

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of March 28, 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 Great Lakes Capital Development, LLC, an Indiana Limited Liability Company, with offices at 7410 Aspect Drive, Suite 100, Granger, IN 46530 (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 Parties are, together with this Agreement, entering into a certain Real Estate Purchase Agreement with Beacon Health System, Inc. and its subsidiaries Memorial Hospital of South Bend, Inc. and Beacon Medical Group, Inc. (f/k/a Memorial Health System, Inc.) (collectively, “Beacon”) for (a) Developer’s acquisition of certain real property from Beacon as generally described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively the “Project Property”), and (b) Commission’s agreement to enter into this Agreement as well as a separate Development Agreement with Beacon, in furtherance of future development projects related to the Project Property and other Beacon property (the “Beacon Purchase Agreement”); and

WHEREAS, upon acquisition of the Project Property under the Beacon Purchase Agreement, and subject to the terms and conditions of this Agreement, the Developer intends to improve, construct, renovate, or otherwise rehabilitate certain elements of such Project Property in accordance with the project plan (the “Project Plan”) attached hereto as **Exhibit B**, using a combination of private financing and public funding (collectively, the “Project”); and

WHEREAS, the Project Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the River West 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 Plan; and

WHEREAS, the Commission seeks to support the Project, which will include the development of new housing units, a new hotel, and additional retail and office space, all in the downtown Area; and

WHEREAS, the Commission believes that accomplishing the Project as described herein advances a public good, the expected benefits of which exceed the expected costs to the

Commission, and 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 Plan 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; and

WHEREAS, the Developer (or an entity under common control with Developer) owns certain real property described in Exhibit I in a redevelopment area, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”), which is situated in the Area and is set forth on the acquisition list related thereto, pursuant to Commission’s Resolution No. 550; and

WHEREAS, the Commission desires to acquire the Developer Property and, simultaneously with this Agreement, the Developer and Commission are entering into a certain Purchase Agreement (in the form attached as Exhibit J (the “Purchase Agreement”)) for Developer’s sale of such Developer Property to Commission.

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 at least (i) Twenty-Four Million Dollars (\$24,000,000.00) of tax increment finance revenues, and (ii) contingent upon an executed agreement by one or more of the Parties with the Northern Indiana Regional Development Authority (“RDA”) for its Regional Economic Acceleration Development Initiative and direction of funding thereunder to the Commission, the amount of Eleven Million Seven Hundred Eighty Thousand Dollars (\$11,780,000.00) (“READI Grant”); all of which shall be used for paying the costs associated with the construction, equipping, inspection and delivery of the Local Public Improvements and Project.

1.4 Private Investment. “Private Investment” means an amount (provided the Funding Amount includes the READI Grant), no less than One Hundred Two Million Dollars (\$102,000,000.00), not including the Funding Amount, to be expended by the Developer after the Effective Date (subject to Commission’s satisfaction of its obligations hereunder) 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 Project 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. FEASIBILITY AND DUE DILIGENCE ON PROJECT PROPERTY.

3.1 General Planning Process.

(a) The Parties agree, as a condition of commencing construction of the Project, to continue to cooperate in good faith to prepare, evaluate and agree (if mutual agreement may be reached) on a planning schedule for (i) refinement of the scope of the Project Plan and Local Public Improvements, (ii) review of total anticipated costs of the Project and models estimating operating performance of each aspect of the Project Plan, and (iii) timing for critical milestones to confirm both (x) mutual agreement to the scope of Project, and (y) that as a requirement for advancement, financial metrics for the Project Plan meet or exceed an eight percent (8%) return on cost, prior to finalizing construction plans for submission to the Commission for the Project or otherwise being obligated to commence construction on the Project Property (the “Mutual Project Diligence”). The Mutual Project Diligence shall be completed no later than eighteen (18) months from the Effective Date. Subject to both Developer acquiring the Project Property under the Beacon Purchase Agreement and the Parties’ reaching agreement to the Mutual Project Diligence, the Parties will execute an addendum hereto, to reflect any applicable changes and an agreement to commence Project construction/advancement (“Notice to Commence”), which may also confirm additional terms and conditions regarding each element of Local Public

Improvements and/or the Project with respect to plans, specifications, timeline and funding to ensure coordination and completion of all work to support the Project.

