



South Bend

Redevelopment Commission

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

Agenda

Regular Meeting, February 23, 2022 – 9:30 a.m.

<http://tiny.cc/RDC2023> or BPW Conference Room 13th Floor

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1. **Roll Call**
 2. **Approval of Minutes**
 - A. Minutes of the Regular Meeting of Thursday, February 9, 2023
 3. **Approval of Claims**
 - A. Claims Allowance Request 2.15.23
 4. **Old Business**
 5. **New Business**
 - A. Opening and Reading of Receipt of Bids
 1. Property at LWW.Leland.Marion
 2. Property at Salvation Army Building
 3. Property at 18 Chestnut
 - B. South Side Development Area
 1. Second Amendment to Development Agreement (Miami Hills)
 - C. Administrative
 1. Estoppel Agreement (RDC and MarMain)
 6. **Progress Reports**
 - A. Tax Abatement
 - B. Common Council
 - C. Other
 7. **Next Commission Meeting:**

Thursday, March 9, 2023, 9:30 am

Adjourn



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

**SOUTH BEND REDEVELOPMENT COMMISSION
 SCHEDULED REGULAR MEETING**

February 9, 2023 – 9:30 am

<http://tiny.cc/RDC2023> or BPW Conference Room

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, Vice-President – IP Vivian Sallie, Secretary - IP Eli Wax, Commissioner - IP Dave Relos, Commissioner – IP Leslie Wesley, Commissioner - V	IP = In Person V = Virtual
Members Absent:		
Legal Counsel:	Sandra Kennedy, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary Joseph Molnar, RDC Staff	
Others Present:	Erik Glavich Laura Althoff Rachel Boyles Jitin Kain Charlotte Brach Matt Barrett Randy Rampola Emma Adlam Kyle Willis Benjamin Dougherty Aaron Perri Kara Boyles Chris Dressel Rachel Tomas Morgan Katrina Marquardt Leslie Biek Griffin Johnson Chris Gerard	DCI – IP DCI – V DCI – V Engineering – V Engineering – V Resident Barnes & Thornburg Baker Tilly Admin & Finance Admin & Finance VPA - IP Engineering - IP DCI – IP Common Council – V Resident – V Engineering - V The Hill – V Bear Brew - V

2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, January 26, 2023**

Secretary Sallie noted that Commissioner Wax title is incorrect.

Upon a motion by Commissioner Relos, seconded by Vice-President Warner, the motion carried unanimously, with above mention change, the Commission approved the minutes of the regular meeting of Thursday, January 26, 2023.

3. Approval of Claims

- **Claims Submitted for February 24, 2023**

Upon a motion by Secretary Sallie, seconded by Commissioner Relos, the motion carried unanimously, the Commission approved the claim for February 24, 2023

4. Old Business

5. New Business

A. River West Development Area

1. Resolution No. 3571 (Claey's Candy)

Mr. Molnar Presented Resolution No. 3571 (Claey's Candy). In April 2022 the Commission agreed to an option to purchase the land which includes the current Claey's Candy factory and three parcels that are part of the parking lot. Four Winds Field and the city have leased those parking spaces for a number of years. Claey's has expanded and built a new factory on Nimitz Parkway, and they have notified the city they are ready to move. The city is ready to exercise the option to purchase. This resolution gives staff the authority to go forward with that option.

Commissioner Wax asked what the price was.

Mr. Molnar stated it was \$550k for both the factory building and the parking lots.

Commissioner Wax asked if the city has a plan after the purchase of the property.

Mr. Molnar stated that the city has been interested in parking for some time now. There have been discussions with perhaps south been housing authority but no firm commitments at this time.

Commissioner Wax asked if we will re-coup the money.

Mr. Molnar stated we hope.

Commissioner Wax asked what the business perspective would be.

South Bend Redevelopment Commission Regular Meeting – February 9, 2023

Mr. Molnar stated the value for the city is in the ownership of the parking lots for the fields. South Bend Housing is perhaps looking into a major renovation of that entire block. This also helped Clay's move and expand creating more jobs.

