



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 8/6/24  
FROM: Erik Glavich, Director, Growth & Opportunity  
SUBJECT: Development Agreement (Momentum Development Group/SoMa Capital)

Tracy Pres/V-Pres

ATTEST: Timothy A. Ballie Secretary

Date: 8-8-24

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 the old Salvation Army building located at 510 S. Main Street and the parcels south on Main Street.

**SPECIFICS:** The Commission will consider a Development Agreement with Momentum Development Group, LLC, and SoMa Capital LLC (collectively, the "Developer"). The organizations are under common ownership and are rehabilitating the old Salvation Army building located at 510 S. Main Street and the apartment building located at 536 S. Main Street. The Salvation Army building will be converted into an entrepreneurship hub with co-working spaces including private offices, a commercial kitchen, retail space, and retail/commercial space.

Momentum Development Group acquired the Salvation Army building from the Commission through a real estate purchase agreement on May 11, 2023. The organization also has an option to purchase the parking lot south of the building. SoMa Capital owns the apartment building to the south.

This Agreement specifies that (1) the Funding Amount provided by Redevelopment Commission will not exceed \$475,000 and (2) the Private Investment by the Developer will be no less than \$5,825,000. The Funding Amount can be used for Local Public Improvements such as repairing the parking lot, improvements to the exterior of the Salvation Army Building, installing fences, site work, lighting, and signs. The Developer is committed to completing the project by July 21, 2026, in accordance with the purchase agreement.

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

CITY OF SOUTH BEND | REDEVELOPMENT COMMISSION

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 August 8, 2024 (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 Momentum Development Group, LLC, an Indiana Limited Liability Company, with offices at 510 S. Main Street, South Bend, Indiana 46601, and SoMa Capital LLC, an Indiana Limited Liability Company, with a principal mailing address of P.O. Box 1236, South Bend, Indiana 46624 (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, Momentum Development Group, LLC, is the owner of certain real property described in **Exhibit A**, which it acquired from the Commission through a certain Real Estate Purchase Agreement dated May 11, 2023 (the “Purchase Agreement”); and

WHEREAS, SoMa Capital LLC is the owner of certain real property described in **Exhibit B**; and

WHEREAS, Momentum Development Group, LLC, entered into a certain Real Estate Option Agreement with the Commission on May 25, 2023, as amended on August 8, 2024 (collectively, the “Option Agreement”), which provides Momentum Development Group, LLC, with the exclusive option to purchase certain other property owned by the Commission as of the Effective Date and described in **Exhibit C**; and

WHEREAS, Momentum Development Group, LLC, and SoMa Capital LLC (collectively, the “Developer”) are common entities and desire to share the rights and obligations under this Agreement; and

WHEREAS, the real property described in **Exhibit A**, **Exhibit B**, and **Exhibit C** collectively are henceforth known as the “Developer Property” for the purposes of this Agreement; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City within the River West Development Area (the “Area”); 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 D**; and

WHEREAS, the Developer has represented to the Commission it intends to acquire ownership of the real property described in Exhibit C upon completion of the Project; 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 E (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 Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) 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 Five Million Eight Hundred Twenty-Five Thousand Dollars (\$5,825,000.00) 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 temporary, non-exclusive easements on, in, over, under and across any part(s) of the Developer Property (collectively, the "Easement") in the forms attached hereto as **Exhibit F** and **Exhibit G**, 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 and the Purchase 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 D** 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 D** 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 the completion date established in the Purchase Agreement (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 D.

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 H, 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 I 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 E 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. In the event that the option contemplated in the Option Agreement is not exercised by the end of the Option Period (as defined in the Option Agreement), and the transfer of property contemplated therein does not occur, Developer will be considered in default of this Agreement without any requirement of notice or an opportunity to cure such failure.