(b) As part of Mutual Project Diligence, Developer may, from time to time, elect to submit to the Commission for its review schematic design or development drawings, which will be reviewed in accordance with Section 4.8. The Commission shall cause the City's Executive Director of Community Investment, or their designee ("Reviewer"), to provide notice of approval or disapproval within fourteen (14) days after receipt of the proposed drawings under Section 4.8. If proposed drawings or plans are disapproved, the Reviewer shall explain in a written notice specific reasons for the disapproval, and Developer shall be entitled to submit revised proposed drawings. Any subsequent submission to address a disapproved item will be reviewed within ten (10) days after receipt of the revised proposed drawings; provided, however, that the Commission and Reviewer may not then disapprove of any feature that was included in prior proposed drawings that was not disapproved unless in the reasonable good faith judgment of the Reviewer, the revisions materially adversely affect such feature. This process shall continue until the drawings submitted are fully approved.

(c) The Commission covenants and agrees to pay directly (or reimburse Developer) for any costs incurred by Developer in connection with acquiring and owning the Project Property between the date of acquisition of such property and the earlier of the date on which (i) the Parties agree to a Notice to Commence, or (ii) the Commission acquires the Project Property under the Option Agreement. Such costs include, for example, any environmental, survey or other diligence costs before acquisition, real estate taxes, insurance premiums, utility services and related costs of holding the Project Property and/or leasing the same to Beacon for continued parking rights. Any such costs will be paid directly by Commission or otherwise reimbursed to Developer within thirty (30) days of Developer providing an invoice together with supporting documentation of the costs incurred.

3.2 Other Diligence on Project Property. The execution of the Notice to Commence is subject to the satisfaction or waiver in writing of the following terms and conditions:

(a) Project Property. Developer shall have acquired title to the Project Property under the Beacon Purchase Agreement.

(b) READI Grant. The RDA shall have awarded the READI Grant (and such amount be included in the Funding Amount), for investment in the Local Public Improvements and/or Project.

(c) Additional Property. The Commission shall have acquired, at its sole cost and expense, and transferred to Developer (or caused the following to be transferred to Developer) to become part of the Project Property, certain property generally located at 333 N. Martin Luther King Jr. Drive (identified as Parcel No. 018-1003-0112) currently owned by 300 North Michigan Associates, LLC (the "300 North Michigan Site")

(d) Billboards. The Commission shall have at its sole cost and expense terminated all easement or other rights of any billboards to remain on the Project Property, including on the 300 North Michigan Site and on property generally referred to as 324 N. Main Street and caused such billboards to be removed (or have reached an agreement acceptable to the Developer for such owner of the billboards to remove the billboards from the Project Property).

(e) INDOT. The Indiana Department of Transportation shall have agreed to any right of way dedications or reconfigurations as may be required by the Parties in connection with the Project.

(f) Final Plans. Final plans for the Project shall have been completed and approved by the Commission or Reviewer under Sections 3.1 and/or 4.8 hereof.

(g) Required Permits. Developer shall have obtained (or determined that it will be able to obtain) all required permits and all permits related to the Project.

(h) Tax Abatement. The Commission shall have supported a proposal to the Common Council of the City of South Bend for a ten (10) year real property tax abatement with respect to the Project, on a schedule acceptable to Developer.

(i) Notice to Commence. The Parties shall have confirmed, through the Mutual Project Diligence, final scope of the Project and agreement to anticipated economics related to the development and operation of the Project.

(j) Entitlements. The Project Property shall have been zoned to permit the construction of the Project, with issuance of any required variances and other approvals with respect to the Project.

(k) Platting. Developer shall have created a plat for the Project Property with separate legal lots of record for components of the Project.

(l) Local Public Improvements. Developer (or its affiliate or designee) and Commission (or the City of South Bend), as applicable, shall have agreed to terms of a certain (i) Ground Lease, for the lease of ground to the Commission for its construction and location of one or more parking garage structures, and (ii) perpetual easement in favor of Developer, for Developer's right to use structural components of such garage in connection with construction of the Project, and a license agreement for access to and use of certain parking spaces within the garage structures to serve the Project.

(m) Purchase Agreement. The Parties shall have closed on the purchase and sale of Developer's Property pursuant to the Purchase Agreement set forth in the form attached hereto as Exhibit J.

(n) Option to Purchase. The Parties shall have executed the Option to Purchase Agreement in the form (or substantially similar to the form) attached hereto as Exhibit G and executed, recorded, and placed of record in the office of the County Recorder of St.

Joseph County, Indiana a memorandum of the Option set forth in Section 6, in the form (or substantially similar to the form) attached hereto as **Exhibit H**.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer may elect (absent mutual agreement to the contrary) to: (i) waive in writing satisfaction of the conditions and proceed with the Notice to Commence; or (ii) terminate this Agreement by a written notice to the Commission. In the event the Developer elects to terminate this Agreement in accordance with this Section 3, the Commission shall have the option to purchase the Project Property from the Developer, under the terms set forth in Section 6. Notwithstanding anything to the contrary set forth herein, Developer and Commission shall work diligently and in good faith to satisfy the conditions set forth in this Section 3.

