



South Bend

# Redevelopment Commission

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

## Agenda

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

<http://tiny.cc/RDC> or BPW Conference Room 13<sup>th</sup> Floor

### 1. Roll Call

### 2. Approval of Minutes

- A. Minutes of the Regular Meeting of Thursday, January 26, 2023

### 3. Approval of Claims

- A. Claims Allowance Request 1.24.23

### 4. Old Business

### 5. New Business

#### A. River West Development Area

- 1. Resolution No. 3571 (Claey's Candy)
- 2. Seventh Amendment (REPA Bear Brew LLC)
- 3. Budget Request (LaSalle Park Improvements)
- 4. Budget Request (Kennedy SRTS)

#### B. River East Residential

- 1. Budget Request (Seitz Park Phase I)

#### C. River East Development Area

- 1. Development Agreement (ND QOZB)
- 2. Budget Request (Appropriation Legal Fees Expense)

#### D. River West and East Development Areas

- 1. Resolution No. 3572 (Regarding Special Tax SB 2023 Projects Financing)

#### E. South Side Development Area

- 1. Budget Request (High Street Improvements)

## **6. Progress Reports**

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

## **7. Next Commission Meeting:**

Thursday, February 23, 9:30 am

## **Adjourn**



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

**SOUTH BEND REDEVELOPMENT COMMISSION  
SCHEDULED REGULAR MEETING**

January 26, 2023 – 9:30 am  
[http://tiny.cc/RDC\\_\\_](http://tiny.cc/RDC__) or BPW 13th 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 Troy Warner, Secretary – V Vivian Sallie, Secretary - IP Eli Wax, Commissioner - IP Dave Relos, Commissioner - IP	IP = In Person V = Virtual
Members Absent:	Leslie Wesley, Commissioner	
Legal Counsel:	Sandra Kennedy, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary Joseph Molnar, RDC Staff	
Others Present:	Caleb Bauer Erik Glavich Laura Althoff Tim Corcoran Amy Paul Charlotte Brach Matt Barrett	DCI - IP DCI – IP DCI – V DCI – V DCI – V Engineering – V Resident

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, January 12, 2023**

Secretary Sallie stated there was an error on page 6 of the minutes changing the second approval to Vice-President Warner.

Upon a motion by Commissioner Relos, seconded by Secretary Sallie, the motion carried unanimously, with above mention change, the Commission approved the minutes of the regular meeting of Thursday, January 12, 2023.

## 3. Approval of Claims

- **Claims Submitted for January 10, 2023**

Upon a motion by Commissioner Relos, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the claim for January 10, 2023

## 4. Old Business

1. Mr. Molnar stated that today was the deadline for receipt of bids for the Lafayette building RFP and no bids have been received. There was a lot of interest about the property by different developers. At the next meeting we will have a petition to reject all bids. The city will now be able to work with developers and negotiate the purchase price so we are hopeful to see that site redeveloped; we will keep working on marketing the site.

Commissioner Wax asked about the 26 parking spaces; will they stay with the Lafayette Building?

Mr. Molnar stated that they would. Once the city moves to the School Corporation, those spaces will be available; the contract would be conditional upon our moving.

## 5. New Business

### A. River West Development Area

1. **Resolution No. 3568 (Disposition Offering Price LWW/Leland/Marion)**

Mr. Molnar Presented Resolution No. 3568 (Disposition Offering Price LWW/Leland/Marion). These are sites that the city acquired over the past 10 years. They were included in the scattered sited RFP. They have not been through the disposition process. The total appraised value of the properties is \$72,952, which is our opening asking price. The resolution, therefore, sets the disposition price. The disposition due date is February 23, 2023. Commission approval is requested.

Upon a motion by Commissioner Relos, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Resolution No. 3568 (Disposition Offering Price LWW/Leland/Marion) submitted on Thursday, January 26, 2023.

**2. Approval of Bid Specifications (LWW/Leland/Marion)**

Mr. Molnar Presented Approval of Bid Specifications (LWW/Leland/Marion). This item is for the commission to approve the bid specifications for the disposition property. Commission approval is requested.

Upon a motion by Commissioner Relos, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Approval of Bid Specifications (LWW/Leland/Marion) submitted on Thursday, January 26, 2023.

**3. Request to Advertise (LWW/Leland/Marion)**

Mr. Molnar Presented Request to Advertise (LWW/Leland/Marion). This is a request to the commission to give staff permission to advertise the disposition properties on February 3 and February 10, 2023. Commission approval is requested.

Upon a motion by Commissioner Relos, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Request to Advertise (LWW/Leland/Marion) submitted on Thursday, January 26, 2023.

**4. Resolution No. 3570 (Disposition Offering Price Salvation Army Building)**

Mr. Molnar Presented Resolution No. 3568 (Disposition Offering Price Salvation Army Building). We had previously transferred this property from BPW to the RDC to put through the disposition process. This site has been the site of weather amnesty since 2019. The city had purchased the property for \$299,000. A more permanent solution has been agreed upon by the city. The city wishes to see this site redeveloped after April 2023. The total appraised value of the properties is \$671,500. The resolution, therefore, sets the disposition price. The disposition due date is February 23, 2023. Commission approval is requested.

Commissioner Wax asked if staff is able to talk about the proposed winter amnesty.

Mr. Bauer stated that the permanent solution is a partnership with the Center for the Homeless for 68 plus beds at the centers current location as part of a remodel. The remodel will be complete prior to next winter.

Commissioner Wax asked how many beds are in use.

Mr. Bauer stated 50 to 60 beds.

Mr. Barrett asked how this relates to the proposal with the county.

Mr. Baur stated that we are currently working on this as it relates to the motels for now issue and cannot speak for the County Council. We will see in March what their decision will be.