Upon a motion by Commissioner Wax, seconded by Vice-President Warner, the motion carried unanimously, the Commission approved Resolution No. 3571 (Clay's Candy) submitted on Thursday, February 9, 2023.

2. Seventh Amendment (REPA Bear Brew LLC)

Mr. Molnar Presented Seventh Amendment (REPA Bear Brew LLC). This is for the property formerly the Gates Service Center which was sold in 2016 to Bare Hands Brewery for the commitment of establishing a brewery and restaurant. During the most recent amendment they were to start construction on September 1st of the past year, that did not happen. They pulled demo permits and began getting the site ready for construction with demolition of some of the building. The next deadline was February 1st for a rough in inspection meaning the electric and everything was ready to frame up the walls and start finishing the space with an opening date of September 1, 2023.

Mr. Gerard contacted the city stating that the original construction was pushed back due to the construction company's projects and is asking for a project extension. We confirmed that HVAC and general construction permits have been pulled by the contractors and confirmed work is ongoing at the site.

Mr. Gerard stated that all the permits are pulled, and they are working to complete the project. Framing material and HVAC equipment were being delivered. Contractors are stating they should have it completed by March 1, 2023, so they can move forward.

Commissioner Relos asked how close the project is to the rough in inspection by the building department.

Mr. Gerard stated 50%. It should take approximately 3 weeks to complete.

Secretary Sallie thanked Mr. Gerard for coming in person to present the Commission with an update. She asked if he would come back and present an update closer to September.

Mr. Gerard stated he would.

Vice-President Warner asked if there is a restaurant portion to the building.

Mr. Gerard stated yes there would be a full service restaurant with a small pilot brewery set-up of seven barrels which is like 14 full size kegs and 45 barrels per weekly production.

Secretary Sallie asked about parking according to the blueprint.

Mr. Gerard stated that the city asked for some curved areas and grass areas to make it more aesthetically pleasing to the customers.

Commissioner Wax states he understands construction delays and he is really looking forward to the project completion. He recommends coming forward before a deadline is missed, consulting with staff regarding changes or extensions.

Mr. Gerard stated he would be sure to do that.

Commissioner Relos asked if September 1, 2023, date is for certificate of occupancy?

Mr. Gerard stated yes. They are actually hoping to open by opening of baseball season but doubt that will happen.

Commissioner Relos noted that this project has been going on for a long time. When he worked for the city, he brought the documents out to their Granger operation to get them signed. As a note this has been going on for six years and there have been a number of other restaurants in the downtown area that have transformed older buildings without any problems.

Mr. Gerard stated that this project was a little more in-depth than those and then the pandemic was a delay and also legal issues with the city, but he feels that things have turned around and they are showing a consistent effort to finish.

Commissioner Relos noted that Rose Lily moved to a new location which was an empty building by Howard Park. The old buttons and bows is now turned into a bar/restaurant.

Mr. Gerard stated he does not feel like this is apples to apples, but they are doing their best to finish it by the deadline.

Upon a motion by Commissioner Wax, seconded by Vice-President Warner, the motion carried unanimously, the Commission Seventh Amendment (REPA Bear Brew LLC) submitted on Thursday, February 9, 2023.

3. Budget Request (LaSalle Park Improvements)

Mr. Perri Presented Budget Request (LaSalle Park Improvements). On the heels of a pretty comprehensive soil remediation at LaSalle Park that is just wrapping up, we seek to put park back into significantly better condition than it was originally found. We have a community driven plan that includes the addition of a restroom facility, a picnic pavilion, basketball/pickleball tennis courts, roller skating trail and some general connectivity and landscaping in the park. The total estimate plus contingency is \$1.33M, of which we have already taken \$500k from the park fund. We are asking the commission for \$874,571 from the River West TIF. Commission approval is requested.

Upon a motion by Commissioner Relos, seconded by Secretary Sallie, the motion carried unanimously, the Commission Budget Request (LaSalle Park Improvements) submitted on Thursday, February 9, 2023.