SECTION 4. DEVELOPER'S DEVELOPMENT 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. For the avoidance of all doubt, the Commission's completion of the Local Public Improvements, in the timeframes and as further described in this Agreement, or as agreed in a Notice to Commence after Mutual Project Diligence, shall be a condition precedent to any and all obligations of the Developer relating to this Agreement.

4.2 **The Project.** After the later of (a) acquiring fee title to the Project Property, and (b) Developer's execution of a Notice to Commence, the Developer will expend, subject to the Commission's satisfaction of its obligations hereunder related to advancement of the Funding Amount and timely completion of the Local Public Improvements, the Private Investment necessary to perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as **Exhibit B** and the plans and specifications which will be approved by the Commission's Reviewer, or their designee, pursuant to Section 4.8 ("Submission of Plans and Specifications for Project") of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

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. Notwithstanding the foregoing or anything to the contrary contained herein, the Parties agree to work with the engineering firm designated by Developer for the Project, to prepare the design for the Local Public Improvements at Commission's expense. The Parties acknowledge that (i) the Commission is responsible for such expenses, including those if any incurred for such design prior to the Parties entering into a Notice to Commence, and (ii) from and after the Notice to Commence, the Parties agree to seek reimbursement from the READI Grant if applicable for such expenses. Developer, on behalf of and in collaboration and cooperation with the Commission, shall coordinate the preparation of the plans and specifications for the Local Public Improvements, which plans and specifications shall be submitted to and approved by the Commission prior to bidding (which approval shall not be unreasonably withheld, conditioned, or delayed).

4.4 Lease and Grant of Easement. Upon the execution of the Notice to Commence, the Developer will grant to the Commission (a) a ground lease, for the pad site location for each of the garage structures contemplated to be constructed by Commission within the Project Property, and (b) a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Project 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.

4.5 Grant of Structure Easement and Parking License. Upon the execution of the Notice to Commence, the Commission and Developer will enter into a perpetual structure easement, in such a form to be mutually agreed, for the grant by the City (or Commission) to Developer of an easement and related rights to use structural components of the garage structures to be constructed by Commission in connection with Developer’s construction of the Project. Simultaneously upon execution of the Notice to Commence, the Commission and Developer will enter into a license for Developer’s right to access and to use certain parking spaces within the garage structures to serve the Project. The intent of the license will also reserve to the Commission all rights and responsibilities with respect to the maintenance and operation of the garage, as well as retention of a certain portion of the Parking Garages to be controlled by the Commission for the right and benefit of Beacon Health Systems and/or its affiliates.

4.6 Timeframe for Completion.

(a) Provided that the Parties enter into a Notice to Commencement and Commission has completed the Local Public Improvements by June 30, 2026 (or such other date as may be agreed in the Notice to Commence), the Developer hereby agrees to complete the Project in two phases as set forth in the Project Plan (“Phase 1” and “Phase 2”) and any other obligations the Developer may have under this Agreement. The Developer further agrees the total Project will be completed in accordance with the Project Plan attached hereto as **Exhibit B** (unless otherwise agreed in a Notice to Commence). Subject to the terms of any such Notice to Commence, Phase 1 shall be completed by the later of (i) 24 months following Commission’s completion of the Parking Garage and Local Public Improvements for Phase I, or (ii) December 31, 2026, and Phase 2 shall be completed by the later of (iii) 24 months following Commission’s completion of the Parking Garage and Local Public Improvements for Phase II, or (iv) December 31, 2028 (collectively, the “Mandatory Project Completion Dates”).

(b) The Developer’s failure to complete Phase 1 or Phase 2 of the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Dates will constitute a default under this Agreement without any requirement of notice or an opportunity to cure such failure. Notwithstanding the foregoing, Developer may extend the Mandatory Project Completion Dates by two (2) additional twelve (12) month periods, provided that at least 33% of the Project has already been

completed. In order to extend the Mandatory Project Completion Dates, Developer shall provide written notice to Commission of the extension at least one month prior to the applicable Mandatory Project Completion Date.

4.7 Reporting Obligations. Upon substantial completion of the Project, the Developer hereby agrees to (or cause its general contractor to) report to the Commission the number of local contractors and local laborers involved in the Project and the amount of contracts entered into with local contractors related to the Project.