(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; however, Developer shall reimburse the Commission for its reasonable attorneys’ fees associated with the Commission’s defense of this Agreement against a third-party lawsuit. In no event shall the Commission be required to bear the fees and costs of the Developer’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 the Commission shall be entitled to recover from Developer, as liquidated damages, One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements (“Liquidated Damages”). The Parties acknowledge and agree that the actual damages to the Commission, the City, and its citizens in the event of a default by Developer would be difficult or impossible to determine, and the Liquidated Damages set forth above represents the best estimate of the Parties as to the amount of such damages at the time of execution and delivery of this Agreement. If the Developer fails to perform and complete the work within the timeframe fixed for completion, the Liquidated Damages shall be considered not as a penalty, but as agreed upon monetary damages sustained by the Commission, the City, and citizens of South Bend for the Commission’s direct investment into the Project, the negative impact upon the Commission’s ability to develop other projects in South Bend, and expenses of City employees supporting the Project, including, redevelopment staff, engineering staff, legal department staff, and a construction manager on site.

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 the Commission pursues any legal action (including arbitration) to enforce or interpret this Agreement, Developer shall pay Commission's reasonable attorneys' fees and other costs and expenses (including expert witness 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: Momentum Development Group, LLC  
P.O. Box 815  
South Bend, IN 46601  
Attn: Kristopher Priemer, President

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Developer: SoMa Capital LLC  
P.O. Box 1236  
South Bend, IN 46624  
Attn: Mark Neal, Co-Manager

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Commission: South Bend Redevelopment Commission  
1400S 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  
1200S 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



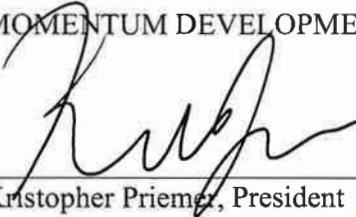
\_\_\_\_\_  
Troy Warner, President

ATTEST:



\_\_\_\_\_  
Vivan G. Sallie, Secretary

MOMENTUM DEVELOPMENT GROUP, LLC



\_\_\_\_\_  
Kristopher Priemer, President

SOMA CAPITAL LLC



\_\_\_\_\_  
Brad Emberton, Co-Manager

**EXHIBIT A**

**Description of Property Owned by Momentum Development Group, LLC, as of the  
Effective Date**

**Tax ID No.** 018-3017-0618

**Parcel Key No.** 71-08-12-306-001.000-026

**Legal Description:** W. 128' Lot 31, All Lots 32 & 33 & N. 1/2 Vac. Alley So. & Adj. Martins  
Addition

**Commonly known as:** 510 S. Main Street

**EXHIBIT B**

**Description of Property Owned by SoMa Capital LLC as of the Effective Date**

**Tax ID No.** 018-3017-0624

**Parcel Key No.** 71-08-12-306-006.000-026

**Legal Description:** Lot 36 Ex 82 1/2 Ft E End Samuel Martins Add

**Commonly known as:** 536 S. Main Street

**Tax ID No.** 018-3017-062601

**Parcel Key No.** 71-08-12-306-007.000-026

**Legal Description:** 82.5' E 1/2 Lot 36 Martins Addition

**Commonly known as:** 117 W. South Street



**EXHIBIT C**

**Description of Property Subject to the Option Agreement**

**Tax ID No.** 018-3017-0620

**Parcel Key No.** 71-08-12-306-002.000-026

**Legal Description:** N 1/2 Lot 34 & S 1/2 Vac Alley N & Adj Martins Add

**Commonly known as:** 520 S. Main Street

**Tax ID No.** 018-3017-0621

**Parcel Key No.** 71-08-12-306-003.000-026

**Legal Description:** S 1/2 Lot 34 Martins Add

**Commonly known as:** 524 S. Main Street

**Tax ID No.** 018-3017-0622

**Parcel Key No.** 71-08-12-306-004.000-026

**Legal Description:** 32 Ft No Side Lot 35 Martins Add

**Commonly known as:** 528 S. Main Street

**Tax ID No.** 018-3017-0623

**Parcel Key No.** 71-08-12-306-005.000-026

**Legal Description:** S 34 Ft Lot 35 Martins Add

**Commonly known as:** 530 S. Main Street

**Tax ID No.** 018-3017-0615

**Parcel Key No.** 71-08-12-306-008.000-026

**Legal Description:** E 37 Ft Lot 31 Martins Add

**Commonly known as:** 114 W. Monroe Street

## **EXHIBIT D**

### **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:

The Developer will complete the development of certain real property to activate a long-vacant building to promote economic development in the southern portion of downtown South Bend as follows:

- At real property identified by Parcel Key No. 71-08-12-306-001.000-026, the Developer will:
  - Construct approximately 20,000 square feet of co-working and/or office space dedicated primarily to entrepreneurs, small businesses, professional service providers and remote workers;
  - Develop approximately 9,000 square feet of commercial grade private commissary kitchen and storage;
  - Develop retail space(s) in a portion of the building frontage facing the road; and
  - Create a separate retail entertainment and/or hospitality space in the building.
- At real property identified by Parcel Key No. 71-08-12-306-006.000-026, the Developer will complete the rehabilitation of the existing building to create twelve (12) apartment units.

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

Each structure will be considered complete upon the issuance of a Certificate of Occupancy.

## EXHIBIT E

### **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:

- Repair, re-grade, and expand the parking lot, which shall include making improvements to site drainage, paving, curbs, sidewalks, and exterior lighting;
- At real property identified by Parcel Key Nos. 71-08-12-306-001.000-026 and 71-08-12-306-002.000-026, construct a patio area outside the south side of the building;
- Install a perimeter fence around all parcels, which will contain parking;
- Landscape and complete site work; and
- Install exterior lighting and signs.

It is understood between the Parties that the Commission will contribute an amount not to exceed the Funding Amount specified in Section 1.3 of this Agreement for the Local Public Improvements. The Developer shall have the sole responsibility to fund any and all costs associated with Local Public Improvements which exceeds this amount. Any and all costs associated with improvements not explicitly described above and not approved pursuant to Section 4.9 (“Specifications for Local Public Improvements”) or that require funding above the Funding Amount are the sole responsibility of the Developer.

**EXHIBIT F**  
**Form of Easement**

## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ of \_\_\_\_\_, 2024 (the “Effective Date”), by and between Momentum Development Group, LLC, an Indiana Limited Liability Company, with offices at 510 S. Main Street, South Bend, Indiana 46601 (the “Grantor”), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400S 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 August 8, 2024 (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.



**EXHIBIT 1**

**Description of Property**

**Tax ID No.** 018-3017-0618

**Parcel Key No.** 71-08-12-306-001.000-026

**Legal Description:** W. 128' Lot 31, All Lots 32 & 33 & N. 1/2 Vac. Alley So. & Adj. Martins  
Addition

**Commonly known as:** 510 S. Main Street

**EXHIBIT G**  
**Form of Easement**



## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ of \_\_\_\_\_, 2024 (the “Effective Date”), by and between SoMa Capital LLC, an Indiana Limited Liability Company, with a principal mailing address of P.O. Box 1236, South Bend, Indiana 46624 (the “Grantor”), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400S 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 August 8, 2024 (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.



**EXHIBIT 1**

**Description of Property**

**Tax ID No.** 018-3017-0624

**Parcel Key No.** 71-08-12-306-006.000-026

**Legal Description:** Lot 36 Ex 82 1/2 Ft E End Samuel Martins Add

**Commonly known as:** 536 S. Main Street

**Tax ID No.** 018-3017-062601

**Parcel Key No.** 71-08-12-306-007.000-026

**Legal Description:** 82.5' E 1/2 Lot 36 Martins Addition

**Commonly known as:** 117 W. South Street

**EXHIBIT H**

**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 I**

**Minimum Insurance Amounts**

- A. Worker's Compensation
  - 1. State Statutory
  - 2. Applicable Federal Statutory
  - 3. Employer's Liability \$100,000.00
  
- B. Comprehensive General Liability
  - 1. Bodily Injury
    - a. \$5,000,000.00 Each Occurrence
    - b. \$5,000,000.00 Annual Aggregate Products and Completed Operation
  
  - 2. Property Damage
    - a. \$5,000,000.00 Each Occurrence
    - b. \$5,000,000.00 Annual Aggregate
  
- C. Comprehensive Automobile Liability
  - 1. Bodily Injury
    - a. \$500,000.00 Each Person
    - b. \$500,000.00 Each Accident
  
  - 2. Property Damage
    - a. \$500,000.00 Each Occurrence