4. Budget Request (Kennedy SRTS)

Ms. Boyles Presented Budget Request (Kennedy SRTS). This is a request from the River West TIF for the Kennedy SRTS project which is an INDOT project in which federal funding is received which is a matching project. For the design, the city is responsible for initially budgeting 100% of the design but it is 80% reimbursable. The same is true for the construction, we provide 20% and the state covers the rest. We are getting ready to start design which is mostly sidewalk, ADA curb ramps around Kennedy School trying to go as far as we can in terms of radius with the \$2M budget allocated. This request is for \$300k which will be 80% reimbursable.

President Jones asked if there was existing sidewalk?

Ms. Boyles stated that yes, it is all existing sidewalk that they are repairing. This covers striping and crosswalks too. \$2M is the construction grant amount.

Secretary Sallie asked what the completion date of the project would be.

Ms. Boyles state fiscal year 2023 so we will need to be under contract by May or June of this year working through the design this year, but she doesn't anticipate construction until June or July 2024. They take a little longer.

Upon a motion by Vice-President Warner, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved Budget Request (Kennedy SRTS) submitted on Thursday, February 9, 2023.

B. River East Residential

1. Budget Request (Seitz Park Phase II)

Ms. Boyles Presented Budget Request (Seitz Park Phase II). This request is from River East Residential TIF in the amount of \$1M for Seitz Park Phase II which has multiple components. This will cover three of the outstanding engineering agreements which includes design elements. There have been some extensions and duration of this project which were longer than anticipated. The designer has spent more time on providing construction administration and design related to Gintz Road adjacent to the park and taking us into the new part of the park. There have been some unforeseen conditions related to the river wall with different structural elements that we have encountered in opening the park. This budget request will help cover the costs as well as additional repairs. Commission approval is requested.

Vice-President Warner asked for an updated timeline of completion.

Ms. Boyles stated August of 2023.

Upon a motion by Commissioner Relos, seconded by Vice-President Warner, the motion carried unanimously, the Commission approved Budget Request (Seitz Park Phase II) submitted on Thursday, February 9, 2023.

C. River East Development Area

1. Development Agreement (ND QOZB)

Mr. Glavich Presented Development Agreement (ND QOZB). Mr. Glavich Presented Budget Request (Appropriation Legal Fees Expense). This developer is the owner of the old St. Joseph Medical Center building that is just north of St. Joseph High School. This building has been vacant since 2014. The developer is converting the building into a 60-unit apartment building. Council has unanimously approved a tax abatement for this property. Twenty percent of its apartments will be available to low/moderate income households as outlined in the abatement. The developer has agreed to put \$12M worth of renovations into the building. This is a part of a larger plan the developer has for the property including townhomes or condos which would then exceed in excess of \$25M in development. The development agreement before you today only impacts the current building. Staff is asking for a \$500k commitment to assist the developer with upgrading drainage to the property; with any remaining dollar they would go towards exterior surrounding improvements. The developer is committed to completion of this project by the end of 2024.

Mr. Relos noted that a percentage is low/mod but is there college availability to the units.

Mr. Glavich states that is stipulated in the memorandum of agreement related to the tax abatement. The tax abatement is beyond when the development agreement would end.

Commissioner Wax asked for more information on the project.

Griffin Johnson stated the \$12M does not include the building acquisition. They are currently demolishing the inside of the building and have all of the interior walls drywalled. Electrical, plumbing and mechanical are in process. They have spent \$800k on demolition alone so far. Throughout the building is all new framing, electrical and plumbing. They are on track for June completion of the apartment renovations but will take approximately one more month to have them furnished and get IT services. It has been a very fast-paced project. We are hoping to be open for the Fall 2023 school year. We understand from the University that there is a need for graduate students as their building is being re purposed for undergraduate students.

Commissioner Wax what will happen beyond this project.

Mr. Johnson stated the plan is for 25 townhomes lining the existing streets and to the west of the property there will be a little dog park with lighting, security cameras, etc. We have provided a concept plan to the department of community investment, and we think we are well on our way with that project.

Mr. Glavich added that it has been a pleasure to work with Griff and their local representatives. They have asked a lot of questions and want to make sure they are complying with all of our requirements.

Commissioner Wax asked if we should anticipate another development agreement for the future development.