4.8 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 (other than for planning and design related engagements for the Local Public Improvements), the Developer shall deliver a complete set thereof to the Commission's Reviewer, or their designee who will promptly approve the plans or will work in good faith with the Developer to reasonably modify said plans and specifications for the Project and thereafter approve the plans. Without limiting the generality of the foregoing, the Parties agree that with respect to each item of a Local Public Improvement, including site work, the Parking Garages and related public work:

(a) The Parties will cooperate, in good faith, to further establish a scope of work, schedule for completion and budget for items of such work;

(b) The Parties will enter into an addendum hereto, containing the agreed terms and conditions concerning the plans, specifications and timeline for each component of the Local Public Improvements for Developer to cause to be constructed (or to manage as part of the overall Project); and

(c) Commission shall pay the cost to design and construct the Local Public Improvements in accordance with each addendum for such work, which costs shall at least total the Funding Amount.

4.9 Reporting Obligations. On or before June 30 and December 31 of each year from and after the Parties enter into a Notice to Commence, 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 Project Property.

4.10 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 subject to the terms of this Agreement.

4.11 Specifications for Local Public Improvements. The Commission will be responsible for the preparation of all bid specifications related to the Local Public Improvements,

and the Commission will pay all costs and expenses of such preparation. The Commission will seek Developer's approval of the bid specifications, which consent will not be unreasonably withheld. Thereafter the Commission 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 Local Public Improvements in its reasonable discretion and may request revisions or amendments to be made to the same. The Commission shall not be required to expend the Funding Amount on the Local Public Improvements (other than for planning and design related engagements for the Local Public Improvements) until the Engineering Department has approved all bid specifications.

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

4.13 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 G 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).

4.14 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 DEVELOPMENT 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) After the Developer has obtained fee simple title to the Project Property, 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 in accordance with each addendum to be agreed to between the Parties (as referred in Section 4.8 above).

(b) Before any work on the Local Public Improvements will commence, (i) the Commission will have received satisfactory plans and specifications for the Project and responded in accordance with Section 4.8 ("Submission of Plans and Specifications for Project") of this Agreement, and (ii) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same

in accordance with Section 4.11 (“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, by providing reasonable notice to the Developer.

5.3 Reporting Obligations. Upon the letting of contracts for substantial portions of the Local Public Improvements and again upon substantial completion of the Local Public Improvements, the Commission hereby agrees to report to the Developer, the amount of bid awards for each contract related to the Local Public Improvements, and information regarding which contractor is awarded each contract with respect to the Local Public Improvements. Additionally, on or before June 30 and December 31 of each year until substantial completion of the Local Public Improvements, the Commission shall submit to the Developer a report, in the format similar to Exhibit E, demonstrating the Commission’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 of the Local Public Improvements completed to date, (ii) an update on the Local Public Improvements project schedule, and (iii) an itemized accounting generally identifying the Funding Amount expended to the date of the report.

5.4 Easements. Other than the Easement the Developer will be granting the Commission, as contemplated in Section 4.4, the Commission shall obtain any and all other 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 Project.

5.5 Additional Easements. In addition, without limiting the foregoing, as a condition to Developer’s obligations hereunder, the Parties will enter into a permanent easement (as contemplated in Section 4.5 above) regarding the right of Developer to use certain parking areas within the Parking Garages as well as a permanent easement allowing Developer to attach to structural components of the Parking Garages for purposes of the design and construction of real estate improvements adjacent to and connected to such Parking Garages.

5.6 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.

5.7 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. OPTION TO PURCHASE PROJECT PROPERTY.

6.1 Generally. The Parties acknowledge and agree that the Commission's commitment to construct the Local Public Improvements is inextricably connected to the Developer's commitment to develop the Project Property as set forth herein, and the Commission's construction of the Local Public Improvements will occur before the Developer begins significant vertical construction work towards completing the Project Plan. The Parties further acknowledge and agree that the Project Plan is one piece of a greater downtown South Bend plan for development of the Madison Lifestyle District, and if the Developer does not proceed with constructing the Project as set forth herein, the Commission shall be entitled to an exclusive option to purchase the Project Property ("Option"), as further defined herein. More specifically, upon Developer acquiring the Project Property, the Parties agree to execute an Option to Purchase, in the form (or substantially similar to the form) attached hereto as **Exhibit G**. Notwithstanding the foregoing, if Developer does not acquire the Project Property from Beacon, this Section 6 shall become null and void.