Mr. Barrett is correct that the city has committed funds for the construction and operation.

Mr. Bauer stated that the city has committed funds both for construction and operation of a new low barrier intake center in partnership with Our Lady of the Road. They have also received state funding. This is a couple years out since they need to secure a site, complete construction, etc. We believe a partnership with the county on Motels for now will bridge the gap. The city does provide Oaklawn wrap around support for both sites.

Upon a motion by Commissioner Wax, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved Resolution No. 3570 (Salvation Army Building) submitted on Thursday, January 26, 2023.

**5. Approval of Bid Specifications (Salvation Army Building)**

Mr. Molnar Presented Approval of Bid Specifications (Salvation Army Building). This item is for the commission to approve the bid specifications for the disposition property. Commission approval is requested.

Upon a motion by Commissioner Wax, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved Approval of Bid Specifications (Salvation Army Building) submitted on Thursday, January 26, 2023.

**6. Request to Advertise (Salvation Army Building)**

Mr. Molnar Request to Advertise (Salvation Army Building). This is a request to the commission to give staff permission to advertise the disposition properties on February 3 and February 10, 2023. Commission approval is requested.

Upon a motion by Commissioner Wax, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved Request to Advertise (Salvation Army Building) submitted on Thursday, January 26, 2023.

**B. West Washington Chapin Development Area**

**1. Resolution No. 3569 (Disposition Offering Price Masterbilt/18 Chestnut)**

Mr. Molnar Presented Resolution No. 3569 (Disposition Offering Price Masterbilt/18 Chestnut). A few months ago, we transferred these parcels from BPW to RDC. There is very little street front at all. Both parcels are from the sixties. Neither property has a real address. The total appraised value of the properties is \$1,930. The resolution, therefore, sets the disposition price. The disposition due date is February 23, 2023. Commission approval is requested.

Commissioner Wax asked if a city property is sold do the proceeds go to that individual TIF.

Mr. Molnar answered yes.

Upon a motion by Secretary Sallie, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Resolution No. 3569 (Disposition Offering Price Masterbilt/18 Chestnut) submitted on Thursday, January 26, 2023.

**2. Approval of Bid Specifications (Masterbilt/18 Chestnut)**

Mr. Molnar Presented Approval of Bid Specifications (Masterbilt/18 Chestnut). This item is for the commission to approve the bid specifications for the disposition property. Commission approval is requested.

Upon a motion by Secretary Sallie, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Approval of Bid Specifications submitted on Thursday, January 26, 2023.

**3. Request to Advertise (Masterbilt/18 Chestnut)**

Mr. Molnar Presented Request to Advertise (Masterbilt/18 Chestnut). This is a request to the commission to give staff permission to advertise the disposition properties on February 3 and February 10, 2023. Commission approval is requested.

Upon a motion by Secretary Sallie, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Request to Advertise (Masterbilt/18 Chestnut) submitted on Thursday, January 26, 2023.

**6. Progress Reports**

1. Tax Abatement

2. Common Council

3. Other

1. Mr. Bauer stated he shared with the Commissioner's via email and now here that the Redevelopment Commission has filed a complaint against Commerce Center Development, LLC on Friday, January 20, 2023. It is now ongoing litigation. If the Commission wishes to have an Executive Session to discuss, please contact staff.

Mr. Relos asked how long Commerce Center Development, LLC has to respond.

Commissioner Wax stated 20 days.

Ms. Kennedy states that an extension will most likely be filed giving an additional 30 days for response.

2. Commissioner Wax asked what the due date of the tax credits is.

Mr. Bauer stated later today, and he would update the Commission on progress.

3. Commissioner Wax asked about the deadline for Barehands.

Mr. Bauer states February 1, 2023, is the deadline for a rough in. There has been new electrical happening (building permit was approved).

4. Mr. Barrett stated that at the last commission meeting he asked for the commission to add onto the litigation the property on Sycamore street and the vacant lots on the corner of south Niles and east Jefferson. He believes other neighbors sent messages to the commission as well. How long do we need to wait. Nothing has happened. This deprives others of using the property. It is unsafe. It is unfinished. I noticed a default was sent in September 2021 which stated that if no action is taken within thirty days of receiving this notice that the commission and the city shall institute proceedings to enforce its rights under the agreement. There have been seventy-one notices of ordinance violations sent certified mail. The fines now approach \$150,000 from code enforcement.

Commissioner Relos asked if the Sycamore street was covered by state RDA.

Mr. Bauer stated that it is, and they have sent a letter of default to Matthews, LLC.

Commissioner Relos asked if the city looked into its agreement of selling the parking lot on the east side of Sycamore.

Mr. Bauer states that we have and that agreement is superseded by the Commerce Center Development agreement because the Commerce Center Development agreement was part of the commitment to construct a building on that parking lot.

Commissioner Relos clarified that the city's agreement from Commerce Center then most likely superseded those sales.

Mr. Barrett noted that property can just sit there in its current perpetuity.

Mr. Bauer noted, no, but it is not germane to the redevelopment commission to discuss until there is a code hearing.

Mr. Barrett asked so the city's position is currently null and void.

Mr. Bauer stated generally yes. The time to enforce that agreement would have been prior to the creation of a new development agreement that's contemplated the same property that the parking lot was on.



South Bend Redevelopment Commission Regular Meeting – January 26, 2023

Mr. Barrett asked so in addition to the claw back that there is another breach of the agreement of the Commerce Center.

Mr. Bauer notes that in our opinion there are potentially numerous breaches of the agreement.

Commissioner Relos asked about certificate of occupancy have been issued.