Mr. Johnson stated that he does not believe so. Hopefully this request will be connected to their second phase in terms of the storm drainage for the property.

Matt Barrett, resident, asked the commission, in the future to look into item 9.5 of the agreement regarding attorney fees in the event of litigation, mediation or arbitration between the parties that none of the parties shall be entitled to any award of attorney fees. Please consider this when writing agreements in case of breach of agreement.

Ms. Kennedy, per the commission's request, will look into this item.

Vice-President Warner stated that the council approved a tax abatement for this project.

Mr. Glavich stated that Council passed an 8-year abatement for the property. Estimates show that currently under the tax rate of last year the building would have accumulated approximately \$211k in taxes over 8 years. With this development the net taxes paid/estimated will be \$1.1M. That is without the townhomes.

Commissioner Wax stated that going forward in the future that it would be helpful to be aware of potential agreements that the city is engaging with developers. He fully supports this project and their next project.

Upon a motion by Commissioner Wax, seconded by Vice-President Warner, the motion carried unanimously, the Commission approved Development Agreement (ND QOZB) submitted on Thursday, February 9, 2023.

2. Budget Request (Appropriation Legal Fees Expense)

Mr. Glavich Presented Budget Request (Appropriation Legal Fees Expense). This is a request for \$150k from River East TIF to cover legal fees related to the litigation against Commerce Center Development, LLC. On January 12, 2023 the commission authorized the city to engage in litigation and contract with outside counsel to enforce the terms of the development agreement. Commission approval is requested.

South Bend Redevelopment Commission Regular Meeting – February 9, 2023

Commissioner Sallie asked if this would cover all of the fees.

Ms. Kennedy states this should be more than enough.

Commissioner Wax asked if we have entered into an agreement with the RDA.

Ms. Kennedy stated we are meeting on February 13th.

Upon a motion by Commissioner Wax, seconded by Vice-President Warner, the motion carried unanimously, the Commission approved Budget Request (Appropriation Legal Fees Expense) submitted on Thursday, February 9, 2023.

D. River West Development Area

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

Mr. Glavich Presented Resolution No. 3572 (Regarding Special Tax SB 2023 Projects). Mr. Randy Rampola, Barnes and Thornburg noted that this is a concluding resolution for the Redevelopment Commission. The Commission has held a public hearing, approved a form of lease. This trailing resolution is the mechanics of lease financing. This lease is payable from TIF out of the River East and River West areas. In order to get the best interest rate in the market there would be a tax backup. This resolution provides the mechanics of that tax backup. Essentially, you are agreeing every year in August to make sure that you have sufficient TIF revenues to make the following lease payments over 12 months the following calendar year. This also provides for the lowest interest rate.

Common Council did approve the execution of the lease. They did approve the bond financing at Monday night's meeting. Tomorrow, the Redevelopment Authority will be asked to consider the actual bond resolution to authorize the issuance of the bonds. You'll also sign the lease. We're anticipating the first series of bonds that would fund the River East and River West improvements to be issued sometime in April 2023. The 2nd series will come when the Beacon Improvement District improvements, public and private have been finalized and that'll be later in the year at some point.

Commissioner Wax clarified that the Redevelopment Commission can issue a tax to cover on top of everyone's property tax?

Mr. Rampola stated that the tax would be levied upon the Redevelopment district which has boundaries within the city. As I mentioned before as the city does with other financings that are outstanding, we would look to make sure that there are sufficient tax increment revenues in that case. It would be subject to the DLGF approval they would look at the tax and make sure it's sufficient to pay the debt service on the bonds and then the taxes would be collected.

Commissioner Wax asked Mr. Rampola if everything had been covered by bond counsel.

Mr. Rampola stated that we give our opinion relating to the validity of the bonds and make sure everything is lined up from our standpoint.

Commissioner Wax stated that at Council, the Beacon portion of the bonds wouldn't be issued until an agreement with Beacon was finalized with the city.

Mr. Glavich states that we will get confirmation of that and round back with the commission.

Upon a motion by Commissioner Wax, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved Resolution No. 3572 (Regarding Special Tax SB 2023 Projects) submitted on Thursday, February 9, 2023.