6.2 Events to Trigger Option to Purchase. The Commission shall have the right to exercise its Option if:

(a) The conditions set forth in Section 3.2 cannot be fulfilled and the Developer elects to terminate this Agreement as a result; or

(b) Developer fails to secure construction financing for the Project and commence construction of Phase 1 of the Project within Twelve (12) months following Commission's completion of the Local Public Improvements related to such Phase 1 of the Project.

6.3 Exercise of Option. The Commission may exercise its Option by delivering written notice of such intent in writing no later than ninety (90) days following the trigger event(s) as set forth in Section 6.2. In the event the Commission exercises its Option, the purchase price shall be One Dollar (\$1.00), and Developer shall convey the Project Property to the Commission by Special Warranty Deed.

6.4 Recording of Memorandum. Upon the Developer's acquisition of title to the Project Property, the Parties shall execute, record, and place of record a memorandum of this Option, in the form (or substantially similar to the form) attached hereto in **Exhibit H**, in the office of the County Recorder of St. Joseph County, Indiana.

6.5 Release of Option. Promptly upon (or simultaneously with) Developer's commencement of construction of Phase 1 of the Project and its closing on construction financing for such Phase 1, the Commission will issue to Developer a certificate acknowledging such commencement and releasing Commission's Option in the Property (the "Option Release"). The Parties agree to record the Option Release immediately upon issuance, and Developer will pay the costs of recordation.

SECTION 7. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

7.1 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 challenging Developer's authority or actions hereunder. 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 7.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 8. DEFAULT.

8.1 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 8.1, then no default shall exist and the noticing Party shall take no further action.

8.2 Liquidated Damages and Option to Purchase.

(a) In the event Developer fails to commence construction of the Project within the time frame set forth in Section 6.2(b), the Commission shall have (i) the exclusive right to exercise its Option to purchase the Project Property by following the procedures set forth in Section 6; and (ii) 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 its Local Public Improvements that is specific to Developer's Project Plan and which cannot be reused for other development plans of the Project Property ("Liquidated Damages").

(b) If and in the event Developer fails to (i) complete Phase 1 or Phase 2 of the Project by the applicable Mandatory Project Completion Date, or (ii) expend the full amount of the Private Investment for the Project upon the completion of Phase 2, then the Commission shall be entitled to recover from Developer, all Liquidated Damages together with any other remedies available under this Agreement including, without limitation, this Section 8.

If the Developer fails to perform and complete the work within the timeframe for completion, the Parties agree that 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.

8.3 General Remedies. Whenever an event of default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (a) collect any payments due under this Agreement; (b) protect the rights granted to the non-defaulting party under this Agreement; (c) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (d) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses, as well as attorneys' fees, in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, as well as reasonable attorneys' fees.

8.4 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither 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 9. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.

9.1 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.

9.2 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.

9.3 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 Developer's actions involving the Local Public Improvements or the Project. Further, the Parties agree that their approval of each other's plans or specifications does not create any liability to the approving party, and, to the extent that such liability may be found, the party that created the plans or specifications shall fully indemnify the approving party against any claims arising from such plans or specifications.

SECTION 10. MISCELLANEOUS.

10.1 Other Necessary Acts. Each Party shall execute and deliver to the other Party all such other further instruments and documents as may be reasonably necessary to accomplish the matters contemplated by this Agreement and to provide and secure to the other Party 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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: Great Lakes Capital Development LLC
7410 Aspect Drive, Suite 100
Granger, IN 46530
Attn: Audra Sieradzki
E-mail: asieradzki@greatlakescapital.com

With a copy to: Rich Deahl
E-mail: rdeahl@greatlakescapital.com

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

10.7 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.

10.8 Interpretation; Governing Law. This Agreement was negotiated by the Parties at arm's length and each of the Parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither Party shall be deemed the drafter of the Agreement, and neither Party shall maintain that the language in this Agreement shall be construed against any signatory hereto. The captions and Section numbers of this Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Agreement. Further, notwithstanding anything to the contrary herein, no person other than the Parties hereto, and their permitted assigns, shall have any right of action under this Agreement. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

10.9 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).

10.10 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.

10.11 Tax Advice. Each Party acknowledges and agrees that it is responsible for its own federal, state, and/or local tax obligations or consequences that may arise from or relate to this Agreement. Neither Party is relying on any representation that may be made by the other regarding the tax consequences of the matters contemplated herein and shall hold the other Party harmless from any adverse tax consequences resulting from any and all provisions of this Agreement.