Mr. Bauer stated that all apartments have been issued a certificate of occupancy (issued floor by floor). The first level, however, does not.

Mr. Barrett asked about the Trager site. He notes that there are seventy-one violations that are not improving the property.

Mr. Bauer states that there was litigation related to that case that has been resolved and we have moved onto collections.

Mr. Barrett states he is asking for enforcement of the notice of default 30 days.

Mr. Bauer thanks him for his comments.

Commissioner Relos asked if the court upheld the fines.

Ms. Kennedy stated that he was challenging the Board of Zoning Appeals process and the court upheld that the process had been filed correctly.

Mr. Bauer states that the amount exceeds \$150k. Generally it would go to collections prior to that high amount, however, since it is ongoing litigation, the appeal by the property owner was unsuccessful. Now new fines have been levied. The fines are not being paid.

**7. Next Commission Meeting:**

Thursday, February 9, 2023

**8. Adjournment**

Thursday, January 26, 2023, 10:01 a.m.

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Vivian Sallie, 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: Benjamin J. Dougherty, Deputy City Controller/Interim City Controller  
Date: Tuesday, January 24, 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-0050700	\$436,425.79
GBLN-0000000	\$0.00
Total:	<u>\$436,425.79</u>

*Benjamin J. Dougherty*

Benjamin J. Dougherty, Deputy City Controller/Interim City Controller

The attached claims described above were allowed in the following total amount at a public meeting on the date stated below: \$ 436,425.79

South Bend Redevelopment Commission

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

Date:

Attest: \_\_\_\_\_  
Name:

**Expenditure approval**RDC Payments-1/24/23 Pymt Run  
GBLN-0050700**Payment method:** CHK-Total  
**Voucher:** RDCP-00013615  
**Payment date:** 1/24/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000472	DLZ INDIANA LLC	705138	Design	1/28/2023	\$16,950.00	429-10-102-121-431002-- PROJ00000371	PO-0019975

**Payment method:** CHK-Total  
**Voucher:** RDCP-00013616  
**Payment date:** 1/24/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000618	FORUM ARCHITECTS LLC	2212802	MarMain Roof PSA	1/30/2023	\$26,915.62	324-10-102-121-443001-- PROJ00000372	PO-0020013

**Payment method:** ACH-Total  
**Voucher:** RDCP-00013617  
**Payment date:** 1/24/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000665	GIBSON LEWIS LLC	APP #3	Change Order #1	1/30/2023	\$81,153.17	324-10-102-121-443001-- PROJ00000051	PO-0019070

**Payment method:** CHK-Total  
**Voucher:** RDCP-00013618  
**Payment date:** 1/24/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000874	INVANTI LLC	1172	Invanti Capacity Building	1/31/2023	\$41,667.00	433-10-102-123-439300--	PO-0009409

**Payment method:** CHK-Total  
**Voucher:** RDCP-00013619  
**Payment date:** 1/24/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001531	SOUTH BEND CHOCOLATE CO	1042023	Caleb/Laura SBCC Grant Indiana Dinosaur Museum	1/24/2023	\$214,890.00	324-10-102-121-441000-- PROJ00000403	PO-0020952
V-00001531	SOUTH BEND CHOCOLATE CO	12262201	Caleb/Laura SBCC Grant Indiana Dinosaur Museum	1/25/2023	\$50,000.00	324-10-102-121-441000-- PROJ00000403	PO-0020952

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00013620  
**Payment date:** 1/24/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00005200	Arnt Asphalt Sealing, Inc dba Great Lakes Coatings	35366	Asphalt Seal and Striping	11/11/2022	\$4,850.00	429-10-102-121-442001-- PROJ00000087	PO-0021215

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# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 2/3/23  
FROM: Joseph Molnar  
SUBJECT: Authorizing Staff Execute Option

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

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

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

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

PURPOSE OF REQUEST: Resolution Authorizing Execution of Option to Purchase Agreement

Specifics: On April 13, 2022 the RDC entered into an Option to Purchase Agreement regarding the Claeys Factory building in Downtown South Bend. Claeys Candy has notified City staff that they are ready to sell the building and fully move to their new factory.

The attached resolution allows Staff to execute the final agreement and all necessary paperwork for the purchase of the building along the terms of the previously approved Option to Purchase Agreement.

Staff recommends approval of the resolution.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;

Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_

\_\_\_\_\_ Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

**RESOLUTION NO. 3571**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
AUTHORIZING EXECUTION OF AGREEMENT**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), governing body of the South Bend Department of Redevelopment (“Redevelopment”), exists and operates pursuant to I.C. 36-7-14; and

WHEREAS, the Commission entered into a Option to Purchase Agreement (“Agreement”), dated April 13, 2022, with Gregg Claeys (“Claeys”) and Michael D. Machalleck (“Machalleck”) each an individual (together, Claeys and Machalleck are referred to as the “Developer”) for the option to purchase certain property (“Property”), a copy of which is attached as Exhibit A; and

WHEREAS, as a part of the Agreement, the Commission have an exclusive option to purchase the Property; and

WHEREAS, the Commission wishes to exercise their option.

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

1. The Commission hereby ratifies and approves the acquisition of the Property at the agreed upon purchase price of Five Hundred and Fifty Thousand Dollars (\$550,000.00).
2. The Commission authorizes members of the Department of Law and Department of Community Investment to negotiate the remaining terms of the agreement on its behalf.
3. The Corporation Counsel of the City of South Bend, Indiana is hereby authorized and instructed to execute the final agreement.
4. This Resolution will be in full force and effect upon its adoption by the Commission.

