof PSA	12/30/2022	\$2,990.63	324-10-102-121-443001-- PROJ00000372	PO-0020013

**Payment method:** CHK-Total  
**Voucher:** RDCP-00012625  
**Payment date:** 12/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
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V-00001212	NORFOLK SOUTHERN RAILWAY COMPANY	92966845	NS- Olive Xing CN	12/29/2022	\$15,526.08	324-10-102-121-442001-- PROJ00000059	PO-0013272
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**Payment method:** CHK-Total  
**Voucher:** RDCP-00012626  
**Payment date:** 12/20/2022

<b>Vendor #</b>	<b>Name</b>	<b>Invoice #</b>	<b>Line description</b>	<b>Due date</b>	<b>Invoice amount</b>	<b>Financial dimensions</b>	<b>Purchase order</b>
V-00001875	ZIOLKOWSKI CONSTRUCTIO N	APP #17	Public Works Construction	12/30/2022	\$778,635.49	429-10-102-121-444000-- PROJ00000079	PO-0006342

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**Expenditure approval**

RDC Payments-12/28/22 Pymt Run

GBLN-0049701

**Payment method:** CHK-Total  
**Voucher:** RDCP-00012815  
**Payment date:** 12/28/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000029	ACORN LANDSCAPING LLC	3	Brick Pavement Spot Repairs	12/17/2022	\$7,880.00	422-10-102-121-442001-- PROJ00000331	PO-0017969
V-00000029	ACORN LANDSCAPING LLC	3	Change Order #1	12/17/2022	\$28,323.30	408-06-602-503-436008-- PROJ00000331	PO-0017969
V-00000029	ACORN LANDSCAPING LLC	3	NAICS	12/17/2022	(\$28,323.30)	408-06-602-503-436008--	

**Payment method:** CHK-Total  
**Voucher:** RDCP-00012816  
**Payment date:** 12/28/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000222	BLACK & VEATCH CORPORATION	1384636	Amendment #2	12/15/2022	\$5,014.62	324-10-102-121-431002-- PROJ00000056	PO-0005261

**Payment method:** CHK-Total  
**Voucher:** RDCP-00012817  
**Payment date:** 12/28/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000476	DONOHUE & ASSOCIATES	1329822	SUE - 17J022 SOUTH WELL FIELD IMPROVEMENTS	11/25/2022	\$43,410.72	430-10-102-121-431002-- PROJ00000082	PO-0000038
V-00000476	DONOHUE & ASSOCIATES	1329822	SUE - 17J022 SOUTH WELL FIELD IMPROVEMENTS	11/25/2022	(\$37,805.36)	430-10-102-121-431002-- PROJ00000082	PO-0000038
V-00000476	DONOHUE & ASSOCIATES	1329822	Change Order #1	11/25/2022	\$9,774.88	430-10-102-121-431002-- PROJ00000082	PO-0000038
V-00000476	DONOHUE & ASSOCIATES	1329823	Change Order #1	12/19/2022	\$13,582.26	430-10-102-121-431002-- PROJ00000082	PO-0000038



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**Payment method:** CHK-Total  
**Voucher:** RDCP-00012818  
**Payment date:** 12/28/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000775	HRP CONSTRUCTIO N INC	155997	Water Main - Prairie	12/30/2022	\$204,247.46	430-10-102-121-442001-- PROJ00000069	PO-0014485

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00012819  
**Payment date:** 12/28/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000968	La Casa de Amistad	12202022b	La Casa Refugee Support Program - ARP Immigration Support	12/28/2022	\$50,000.00	433-10-102-123-439300--	PO-0016602

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00012820  
**Payment date:** 12/28/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001339	PRESIDIO NETWORKED SOLUTIONS GROUP	6011821903936	Security Camera	1/7/2022	\$1,562.64	430-10-102-121-443001-- PROJ00000057	PO-0013126
V-00001339	PRESIDIO NETWORKED SOLUTIONS GROUP	6011821903936	Camera License	1/7/2022	\$542.56	430-10-102-121-443001-- PROJ00000057	PO-0013126
V-00001339	PRESIDIO NETWORKED SOLUTIONS GROUP	6011821903936	R Care Plus	1/7/2022	\$100.64	430-10-102-121-443001-- PROJ00000057	PO-0013126
V-00001339	PRESIDIO NETWORKED SOLUTIONS GROUP	6011821903936	Shiping	1/7/2022	\$25.00	430-10-102-121-443001-- PROJ00000057	PO-0013126

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# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: January 12, 2023

FROM: Caleb Bauer, DCI Executive Director

SUBJECT: High Skill Immigration Fund

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

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

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

APPROVED  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

**Specific request:** \$300,000 from Redevelopment-Controlled Pokagon Fund

**Purpose of Request:** Disbursement of funds for City of South Bend to pilot a High Skill Immigration Fund to encourage and facilitate businesses to hire high-skilled foreign talent.

The request for funding aims to attract talent to South Bend to accelerate expansion, spur population growth, and fill vital jobs in a time of record low unemployment.