10.12 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. None of the Parties shall assign this Agreement without the prior written approval of the other parties hereto; provided that (a) without the prior written approval of Developer, the Commission may assign this Agreement to another agency, board, commission, department and/or instrumentality of the City of South Bend, Indiana; and (b) without the prior written approval of the Commission, Developer may (i) assign this Agreement to any affiliate or principal of Developer (which is under common control); or (ii) collaterally assign this Agreement to its construction financing lender. 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).

10.13 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.

10.14 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.

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

10.16 Entire Agreement. Except for as may be provided in the Purchase 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.

10.17 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, Vice President

ATTEST:



Vivian Sallie, Secretary

Great Lakes Capital Development LLC

Bradley J. Toothaker, Manager

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, Vice President

ATTEST:

Vivian Sallie, Secretary

Great Lakes Capital Development LLC

DocuSigned by:

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Bradley J. Toothaker, Manager

EXHIBIT A

Description of Project Property

Tax ID No. 018-1003-0125

Parcel Key No. 71-08-12-103-002.000-026

Legal Description: Lots 72 & 73 O P South Bend

Commonly known as: 307 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0107

Parcel Key No. 71-08-01-358-008.000-026

Legal Description: Lot 172 & So 1/2 Vac Alley Op South Bend

Commonly known as: 309 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0111

Parcel Key No. 71-08-01-358-007.000-026

Legal Description: Lot 171 & So 41ft Lot 170 & No 1/2 Vac Alley Op South Bend

Commonly known as: 321 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0112

Parcel Key No. 71-08-01-358-006.000-026

Legal Description: Lot 169 & 25'N End Lot 170 O P So Bend

Commonly known as: 333 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0101

Parcel Key No. 71-08-01-358-005.000-026

Legal Description: 55'E End Lot 176 O P So Bend

Commonly known as: Parcel immediately east of 336 N. Main Street

Tax ID No. 018-1003-0100

Parcel Key No. 71-08-01-358-001.000-026

Legal Description: Lot 176 Ex 55'E End O P So Bend

Commonly known as: 336 N. Main Street, South Bend, IN 46601

Tax ID No. 018-1003-0102

Parcel Key No. 71-08-01-358-002.000-026

Legal Description: N 30 Ft Lot 175 O P So Bend

Commonly known as: 336 N. Main Street, South Bend, IN 46601

Tax ID No. 018-1003-0103

Parcel Key No. 71-08-01-358-003.000-026

Legal Description: 36 Ft S Side Lot 175 O P So Bend

Commonly known as: 324 N. Main Street, South Bend, IN 46601

Tax ID No. 018-1003-0092

Parcel Key No. 71-08-01-355-006.000-026

Legal Description: Lot 162& E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13
03-22-2013

Commonly known as: 401 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0093

Parcel Key No. 71-08-01-355-005.000-026

Legal Description: Lot 161& E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13
03-22-2013

Commonly known as: 409 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0094

Parcel Key No. 71-08-01-355-004.000-026

Legal Description: Lot 160 & S1/2 Vac alley N & Adj & E1/2 Vac alley W & Adj O P So Bend
14/15 Vac Ord #10218-13 03-22-13 13/14 Vac Ord#10176-12 10-11-12

Commonly known as: 413 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0095

Parcel Key No. 71-08-01-355-003.000-026

Legal Description: Lots 165 166 E Pt Of 167 & Lots 157 158 & 159 & Ew vac alley Ex Pt Sold
For St & Pt Vac Ns Alley Original Plat So Bend 14/15 Vac Ord#10218-13 03-22-13
13/14 Vac Ord#10176-12 10-11-12

Commonly known as: 425 N. Dr. Martin Luther King Jr. Boulevard, South Bend, IN 46601

Tax ID No. 018-1003-0089

Parcel Key No. 71-08-01-355-002.000-026

Legal Description: Lots 163 & 164 & W1/2 Vac alley E & Adj O P So Bend 14/15 Vac Ord
#10218-13 7/15/2013

Commonly known as: 322 N. Main Street, South Bend, IN 46601

EXHIBIT B

Project Plan

Subject to the Mutual Project Diligence, the Developer will complete the construction of a development known as the “Madison Street District” and consisting of each of the following elements:

Phase 1

- Construction of a 150-unit apartment building that includes workforce housing units;
- Construction of a 105-bed hotel;
- Construction of flex/office/research/other space measuring at least 35,000 square feet in size; and
- Construction of a retail space measuring at least 1,400 square feet in size.

Phase 2

- Construction of a 91-unit apartment building that includes workforce housing units;
- Construction of retail space measuring at least 7,000 square feet in size; and

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.