*Signature Page Follows*

ADOPTED at a meeting of the South Bend Redevelopment Commission held on February 9, 2023.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia Jones, President

ATTEST:

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Vivian Sallie, Secretary

EXHIBIT A

Option to Purchase Agreement



## **OPTION TO PURCHASE AGREEMENT**

THIS EXCLUSIVE OPTION TO PURCHASE AGREEMENT (the "Option Agreement") is made and entered into by and between the South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment ("Commission"), and Gregg Claeys ("Claeys") and Michael D. Machalleck ("Machalleck"), each an individual (together, Claeys and Machalleck are referred to as the "Developer") (the Commission and the Developer are each sometimes referred to herein as a "Party" or collectively as the "Parties").

### **PRELIMINARY STATEMENT**

Developer is the owner of certain real estate, as more particularly described in **Exhibits A and B** to this Option Agreement (the "Real Estate"). GFC Holdings LLC and Claeys Candy, Inc. have entered into a certain Development Agreement dated concurrently herewith relating to the Developer's construction of a new facility within the City of South Bend and the Commission's contribution to the construction of a gas utility main pipeline (the "Development Agreement"). Pursuant to the Development Agreement, Developer agrees to grant to the Commission an exclusive option to purchase the Real Estate and, in the event of exercise of said option, Developer agrees to sell the Real Estate to the Commission, upon the terms and conditions hereinafter set forth. Unless otherwise specified herein, all capitalized terms have the meaning set forth in the Development Agreement.

In consideration of the mutual promises contained in this Option Agreement, the Parties agree to the following:

### **AGREEMENT**

1. **Exclusive Option to Purchase.** The Developer hereby grants the Commission the exclusive option to purchase the Real Estate, subject to the terms and conditions set forth herein (the "Option"). The Option must be exercised by Commission, if at all, no later than the expiration of the Option Period, which is herein defined as two (2) years from the date hereof (the "Option Period"). As consideration for this Option, the parties acknowledge that the Commission will pay the Funding Amount (the "Option Payment").

2. **Exercise of Option.** Commission may exercise the Option by giving notice to the Developer in writing during the Option Period in the manner provided for the giving of notices in Section 10 of this Option Agreement. The Option Payment shall be applied to the purchase price for the Real Estate.

3. **Purchase Price.** In the event of exercise, the Commission shall purchase from Developer and Developer shall sell to the Commission, the Real Estate for the purchase price of Five Hundred Fifty Thousand Dollars (\$550,000.00), minus the amount of the Option Payment \, as well as any costs typically paid by the seller at closing, including but not limited to taxes, closing costs, and transfer fees (the "Purchase Price").

4. Purchase Agreement and Closing. If the Option is exercised, the Commission and Developer will promptly negotiate the terms of a purchase agreement for the Real Estate, which shall include the Purchase Price and shall specify that the Commission shall accept the real estate comprising the parking lot, described in Exhibit B, as-is with all faults. and that all environmental remediation deemed reasonable and necessary by the Commission in its sole discretion with regard to the property on which the building is situated (including any remediation with respect to the building itself), as such property is described in Exhibit A, shall be completed by the Developer prior to closing. The Commission and its counsel shall be responsible for preparing the initial draft of the purchase agreement, which will be in a form customary for transactions of similar scope and significance to the Parties and, with the exception of the foregoing, will include customary representations, warranties, indemnities, covenants, customary conditions of closing and other customary matters. At closing, Developer shall deliver a warranty deed free and clear of all encumbrances excepting and subject to all legal highways, applicable zoning ordinances, and easements of record and real estate taxes and assessments prorated in accordance with local custom.

5. Recording of Memorandum. The Parties shall concurrently herewith execute, record and place of record a memorandum of this Option Agreement in the office of the County Recorder of St. Joseph County, Indiana.

6. Governing Law and Jurisdiction. This Option Agreement will be governed by Indiana law, without regard to principles of conflicts of law. Any dispute between the Parties shall be heard in any court of competent jurisdiction in St. Joseph County, Indiana.

7. Benefit of the Parties. This Option Agreement is made solely for the benefit of the Parties, and no one else shall acquire or have any right under (or by virtue of) this Option Agreement.

8. Binding Effect and Assignment. This Option Agreement shall be binding upon and inure to the benefit of the Parties and to their respective successors and assigns. The rights and obligations contained in this Option Agreement shall not be assigned by either Party.

9. Amendment. This Option Agreement may only be amended or modified as may be agreed upon in writing by all Parties.

10. Notices. All notices and other communications hereunder shall be in writing and shall be furnished by hand delivery or by registered or certified mail to the Parties at the addresses set forth below. Any such notice shall be duly given upon the date it is delivered to the addresses shown below, addressed as follows:

If to the Commission, to:

South Bend Redevelopment Commission  
c/o Department of Community Investment  
227 W. Jefferson Blvd., Suite 1400 S.  
South Bend, IN 46601  
Attn: Executive Director

With a copy to:

City of South Bend Department of Law  
227 W. Jefferson Blvd., Suite 1200 S.  
South Bend, IN 46601  
Attn: Corporation Counsel

If to Developer, to:

Gregg Claeys  
Michael D. Machalleck  
525 S Taylor St.

South Bend, IN 46634

With a copy to:

11. Severability. If any term, provision, covenant or restriction contained in this Option Agreement that is intended to be binding and enforceable is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

12. 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.

13. 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.

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

15. Entire Agreement. The Parties acknowledge that upon final execution of this Option Agreement, all previous statements, proposals, offers and information and any oral statements or understandings are hereby rendered void, null, and of no legal consequence in

connection with the subject matter hereof and that this Option Agreement represents an expression of the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements or understandings of any kind between the Parties with respect to the subject matter hereof.