The South Bend region has hundreds of unfilled positions in non-technical business, education, healthcare, information technology, manufacturing, and social services sector, with growth expected in nearly every sector within the next decade. High-skilled immigrants can spur growth in the region and fill these high-demand vacant positions.

For businesses looking to hire foreign talent, the cost of visa processing can be a deterrent to welcoming international employees to the company. To attract talent to South Bend and the wider region, the proposed High Skill Immigration Fund would provide matching grants to subsidize visa costs.

Additionally, the High Skill Immigration Fund would help to retain international talent from world-renowned local universities, attracting top global talent to South Bend. A model of this can already been seen at enFocus, which recruits recent college graduates and works to maintain diverse young professionals with a 70% retention rate. EnFocus has been engaged with the City in the exploratory work for this Fund and will continue to collaborate to implement the fund.

In addition to visa costs, the High Skill Immigration Fund would sponsor workshops and webinars to educate employers and help build capacity to hire and retain foreign talent.

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CITY OF SOUTH BEND | REDEVELOPMENT COMMISSION

The proposed funding would subsidize the prohibitive costs of H1-B petitions filed by employers for high-skilled workers and would educate local businesses to build capacity surrounding the visa process to facilitate the hiring of foreign workers.

INTERNAL USE ONLY: Project ID: PROJ \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$ \_\_\_\_\_;

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 \$ \_\_\_\_\_



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: January 6, 2023  
FROM: Zach Hurst, PE  
SUBJECT: Budget Request – Fire Station 8 Replacement

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

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

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

APPROVED  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

This budget request is for \$3,437,659 to cover final design and construction of the replacement of Fire Station 8. The schematic design phase has been completed, and a new two-story station measuring approximately 7,000 square feet has been selected.

A budget overview for the project is as follows:

Schematic Design:	\$62,341**
Final Design:	\$226,085
Demolition Estimate:	\$50,000
Construction Estimate:	\$3,082,176
Contingency:	\$79,398
TOTAL:	\$3,500,000

\*\*Previously allocated through Redevelopment Commission

INTERNAL USE ONLY: Project ID: PROJ 355 \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$ \_\_\_\_\_;

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 \$ \_\_\_\_\_

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**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made on January 12, 2023, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Miami Hills MF II, LLC (the “Developer”) (each a “Party,” and collectively the “Parties”).

**RECITALS**

A. The Commission and the Developer entered into a Development Agreement dated effective February 10, 2022 (the “Development Agreement”), pertaining to certain local public improvements ("LPI") to renovate, rehabilitate, and activate the Developer Property, which is located in the South Side Development Area (the "Project").

B. As set forth in the Development Agreement, the Commission agreed to expend no more than One Million Dollars (\$1,000,000.00) of tax increment finance revenues to complete the LPI in support of Developer’s Project (the Funding Amount”).

C. In accordance with the terms of the Development Agreement, the City of South Bend, Indiana Board of Public Works (the “Board”), as the Commission’s agent, entered into a professional services agreement with Forum Architects for \$70,000.00 to produce plans and specifications for public bid, and on June 28, 2022, the Board attempted to open bids for the Project; however, no bids were received.

D. Because no bids were received for the Project, in accordance with City policy at the time, an open market procurement process was then begun by the Board, and H&H Renovations, Inc. of Atlanta, Georgia, (the “Contractor”) provided the most responsive and cost-effective open market bid at \$1,584,305.00.

E. The Contractor’s bid to complete the Project exceeds the remaining Funding Amount set forth in the Development Agreement, and needs to be increased.

F. In consideration of the Commission’s willingness to approve an increase to the Funding Amount, the Developer agrees to reimburse the City for the amount that exceeds the remaining Funding Amount, as set forth in this First Amendment.

G. Because of the unforeseeable issues arising from the bid process, the Project has been delayed, and the parties also desire to extend the substantial completion date of the Project in order to allow sufficient time to complete the Local Public Improvements and the Project.

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

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

**1.3 Funding Amount.** “Funding Amount” means an amount not to exceed One Million Five Hundred Eighty-Four Thousand Three Hundred and Five Dollars (\$1,584,305.00) 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.

2. The phrase “the date that is seventeen (17) months after the Effective Date of this Agreement” shall be deleted from Section 4.5 and replaced with the phrase “December 31, 2023”.

3. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of completing the LPI, including any necessary change orders to the LPI Contract, in excess of the Funding Amount, as such amount is hereby amended. The Developer hereby acknowledges that the Developer or the Developer’s designee may inspect the LPI upon completion and hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of inspecting the LPI.

4. Notwithstanding any provision to the contrary, the Commission’s obligations to complete the LPI will be satisfied in full upon the completion of the LPI Contract, irrespective of the final amount of the LPI Contract.

5. As an inducement for the Commission’s increase of the Funding Amount under this First Amendment and as a further assurance to the Commission pursuant to Section 9.13 of the Development Agreement, the Developer shall submit funds to the Commission through staff of the Department of Community Investment in the amount of Six Hundred Fifty-Four Thousand Three Hundred and Five Dollars (\$654,305.00), which funds will be applied at an appropriate time to the LPI Contract in accordance with the Board’s ordinary payment practices and applicable laws.