EXHIBIT C

Description of Local Public Improvements

Subject to the Mutual Project Diligence, 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:

Phase 1

- Construct a cast-in-place concrete parking structure with 625 parking spaces; and
- Make pedestrian crossing improvements on streets on and around the development site
- Site work to be identified

Phase 2

- Construct a precast concrete parking structure with approximately 300 parking spaces.

Any and all costs associated with improvements in Phase 1 and Phase 2 not explicitly described in this Exhibit and not approved pursuant to Section 4.11 (“Specifications for Local Public Improvements”) are the sole responsibility of the Developer.

EXHIBIT D

Form of Temporary Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ of _____, 2024 (the “Effective Date”), by and between Great Lakes Capital LLC, with offices at 7410 Aspect Drive, Suite 100, Granger, IN 46530 (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 Land Exchange and Development Agreement by and between Grantor and Grantee, dated March 28, 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.

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:

Great Lakes Capital LLC

Printed: Bradley J. Toothaker

Its: Managing Member

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said State, personally appeared Bradley J. Toothaker, to me known to be the Managing Member 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 _____ day of _____, 20____.

_____, Notary Public

Residing in _____ County, _____

My Commission Expires: _____

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. / s / 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

Parcel 1

Key No. 018-1003-0125

Legal Description: Lots 72 & 73 O P South Bend

Commonly Known As: 307 N. Dr. Martin Luther King Jr. Blvd.

Parcel 2

Key No. 018-1003-0107

Legal Description: Lot 172 & So 1/2 Vac Alley Op South Bend

Commonly Known As: 309 N Dr. Martin Luther King Jr Blvd

Parcel 3

Key No. 018-1003-0111

Legal Description: Lot 171 & So 41ft Lot 170 & No 1/2 Vac Alley Op South Bend

Commonly Known As: 321 N Dr. Martin Luther King Jr Blvd

Parcel 4

Key No. 018-1003-0103

Legal Description: 36 Ft S Side Lot 175 O P So Bend

Commonly Known As: 324 N Main Street

Parcel 5

Key No. 018-1003-0102

Legal Description: N 30 Ft Lot 175 O P So Bend

Commonly Known As: 328 N Main Street

Parcel 6

Key No. 018-1003-0100

Legal Description: Lot 176 Ex 55'E End O P So Bend

Commonly Known As: 336 N Main Street

Parcel 7

Key No. 018-1003-0092

Legal Description: Lot 162 & E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13
03-22-2013

Commonly Known As: 401 N. Martin Luther King Jr. Dr.

Parcel 8

Key No. 018-1003-0093

Legal Description: Lot 161 & E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13
03-22-2013

Commonly Known As: 409 N. Martin Luther King Jr. Dr.

Parcel 9

Key No. 018-1003-0094

Legal Description: Lot 160 & S1/2 Vac alley N & Adj & E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13 03-22-13 13/14 Vac Ord#10176-12 10-11-12

Commonly Known As: 413 N. Martin Luther King Jr. Dr.

Parcel 10

Key No. 018-1003-0095

Legal Description: Lots 165 166 E Pt Of 167 & Lots 157 158 & 159 & Ew vac alley Ex Pt Sold For St & Pt Vac Ns Alley Original Plat So Bend 14/15 Vac Ord#10218-13 03-22-13 13/14 Vac Ord#10176-12 10-11-12

Commonly Known As: 425 N. Martin Luther King Jr. Dr.

Parcel 11

Key No. 018-1003-0089

Legal Description: Lots 163 & 164 & W1/2 Vac alley E & Adj O P So Bend 14/15 Vac Ord #10218-13 7/15/2013

Commonly Known As: 410 416 N. Main St.

Parcel 12

Key No. 018-1003-0117

Legal Description: 56x100 Ft Nw Pt Lot 115 O P South Bend

Commonly Known As: 332 N. Martin Luther King Jr. Dr.

Parcel 13

Key No. 018-1003-0118

Legal Description: 56' Ne Pt Lot 115 & S 22.75' Vac Madison St N & Adj O P South Bend

Commonly Known As: 110 E Madison St.