\* \* \* \* \*

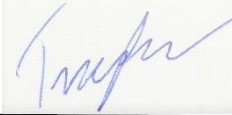
IN WITNESS WHEREOF, the parties hereto have executed this Option to Purchase Agreement on the 13 day of April 2022.

SOUTH BEND REDEVELOPMENT  
COMMISSION



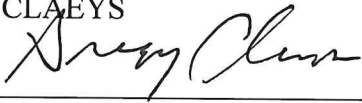
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:



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

GREGG CLAEYS



\_\_\_\_\_  
MICHAEL MACHALLECK

\_\_\_\_\_

**EXHIBIT A**

**Real Property Legal Description - Building**

Parcel 1:

Lots 1 & 2 and the Vacated Alley N and Adjacent in Touhey & Hagery's Subdivision of Lot 59 Bol.

Parcel No. 018-3043-1650

Parcel 2:

Lots 3 & 4 in Touhey & Hagery's Subdivision of Lot 59 Bol.

Parcel No. 018-3043-1653

Commonly known as 525 S Taylor St., South Bend, Indiana

## EXHIBIT B

### Real Property Legal Description – Parking Lot

Parcel 1:

**Property Address:** 522 S Taylor St  
South Bend, IN

**Legal Description:** 31'S End Lot 14 Vails Sub Blk 10

**Tax Key Number:** 018-3014-0512

**State Parcel ID:** 71-08-11-427-032.000-026

Parcel 2:

**Property Address:** Vacant Lot on Taylor St and South St  
South Bend, IN

**Legal Description:** Lot 15 & 16 Ex 34 Ft E End Vails Sub Blk 10

**Tax Key Number:** 018-3014-0513

**State Parcel ID:** 71-08-11-427-011.000-026

Parcel 3:

**Property Address:** Vacant Lot on South St  
South Bend, IN

**Legal Description:** 34 Ft. E End of Lots 15 & 16 Vails Sub Blk 10

**Tax Key Number:** 018-3014-0514

**State Parcel ID:** 71-08-11-427-012.000-026



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 2/3/23  
FROM: Joseph Molnar  
SUBJECT: 7<sup>th</sup> Amendment

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

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

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

APPROVED  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

PURPOSE OF REQUEST: Approval of Seventh Amendment to Bare Hands Real Estate Purchase Agreement

Specifics: In January 2023, Chris Gerard owner of Bare Hands Brewery contacted the City that the February 1<sup>st</sup> rough-in inspection would not be met. Mr. Gerard provided details about contractors who were supposed to start work weeks earlier and who could not because of supply chain issues.

Mr. Gerard has asked for a short extension of the rough-in inspection to March 1<sup>st</sup> 2023 in order to achieve that benchmark in time. No extension has been proposed for the September 1<sup>st</sup> opening day deadline.

Staff recommends approval of the amendment.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;

Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_

\_\_\_\_\_ Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_



**SEVENTH AMENDMENT TO REAL ESTATE PURCHASE  
AGREEMENT**

This Seventh Amendment to Real Estate Purchase Agreement (“Seventh Amendment”) is made effective as of February 1, 2023 (the “Effective Date”) by the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Seller”) and Bear Brew LLC (“Buyer” and collectively with the Seller, the “Parties”). Each of the Parties may be referred to in this Amendment as a “Party.”

**Recitals**

- A. The Parties entered into a Real Estate Purchase Agreement, dated August 25, 2016, as the same was amended by a First Amendment to Real Estate Purchase Agreement, dated October 27, 2016, a Second Amendment to Real Estate Purchase Agreement, dated December 15, 2016, a Third Amendment to Real Estate Purchase Agreement, dated January 9, 2020, a Fourth Amendment to Real Estate Purchase Agreement, dated effective July 9, 2020, a Fifth Amendment to Real Estate Purchase Agreement, dated effective September 20, 2020, a Sixth Amendment to Real Estate Purchase Agreement. Dated effective March 31, 2022, (collectively the “REPA”), in which the Seller agreed to sell and the Buyer agreed to purchase and develop certain real property located at 331 W. Wayne St., South Bend, Indiana (the “Property”).
- B. The Parties again desire to modify certain portions of the REPA.

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

1. The following sentence of Section 12.A.v. of the REPA entitled "Commencement of Development":

Buyer shall also complete a rough-in inspection with the Building Department prior to February 1, 2023 (the “Project Rough-In Inspection Date”).

Shall be deleted in its entirety and replaced with the following:

Buyer shall also complete a rough-in inspection with the Building Department prior to March 1, 2023 (the “Project Rough-In Inspection Date”).

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

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

IN WITNESS WHEREOF, the undersigned have executed this Seventh Amendment as of the date set forth after their signatures.

**SOUTH BEND REDEVELOPMENT COMMISSION**

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

ATTEST: \_\_\_\_\_  
Vivian Sallie, Secretary

Date: February \_\_ , 2023

**BEAR BREW LLC**

\_\_\_\_\_  
Christopher Gerard  
Sole Owner

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



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 2/01/2023

FROM: Aaron Perri, Executive Director Venues Parks & Arts

SUBJECT: LaSalle Park Improvements

\_\_\_\_\_ 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:

Over the past several years, there has been a significant amount of work to remediate the soil at LaSalle Park of various underground contaminants. This work, while it posed no immediate health risks to park users or nearby residents, was done in coordination with the Environmental Protection Agency and Honeywell Corporation. Now that the remediation is complete, a community-informed design is ready to be constructed at LaSalle Park. This effort was led by Troyer Group and includes a new outdoor restroom building, new basketball courts, a new pavilion, a roller skating loop, and some enhanced circulation.

The project work has a current construction estimate of \$1.33M of which near approximately \$456,000 is already funded through the Venues Parks & Arts Department. To make this project a reality for the community, an \$874,571 request is being sought from the River West TIF.