6. 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.

7. Capitalized terms used in this First Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.

8. The recitals set forth above are hereby incorporated into the operative provisions of this First Amendment.

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

10. 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: \_\_\_\_\_  
Troy D. Warner, Secretary

MIAMI HILLS MF II, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Gregory B. Jones, Chief Investment Officer

## **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 FEET 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.





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.

**RESOLUTION NO. 3567**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
APPROVING A SCHEDULE OF  
REGULAR MEETING TIMES FOR CALENDAR YEAR 2023**

WHEREAS, pursuant to Ind. Code § 36-7-14, the South Bend Redevelopment Commission (“Commission”) is the governing body of the City of South Bend Department of Redevelopment; and

WHEREAS, pursuant to Ind. Code § 36-7-14-8(g), the Commissioners may adopt the rules and bylaws it considers necessary for the proper conduct of Commission proceedings and the carrying out of Commission duties; and

WHEREAS, Article IV, Section 1 of the *Second Amended and Restated By-Laws of the South Bend Redevelopment Commission* effective July 9, 2020, provides that the Commission shall adopt a schedule of regular meetings at its first meeting of each year; and

WHEREAS, the Commission desires to approve and adopt a schedule of regular meeting dates and times for calendar year 2023; and

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The Commission approves and adopts as its regular meeting schedule for calendar year 2023 the meeting dates and times stated in the schedule attached hereto as **Exhibit A**.
2. Unless otherwise announced, regular meetings shall be held without further notice at 9:30 a.m., local time, at the Board of Public Works Meeting Room, 1308 County-City Building, 227 West Jefferson Street, South Bend, Indiana 46601 and/or virtually via <http://tiny.cc/RDC2023>.
3. This Resolution shall be in full force and effect after its adoption by the South Bend Redevelopment Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on January 12, 2023.

SOUTH BEND REDEVELOPMENT COMMISSION

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

ATTEST:

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

## 2023 Meeting Schedule

The Redevelopment Commission will hold its regular meetings the  
2<sup>nd</sup> and 4<sup>th</sup> Thursdays at 9:30 a.m. in the  
Board of Public Works Conference Room or via <http://tiny.cc/RDC2023>

January 12	9:30 a.m.	
January 26	9:30 a.m.	
February 9	9:30 a.m.	
February 23	9:30 a.m.	
March 9	9:30 a.m.	
March 23	9:30 a.m.	
April 13	9:30 a.m.	
April 27	9:30 a.m.	
May 11	9:30 a.m.	
May 25	9:30 a.m.	
June 8	9:30 a.m.	
June 22	9:30 a.m.	
July 13	9:30 a.m.	
July 27	9:30 a.m.	
August 10	9:30 a.m.	
August 24	9:30 a.m.	
September 14	9:30 a.m.	
September 28	9:30 a.m.	
October 12	9:30 a.m.	
October 26	9:30 a.m.	
November 9	9:30 a.m.	
November 20	9:30 a.m.	**Note this is the Monday prior to Thanksgiving
December 14	9:30 a.m.	
December 28	9:30 a.m.	

### FOR HEARING AND SIGHT IMPAIRED PERSONS

Auxiliary aid or other services are available upon request at no charge.  
Please give reasonable advance request when possible.

RESOLUTION NO. 3566

A RESOLUTION COMMENDING  
DONALD E. INKS FOR EXTRAORDINARY SERVICE TO THE  
SOUTH BEND REDEVELOPMENT COMMISSION

WHEREAS, Donald E. Inks has been a member of the Redevelopment Commission and a previous staff member for the City of South Bend for decades; and

WHEREAS, during his time volunteering his time on the Redevelopment Commission as a Commissioner, Don has taken a leadership role in advising the Commission in areas of business assistance, tax abatements, public finance, and economic development, and

WHEREAS, Don played an instrumental role in establishing or amending all of South Bend's current Tax Increment Financing Districts; and

WHEREAS, Don has worked with the Commission, residents, the mayor's office and the Department of Community Investment on hundreds of developments that have helped build the City of South Bend and it's infrastructure to what it is today; and

WHEREAS, Don helped South Bend develop green spaces in the numerous parks throughout our great city; and

WHEREAS, Don always has been a patient, steady and reliable source of objective information with facts and figures to guide the Commission in making sound decisions; and

WHEREAS, Don has served the public, giving unselfishly of his time for the betterment of the community with no concern for individual recognition; and

WHEREAS, Don has decided that it is time for him to pursue other endeavors, and

NOW, THEREFORE, BE IT RESOLVED that the South Bend Redevelopment Commission hereby recognizes Donald E. Inks for his extraordinary commitment and distinguished service as a Commissioner and leader to the South Bend Redevelopment Commission and the City of South Bend. The Commission thanks him for the outstanding contribution he has made and declares that his incredible knowledge of South Bend, wit and business sense will be sincerely missed.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on January 12, 2023.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST: \_\_\_\_\_  
Troy Warner, Secretary