E. South Side Development Area

1. Budget Request (High Street Improvements)

Mr. Dressel Presented Budget Request (High Street Improvements). This budget request is for \$200k for the High Street Sidewalk Project. This will be for the Miami Hills project that was adopted by council in 2020. Their priorities included the category of infrastructure. Mr. Dressel provided a map of the project improvement areas. Some of the High Street sidewalks are actually missing. This presented the highest priority from Donmoyer to Ridgedale. We have an opportunity to add a handicapped ramp to the curb and sidewalks. We hope to get this underway this year with completion in 2024. Commission approval is requested.

Commissioner Wax states that his districts students go to Monroe around the corner. It is very difficult to navigate this especially in the winter months. This will be a big benefit to the neighborhood.

Commissioner Relos asked if we have the right of way.

Mr. Dressel stated yes.

Upon a motion by Commissioner Wax, seconded by Vice-President Warner, the motion carried unanimously, the Commission approved Budget Request (High Street Improvements) submitted on Thursday, February 9, 2023.

6. Progress Reports

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

1. Mr. Bauer who is out sent an email to be read that two low income tax credit projects, Real America just east of Four Wins and well as project Thrive were approved. We also found out that the Monroe project was also approved with full approval coming in November with a total of 160 affordable units and 74 market rate units. Two projects are currently on RDC land.

South Bend Redevelopment Commission Regular Meeting – February 9, 2023

7. Next Commission Meeting:

Thursday, February 23, 2023

8. Adjournment

Thursday, February 9, 2023, 10:40 a.m.

Vivian Sallie, Secretary

Marcia Jones, President



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

To: South Bend Redevelopment Commission
From: Kyle Willis, City Controller
Date: Wednesday, February 15, 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-0051464	\$27,210.61
GBLN-0051738	\$21,615.10
GBLN-0000000	\$0.00
Total:	<u>\$48,825.71</u>

Kyle Willis

The attached claims described above were allowed in the following total amount at a public meeting on the date stated below: \$ 48,825.71

South Bend Redevelopment Commission

By: _____
Name:

Date:

Attest: _____

Name:

Expenditure approval

RDC Payments-2/7/23 Pymt Run

GBLN-0051464

Payment method: CHK-Total
Voucher: RDCP-00014015
Payment date: 2/7/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000947	KIL ARCHITECTURE PLANNING	5	PSA for Sibley Center	2/9/2023	\$6,104.61	324-10-102-121-443001-- PROJ00000252	PO-0009095
V-00000947	KIL ARCHITECTURE PLANNING	5	PSA for Sibley Center	2/9/2023	(\$5,108.00)	324-10-102-121-443001-- PROJ00000252	PO-0009095

Payment method: CHK-Total
Voucher: RDCP-00014016
Payment date: 2/7/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001553	SOUTH BEND TRIBUNE	7528845	Tribune Advert - 7528845	7/31/2022	\$91.70	324-10-102-121-443001-- PROJ00000051	PO-0021650

Payment method: CHK-Total
Voucher: RDCP-00014017
Payment date: 2/7/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00008672	USI Consultants, Inc	17405	Inspection Svcs for Coal Line Phase IIB	2/14/2023	\$26,122.30	324-10-102-121-444000-- PROJ00000018	PO-0019649

Expenditure approval

RDC Payments-2/14/23 Pymt Run

GBLN-0051738

Payment method: CHK-Total
Voucher: RDCP-00014019
Payment date: 2/14/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000476	DONOHUE & ASSOCIATES	1398509	Water Booster Pump Station Design	2/18/2023	\$3,480.00	430-10-102-121-431002-- PROJ00000032	PO-0012147

Payment method: ACH-Total
Voucher: RDCP-00014020
Payment date: 2/14/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000821	INDIANA DEPT OF TRANSPORTATI ON	73588	Ph 2 Construction- 20%	11/16/2022	\$1,033.53	324-10-102-121-442001-- PROJ00000059	PO-0015217