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: February 2, 2023

FROM: Kara Boyles

SUBJECT: Budget Request

\_\_\_\_\_ 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 of \$300,000 will fund the engineering design for the 2023 Safe Routes to School (SRTS) for Kennedy Academy [Project No. 123-017]. This project will improve walking routes to and from school for Kennedy Academy students, including sidewalks and ADA curb ramps. This project promotes walking and provides ADA accessibility to students traveling to/from Kennedy Academy, as well as reducing drop off and pick up congestion. In addition to Kennedy Academy students, other populations will benefit from improved connectivity and accessibility of walking routes, including those with disabilities and the elderly. The project is an LPA project, and it is 80% reimbursable by INDOT.

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

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: January 26, 2023

FROM: Kara Boyles, City Engineer

SUBJECT: Seitz Park, Phase I

\_\_\_\_\_ 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:** \$1M from River East Residential TIF

This request will provide funding for three (3) separate amendments related to the Seitz Park, Phase I project. The amendments are related to an unforeseen river wall investigation, as well as design and construction inspection services through the completion date of 08/07/2023. The Designer, SmithGroup, has requested additional funds to cover costs for field re-designs and to design plans for Gintz Road and associated Stephenson Mills parking areas. Lochmueller Group has requested compensation for Construction Inspection to cover services through the new completion date of 08/07/2023. Finally, American Structurepoint, Inc. has requested a supplemental fee to cover costs for exploratory work investigation and design of the resulting recommendations of the South Bend Dam north abutment that is adjacent to the fish ladder. During construction, it was noted that the structural integrity of the wall needed to be evaluated. The three Amendment to Owner-Engineer Agreements total \$373,960.00. This request will also cover costs related to the repair of the wall and additional, outstanding change orders.

INTERNAL USE ONLY: Project ID: PROJ \_\_\_\_\_ 117-093A \_\_\_\_\_ ;

Total Amount – New Project Budget Appropriation \$1,000,000 \_\_\_\_\_ ;

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

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 2/9/23  
FROM: Erik Glavich, Director, Growth & Opportunity  
SUBJECT: "The Hill" Development Agreement

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

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

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

Approved  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

PURPOSE OF REQUEST: Development Agreement for property located at 511 N. Notre Dame Avenue, South Bend, Indiana 46617

SPECIFICS: The Commission will consider a Development Agreement with ND QOZB LLC, which is the owner and developer of property on the corner of North Notre Dame Avenue and Cedar Street. The building was once a medical office building and has been vacant since 2014. The developer will remodel the building and convert it into an apartment building. The apartment building will be named "The Hill."

This Agreement specifies that (1) the Funding Amount provided by Redevelopment Commission will not exceed \$500,000 and (2) the Private Investment by the Developer will be no less than \$12 million. The Developer also agrees to complete the project by the end of 2024.

Staff recommends approval of this Development Agreement.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

## **DEVELOPMENT AGREEMENT**

This Development Agreement (this “Agreement”), is effective as of February 9, 2023 (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 ND QOZB LLC, an Idaho Limited Liability Company with offices at 339 W. State Street, Suite 201, Eagle, Idaho 83616 (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 owns certain vacant and inactive 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 River East 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 Five Hundred Thousand Dollars (\$500,000.00) 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 Twelve Million Dollars (\$12,000,000.00) 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.

#### **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 4.7 ("Submission of Plans and Specifications for Project") 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 4.7 ("Submission of Plans and Specifications for Project") of this Agreement.

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

4.4 Obtain Necessary Easements. The Developer agrees to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project as set forth in the Project Plan and any other obligations the Developer may have under this Agreement by December 31, 2024 (the "Mandatory Project Completion Date"). The Developer further agrees the total Project will be completed in accordance with the Project Plan attached hereto as **Exhibit B**.

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, in the format set forth as **Exhibit E**, 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, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

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's Executive Director Department of Community Investment, or his or her designee, who may approve or disapprove said plans and specifications for the Project in his or her sole discretion and may request revisions or amendments to be made to the same.

4.8 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 may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same. The Commission shall not be required to expend the Funding Amount unless the Engineering Department has approved 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 F** 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.

## **SECTION 5. COMMISSION'S OBLIGATIONS.**

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

### 5.2 **Completion of Local Public Improvements.**

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in **Exhibit C** attached hereto on a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and responded in accordance with Section 4.7 ("Submission of Plans and Specifications for Project") 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 4.9 ("Specifications for Local Public Improvements") 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, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (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, 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: ND QOZB LLC  
2556 E. Arbor Drive  
St. George, Utah 84790  
Attn: Griff Johnson

With a copy to: Freeman Lovell, PLLC  
9980 South 300 West, Suite 200  
Sandy, Utah 84070  
Attn: Steve Lovell

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  
Vivian Sallie, Secretary

ND QOZB LLC

  
\_\_\_\_\_  
Griffin Johnson, Manager

**EXHIBIT A**

**Description of Developer Property**

**Tax ID No.** 018-5024-086001

**Parcel Key No.** 71-08-01-476-033.000-026

**Legal Description:** Lot 2 St Joseph Regional Medical Center Cedar St Minor Sub  
NP #5012 7-13-10

**Commonly known as:** 511 N. Notre Dame Avenue, South Bend, Indiana 46617

## **EXHIBIT B**

### **Project Plan**

The Developer will complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

- Rehabilitate existing building and convert it into an approximately 69-unit apartment building, consisting of studio and one-bedroom apartments;
- Install new interior framing, mechanical, plumbing, fire, and electrical infrastructure;
- Remodel the exterior of the building; and
- Landscape the site and improve the parking lot.