Payment method: ACH-Total
Voucher: RDCP-00014021
Payment date: 2/14/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001933	LYNN WETZEL	80	Commuter's Trust Prof Svs	2/17/2023	\$3,384.61	433-10-102-123-439300-- PROJ00000383	PO-0021586
V-00001933	LYNN WETZEL	81	Commuter's Trust Prof Svs	2/17/2023	\$3,326.96	433-10-102-123-439300-- PROJ00000383	PO-0021586

Payment method: CHK-Total
Voucher: RDCP-00014022
Payment date: 2/14/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
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V-00004259

VS Engineering,
Inc. 518301

Design

2/19/2023

\$10,390.00

324-10-102-121-431002--
PROJ00000365

PO-0019974



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 2/16/22
FROM: Joseph Molnar
SUBJECT: Bid Opening

_____ 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: Bid Opening
Lincoln Way West / Marion / Leland

Specifics: On January 26th, 2023, the Redevelopment Commission Approved the request to advertise property at Lincoln Way West / Marion / Leland for public bid. Those bids are due February 23rd at 9:00 a.m. and any bids received need to be read into the record.

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 \$ _____



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 2/16/22
FROM: Joseph Molnar
SUBJECT: Bid Opening

_____ 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: Bid Opening
Former Salvation Army Building

Specifics: On January 26th, 2023, the Redevelopment Commission Approved the request to advertise property at the former Salvation Army Building for public bid. Those bids are due February 23rd at 9:00 a.m. and any bids received need to be read into the record.

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 \$ _____



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 2/16/22
FROM: Joseph Molnar
SUBJECT: Bid Opening

_____ 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: Bid Opening
18 Chestnut – Vac Lot 50 X 120 / 18 VAC L34 6X20 Walnut

Specifics: On January 26th, 2023, the Redevelopment Commission Approved the request to advertise property at 18 Chestnut – Vac Lot 50 X 120 / 18 VAC L34 6X20 Walnut for public bid. Those bids are due February 23rd at 9:00 a.m. and any bids received need to be read into the record.

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 \$ _____



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: February 21, 2023
FROM: Zach Hurst, PE
SUBJECT: Second Amendment to DA – Miami Hills

_____ 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 Second Amendment to the Development Agreement with Miami Hills MF II LLC (Miami Hills Apartment Complex) corrects a Scrivener's Error with respect to the Funding Amount specified in the agreement.

The Funding Amount (\$1,654,305) should reflect the total dollar amount between the City contribution through Redevelopment Commission (\$1,000,000) and the private contribution towards the construction project (\$654,305). Thought of differently, the Funding Amount should also align with the value of the contracts executed through Board of Public Works (\$70,000 architect's fee and \$1,584,305 construction project).

The Funding Amount in the First Amendment was short by \$70,000 – the value of the architect's fee. This Second Amendment corrects this issue, and also confirms receipt of \$654,305 from Miami Hills MF II LLC.

INTERNAL USE ONLY: Project ID: PROJ 327 _____;

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

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “Second Amendment”) is made on Feb. 23, 2023, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Miami Hills MF II, LLC (the “Developer”) (each a “Party,” and collectively the “Parties”).

RECITALS

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

B. The Development Agreement was amended by a First Amendment to Development Agreement dated January 12, 2023 (“First Amendment”), which increased the Funding Amount to reflect the Developer’s contribution and allow the awarding of the bid for the Project.

C. The amount set forth as the Funding Amount in the First Amendment, however, did not reflect funds already spent by the Commission on the plans and specifications for the public bid in the amount of Seventy Thousand Dollars (\$70,000).

D. The Parties now wish to enter into this Second Amendment to correct the Funding Amount.

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

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

1.3 Funding Amount. “Funding Amount” means an amount not to exceed One Million Six Hundred Fifty-Four Thousand Three Hundred Five Dollars (\$1,654,305.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

2. The Commission acknowledges the receipt of Six Hundred Fifty-Four Thousand Three Hundred Five Dollars (\$654,305) from the Developer in payment of the overage.

3. The Parties hereby expressly reaffirm their respective obligations under the Development Agreement and the First Amendment, and, unless expressly modified by this Second Amendment, the terms and provisions of the Development Agreement as modified by the First Amendment remain in full force and effect.