## 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:

- Update existing parking lot(s) through repair, patching, seal coating, and striping;
- Install property line fence;
- Install exterior drainage system;
- Install bike racks;
- Landscape; and
- Conduct concrete and masonry site work.

Any and all costs associated with improvements not explicitly described above and not approved pursuant to Section 4.9 (“Specifications for Local Public Improvements”) are the sole responsibility of the Developer.

**EXHIBIT D**

**Form of Easement**

## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the 7<sup>th</sup> day of February, 2023 (the "Effective Date"), by and between ND QOZB LLC, an Idaho Limited Liability Company with offices at 339 W. State Street, Suite 201, Eagle, Idaho 83616 (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 7, 2023 (the "Development Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee's contractors acting on Grantee's behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the "Construction Termination Date") of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

ND QOZB LLC, an Idaho Company

[Signature]

Printed: GRIFFIN JOHNSON

Its: Manager

STATE OF Utah )  
 ) SS:  
COUNTY OF Washington )

Before me, the undersigned, a Notary Public in and for said State, personally appeared Griffin M. Johnson, to me known to be the Manager 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 7<sup>th</sup> day of February, 20 23.

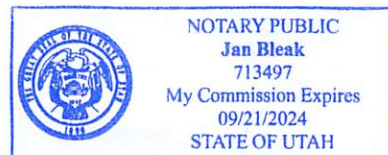
[Signature]

Zions Bank, Notary Public  
Residing in St. George County, Washington

My Commission Expires: 9/21/2024

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. Danielle Campbell Weiss.

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, City of South Bend, Indiana, Department of Law, 227 W. Jefferson Boulevard, Suite 1200S, South Bend, IN 46601. .



**EXHIBIT 1**

**Description of Property**

**Tax ID No.** 018-5024-086001

**Parcel Key No.** 71-08-01-476-033.000-026

**Legal Description:** Lot 2 St Joseph Regional Medical Center Cedar St Minor Sub  
NP #5012 7-13-10

**Commonly known as:** 511 N. Notre Dame Avenue, South Bend, Indiana 46617



**EXHIBIT E**

**Form of Report to Commission**

City of South Bend  
**Department of Community Investment**

**Development Agreement Review**

Answer the below questions and return to the Department of Community Investment.

**Project Information**

**Project Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Construction Completed to Date:**

**Project Schedule Update:**

**Itemized Accounting of Private Investment to Date:**

**Number of Jobs Created:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Position: \_\_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**EXHIBIT F**

**Minimum Insurance Amounts**

- A. Worker's Compensation
  - 1. State Statutory
  - 2. Applicable Federal Statutory
  - 3. Employer's Liability \$100,000.00
  
- B. Comprehensive General Liability
  - 1. Bodily Injury
    - a. \$1,000,000.00 Each Occurrence
    - b. \$2,000,000.00 Annual Aggregate Products and Completed Operation
  
  - 2. Property Damage
    - a. \$1,000,000.00 Each Occurrence
    - b. \$2,000,000.00 Annual Aggregate
  
- C. Comprehensive Automobile Liability
  - 1. Combined Single Limit (Bodily Injury and Property Damage)
    - a. \$1,000,000.00 Each Accident
  
- D. Umbrella Liability
  - 1. \$10,000,000.00 Each Occurrence
  - 2. \$10,000,000.00 Annual Aggregate



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 2/9/23  
FROM: Erik Glavich, Director, Growth & Opportunity  
SUBJECT: Legal Fees

\_\_\_\_\_ 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: Appropriation of money to pay legal expenses for litigation pertaining to 300 E. LaSalle and pursuant to I.C. 36-7-14-12.2(a)(11) - (12).

SPECIFICS: We are requesting \$150,000 from the River East Development Area TIF to cover legal fees related to the litigation initiated against Commerce Center Development LLC. On January 12, 2023, the Commission authorized the City legal department to engage with outside counsel and enforce the terms of the development agreement that is the subject of the litigation.

Staff recommends approval of this appropriation of funds.

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

**RESOLUTION NO. 3572****A RESOLUTION OF THE SOUTH BEND  
REDEVELOPMENT COMMISSION ESTABLISHING  
CERTAIN FUNDS AND ACCOUNTS IN CONNECTION WITH  
THE LEASE DATED AS OF JANUARY 1, 2023, BETWEEN THE  
SOUTH BEND REDEVELOPMENT COMMISSION AND  
THE SOUTH BEND REDEVELOPMENT AUTHORITY  
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 Commission, pursuant to declaratory resolutions previously adopted by the Commission and amended from time to time, has declared (i) a certain area of the City of South Bend (the “City”) known as the “River East Development Area” (the “River East Area”) as a redevelopment area and an allocation area under the Act and approved a redevelopment plan for the River East Area and (ii) a certain area of the City known as the “River West Development Area” (the “River West Area”) as an economic development area and an allocation area under the Act and approved an economic development plan for the River West Area; and

**WHEREAS**, the Commission has given consideration to undertaking local public improvement projects in the River West Area including all or any portion of the following: (i) River Bridge Connector (plus Madison) to South Bend-Notre Dame Trail which consists of Phase 3 of the trail project (the “Trail Project”) to construct a pedestrian bridge to connect the trail from the University of Notre Dame campus to the City’s downtown, and any related improvements; (ii) Linden improvements which consists of streetscape improvements in coordination with the Martin Luther King Jr. Dream Center, from College to Birdsell, including improvements for bikes and pedestrians, and any related improvements; (iii) Kennedy Park improvements which consist of natural and aquatic improvements to the existing park and any related improvements to increase accessible recreation resources on the west side of the City; (iv) South East Park improvements which consist of improvements to the park, including splashpad improvements and playground resurfacing, and any related improvements; (v) Martin Luther King Jr. Dream Center improvements which consist of exterior park redevelopment, including without limitation splashpad, playground, basketball court, other related park amenity improvements, and any related improvements; (vi) Rum Village Park Plan improvements which consist of enhancements to the historic pavilion and the Park including exterior restoration and stabilization of the fieldstones, broad arches, and courtyard, and any related improvements; and (vii) all projects related to any of the projects described in clauses (i) through and including (vi) (clauses (i) through and including (vii), collectively, the “River West Projects”); and