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

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

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

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

IN WITNESS WHEREOF, the Parties hereby execute this Second Amendment to Development Agreement as of the first date stated above.

**SOUTH BEND REDEVELOPMENT
COMMISSION**

By: _____
Marcia I. Jones, President

ATTEST:

By: _____
Vivian Sallie, Secretary

MIAMI HILLS MF, LLC
a Delaware limited liability company

By: _____
Gregory B. Jones, Chief Investment Officer

ESTOPPEL AND AGREEMENT

THIS **ESTOPPEL AND AGREEMENT** (this “**Agreement**”) is made as of February 23, 2023, by **MARMAIN (JV), LLC**, a Delaware limited liability company, having an address at 125 West Marion Street, South Bend, Indiana 46601 (“**Owner**” or “**Borrower**”), **CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT**, acting by and through its governing body, the South Bend Redevelopment Commission, having an address at 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 44061 (“**Commission**”), in favor of **RMWC WA CREDIT LLC**, having an address at 130 East 59th Street, 13th Floor, Suite A, New York, New York 10022 (together with its successors and/or assigns, “**Lender**”).

A. Reference is hereby made to that certain Development Agreement dated effective as of October 13, 2022, executed by and between Commission and Owner (the “**Development Agreement**”). A true and correct copy of which Development Agreement is attached hereto as Exhibit A.

B. The parties hereto have been informed that Lender anticipates making a loan (the “**Loan**”) to Borrower pursuant to a certain Construction Loan Agreement (the “**Loan Agreement**”) between Borrower and Lender and secured by a certain Mortgage, Security Agreement and Financing Statement from Borrower in favor of Lender (as amended, modified and in effect from time to time, the “**Security Instrument**”) encumbering certain property (the “**Property**”) owned by Borrower, which Property is the subject of the Development Agreement.

NOW THEREFORE, in order to induce Lender to make the Loan to Borrower and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby represent, warrant, covenant and agree as follows:

1. The Commission certifies that:
 - (a) Other than as set forth in the Development Agreement, there are no other understandings with respect to the subject matter set forth therein among the parties hereto.
 - (b) The Development Agreement is in full force and effect, has not been supplemented, amended, modified or superseded since its original execution, and no other agreements or understandings exist between the Commission and the Owner with respect to the Property.
 - (c) As of the date hereof, the Owner is not in default or in violation of any of its obligations under the Development Agreement and the Commission has no actual knowledge of the existence of any event which, with the giving of notice, the passage of time or both would constitute a default by the Owner under the Development Agreement.
 - (d) The Commission does not have any right of first refusal or option to purchase the Property.

(e) The Commission has not filed any mechanics', materialman's or other similar liens or claims for work, labor or materials affecting the Property which are or may become liens prior to, or equal or coordinate with, the Lender's lien.

(f) The Commission acknowledges that Owner has satisfied the requirements of Section 5.2(b) of the Development Agreement.

(g) As of the date hereof, the Commission has expended \$32,700 of the Funding Amount (as that term is defined in the Development Agreement) and the City of South Bend, Indiana Board of Public Works, acting as the agent of the Commission, has awarded a bid for the Local Public Improvements (as defined in the Development Agreement) amounting to \$443,987, which amounts total less than Funding Amount (as defined in the Development Agreement).

2. The parties hereto hereby consents and agrees to each of the following covenants and agreements for the benefit of Lender:

(a) The parties hereto shall not amend, supplement, terminate or modify the Development Agreement without the prior written consent of Lender.

(b) The Commission hereby covenants and agrees to deliver to Lender at the address set forth above (or such other address as may be designated by Lender) written notice of any default by Borrower under the Development Agreement simultaneously with sending such notice to Borrower and that no notice of default given to Borrower, and no exercise of any remedy by any of the parties hereto as a result of any such default, shall be effective unless such notice shall have been delivered to Lender. Notwithstanding the foregoing, to the extent that no notice is required under the Development Agreement, written notice shall not be required to be provided to either the Lender or the Borrower.

(c) The parties hereto hereby covenant and agree that Lender shall have the right, but not the obligation, to cure any default by Borrower under the Development Agreement and Lender shall be afforded (i) sixty (60) days to cure any such default beyond the expiration of any applicable notice and cure periods set forth in the Development Agreement, or (ii) in the event that any such default cannot, with reasonable diligence, be cured within such sixty (60) day period, such longer time as may be reasonably required to complete such cure, provided Lender notifies the applicable parties hereto of its intention to cure such default and Lender promptly commences and diligently pursues such cure to completion. The parties hereto acknowledge and agree that (i) any liens imposed by the Development Agreement shall be subordinate to the lien of the Security Instrument and (ii) any indemnity obligations and/or reimbursement obligations of Borrower under the Development Agreement shall be subject and subordinate to its obligations to Lender under the terms of the Loan.

(d) Upon the acquisition of the Property (through foreclosure, power of sale, deed in lieu of foreclosure or otherwise) by Lender, Lender's nominee or designee or by any third party (including, without limitation, any third party transferee obtaining title from Lender or Lender's nominee or designee) (each of the foregoing, a "**Successor Owner**"), the parties hereto shall recognize such Successor Owner as successor in interest to Borrower's rights and interests under the Development Agreement. The powers conferred on Lender hereunder are solely to protect

Lender's interests in the Development Agreement and shall not impose any duty upon Lender to exercise any such powers. To the extent that any approval rights, consent rights or other rights or privileges are granted to Borrower under the Development Agreement, then the parties hereto acknowledge and agree that in such approval rights, consent rights or other rights, protections or privileges shall inure for the benefit of Lender. Commission agrees and acknowledges that upon receipt of notice of the occurrence of an Event of Default (as defined in the Loan Agreement), to follow all written instructions of Lender as assignee of Borrower hereunder.

3. 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.

Borrower:	MarMain (JV), LLC 125 West Marion Street South Bend, Indiana 46601 Attention: Michael Serpos
Commission:	South Bend Redevelopment Commission 1400 S. County-City Building 227 W. Jefferson Blvd. South Bend, Indiana 46601 Attention: 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, Indiana 46601 Attention: Corporation Counsel
Lender:	RMWC WA Credit LLC c/o RMWC 130 East 59th Street, 13th Floor, Suite A New York, New York 10022 Attention: Steven Fischler
with a copy to:	Nelson Mullins Riley & Scarborough, LLP 201 17th Street, Suite 1700 Atlanta, Georgia 30363 Attention: Rusty A. Fleming, Esq.

4. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the laws of the State of Indiana.

5. This Agreement shall be binding upon the parties hereto and each of their respective successors and assigns.

6. Each of the parties hereto represent and warrant that the execution and delivery of this Agreement have been duly authorized by all requisite entity action on their part and the signatory executing this Agreement on their behalf is duly authorized to so execute this Agreement.

7. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

8. This Agreement and the representations, warranties and covenants contained herein are given with the understanding that this Agreement constitutes a material inducement for Lender in making the Loan to Borrower and that Lender shall rely hereon in making the Loan to Borrower. This Agreement and the representations, warranties and covenants contained herein may be relied upon by Lender, its successors and assigns and any nationally recognized statistical rating agency rating any securities issued in connection with the Loan or any portion thereof. To the extent that there are any conflicts between the terms of this Agreement and the Development Agreement, the terms of this Agreement shall control.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

BORROWER:

MARMAIN (JV), LLC, a Delaware limited liability company

By: MarMain Holdings LLC, a Delaware limited liability company

Its: Sole Member

By: MarMain (GP), LLC, a Delaware limited liability company

Its: Manager

By: Oldtown Capital Partners LLC, a Delaware limited liability company

Its: Manager

By: _____

Name: Michael Serposs

Title: Manager

[SIGNATURES CONTINUE ON NEXT PAGE]

COMMISSION:

**CITY OF SOUTH BEND,
DEPARTMENT OF
REDEVELOPMENT,** acting by and
through its governing body, the South Bend
Redevelopment Commission

By: _____
Marcia I. Jones, President

Attest: _____
Vivian Sallie, Secretary

EXHIBIT A

Development Agreement

(attached hereto)