**WHEREAS**, the Commission has given consideration to undertaking additional local public improvements in the River West Area to support and provide incentives to foster the development of the Beacon Integrated Health and Lifestyle District project, said project having

been awarded up to a \$11,780,000 Regional Economic Acceleration and Development Initiative grant by the South Bend-Elkhart Regional Development Authority, which local public improvements include, without limitation, site work, construction of up to two (2) public parking garages and a skyway improvement, and any projects related to the foregoing (collectively, the “Beacon District Improvements”); and

**WHEREAS**, the Commission has given consideration to undertaking local public improvement projects in the River East Area including all or any portion of the following: (i) LaSalle Streetscape which consists of a road diet with a focus on bike and pedestrian improvements from Martin Luther King Boulevard to Eddy Street and any related improvements; (ii) Hill Street Trail (South Bend Avenue to LaSalle Street) which consists of Phase 2 of the Trail Project to construct a shared use path and any related improvements to improve bicycle and pedestrian facilities between the University of Notre Dame campus and the City’s downtown; (iii) South Bend Avenue (Hill Street to Notre Dame Avenue) and Hill Street Intersection which consists of Phase 1 of the Trail Project to construct a shared use path and any related improvements to improve bicycle and pedestrian facilities between the University of Notre Dame campus and the City’s downtown; (iv) Mishawaka Avenue Streetscape Improvements which consist of a road diet and improved parking from Longfellow Street to Emerson Street, storm sewer separation, and any related improvements; (v) Coquillard Splashpad which consists of upgrading the splashpad at Coquillard Park to modern health, safety, and experiential standards, and any related improvements; and (vi) all projects related to any of the projects described in clauses (i) through and including (v) (clauses (i) through and including (vi), collectively (collectively, the “River East Projects” and collectively with the River West Projects and the Beacon District Improvements, the “Projects”); and

**WHEREAS**, the South Bend Redevelopment Authority (the “Authority”) has been established pursuant to the applicable provisions of Indiana Code 36-7-14 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 all or a portion of Portage Avenue in the City from its intersection with Cleveland Road to its intersection with Angela Boulevard (the “Leased Premises”) to the Commission pursuant to a lease dated as of January 1, 2023 (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 all or any portion of the Projects; and

**WHEREAS**, the Authority and the Commission have given consideration to (i) financing the cost of funding a portion of the cost of the Projects; (ii) funding a debt service reserve fund or paying the cost of a reserve surety, 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 Trust Company, National Association, as trustee (the “Trustee”), to be known as the “South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2023” in one (1) or more series an aggregate principal amount not to exceed Sixty-nine Million Dollars (\$69,000,000) (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 Projects; (ii)

funding a debt service reserve fund or paying the cost of a reserve surety, 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 Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) per year, in semiannual installments, with a term no longer than twenty (20) 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 (20) years after such date of acquisition by the Authority (such rent payments being referred to herein as the “Lease Rental Payments”); and

**WHEREAS**, it is necessary for the Commission to establish certain funds and accounts for the payment of the Lease Rental Payments owed by the Commission pursuant to the Lease; 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 available tax increment revenues (the “TIF Revenues”) allocated to the Commission from the River West Area and the River East Area; and

**WHEREAS**, because the Commission anticipates that sufficient TIF Revenues will be available to make the Lease Rental Payments, each of the River East Projects, the River West Projects, and the Beacon District Improvements does not constitute a “controlled project” as such term is defined by Indiana Code 6-1.1-20-1.1;

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

SECTION 1. The Commission hereby determines that, because the TIF Revenues are expected to be sufficient to pay the Lease Rental Payments, each of the River East Projects, the River West Projects, and the Beacon District Improvements does not constitute a “controlled project” as such term is defined by Indiana Code 6-1.1-20-1.1.

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 a 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 TIF Revenues then on deposit in the Lease Fund (as defined herein) 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 2 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, 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 TIF Revenues will be sufficient to pay the Lease Rental Payments when due without the need for the special tax described herein.

SECTION 3. The Commission hereby authorizes and directs the President and the Secretary of the Commission to take any and all necessary actions and execute any and all necessary documents to carry out the purpose of this Resolution. 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 9, 2023, in Room 1308, County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

\_\_\_\_\_  
Vivian Sallie, Secretary





# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: February 6, 2023  
FROM: Chris Dressel, Staff  
SUBJECT: Budget Request: High Street Improvements

\_\_\_\_\_ 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:

Staff requests the Redevelopment Commission's approval of \$200,000 from the South Side Redevelopment Area TIF to be budgeted for improvements to the west side of High Street from Donmoyer Avenue to Ridgedale Road in the form of new curbs and sidewalks. Project construction should commence this year and be completed no later than spring 2023.

The request for funds is consistent with the Miami Hills Neighborhood Plan (2020) that identified upgrading infrastructure conditions and improve connections for non-motorized travel within the neighborhood and to surroundings. The project area is of highest priority as it currently has no proper sidewalks.

If you should have any questions or need more information, please feel free to contact me at either [cdressel@southbendin.gov](mailto:cdressel@southbendin.gov) or 235-5847.

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