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. \$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

Exhibit G

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 Great Lakes Capital Development, LLC, an Indiana Limited Liability Company, with offices at 7410 Aspect Drive, Suite 100, Granger, IN 46530 (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 **Exhibit 1** to this Option Agreement (the "Property"). The Parties have entered into a certain Development Agreement dated March 28, 2024 (the "Development Agreement") relating to the Developer's construction of new housing units, a new hotel, and retail and office space in downtown South Bend and the Commission's contribution to the construction of a parking garage on the Property (the "Development Agreement"). The Parties acknowledge and agree that the Project Plan set forth in the Development Agreement is one piece of a greater downtown South Bend plan for development of the Madison Lifestyle District, and if the Developer does not proceed with completing the Project as set forth in the Development Agreement, the Commission, the City, and citizens of the South Bend will suffer significant injury. Therefore, if the Project is not completed, in accordance with the Project Plan set forth in the Development Agreement, the Commission shall be entitled to an exclusive option to purchase the Project Property ("Option"), if certain conditions are present, and, in the event of exercise of said Option, Developer agrees to sell the Property 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 Property, subject to the terms and conditions set forth herein. The Option must be exercised by Commission, if at all, no later than one year after the trigger events set forth in the Development Agreement (the "Option Period"), which shall occur if:
 - a. The conditions set forth in Section 3.2 of the Development Agreement that must be satisfied or waived in writing prior to execution of the Notice of Commence cannot be fulfilled and the Developer elects to terminate the Development Agreement as a result, or
 - b. Developer fails to (1) complete Phase 1 or Phase 2 of the Project by the Mandatory Completion Dates set forth in Section 4.6 of the Development Agreement, or (2) expend the full amount of Private Investment as defined in Section 1.4 of the Development Agreement for the Project by the end of the Mandatory Completion

Dates.

As a consideration for this Option, the parties acknowledge that the Commission will pay the Funding Amount and construct the Local Public Improvements as set forth in the Development Agreement (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.

3. Purchase Price. In the event of exercise, the Commission shall purchase from Developer and Developer shall sell to the Commission, the Property for the purchase price of One Dollar (\$1.00), 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 Property, which shall include the Purchase Price and shall specify that the Commission shall accept Property described in Exhibit 1, as-is with all faults. 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:

Great Lakes Capital Development LLC
7410 Aspect Drive, Suite 100
Granger, IN 46530
Attn: Audra Sieradzki
E-mail: asieradzki@greatlakescapital.com

With a copy to:

Rich Deahl
E-mail: rdeahl@greatlakescapital.com

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 28 day of March 2024.

SOUTH BEND REDEVELOPMENT
COMMISSION



Troy Warner, Vice President

ATTEST:



Vivian Sallie, Secretary

GREAT LAKES CAPITAL
DEVELOPMENT LLC

Bradley J. Toothaker, Manager

EXHIBIT 1

Property Description

Parcel 1

Key No. 018-1003-0125

Legal Description: Lots 72 & 73 O P South Bend

Commonly Known As: 307 N. Dr. Martin Luther King Jr. Blvd.

Parcel 2

Key No. 018-1003-0107

Legal Description: Lot 172 & So 1/2 Vac Alley Op South Bend

Commonly Known As: 309 N Dr. Martin Luther King Jr Blvd

Parcel 3

Key No. 018-1003-0111

Legal Description: Lot 171 & So 41ft Lot 170 & No 1/2 Vac Alley Op South Bend

Commonly Known As: 321 N Dr. Martin Luther King Jr Blvd

Parcel 4

Key No. 018-1003-0103

Legal Description: 36 Ft S Side Lot 175 O P So Bend

Commonly Known As: 324 N Main Street

Parcel 5

Key No. 018-1003-0102

Legal Description: N 30 Ft Lot 175 O P So Bend

Commonly Known As: 328 N Main Street

Parcel 6

Key No. 018-1003-0100

Legal Description: Lot 176 Ex 55'E End O P So Bend

Commonly Known As: 336 N Main Street

Parcel 7

Key No. 018-1003-0092

Legal Description: Lot 162 & E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13
03-22-2013

Commonly Known As: 401 N. Martin Luther King Jr. Dr.

Parcel 8

Key No. 018-1003-0093

Legal Description: Lot 161 & E1/2 Vac alley W & Adj O P So Bend 14/15 Vac Ord #10218-13
03-22-2013

Commonly Known As: 409 N. Martin Luther King Jr. Dr.

Parcel 9

Key No. 018-1003-0094

Legal Description: Lot 160 & S1/2 Vac alley N & Adj & E1/2 Vac alley W & Adj O P So Bend
14/15 Vac Ord #10218-13 03-22-13 13/14 Vac Ord#10176-12 10-11-12

Commonly Known As: 413 N. Martin Luther King Jr. Dr.

Parcel 10

Key No. 018-1003-0095

Legal Description: Lots 165 166 E Pt Of 167 & Lots 157 158 & 159 & Ew vac alley Ex Pt Sold
For St & Pt Vac Ns Alley Original Plat So Bend 14/15 Vac Ord#10218-13 03-22-13 13/14 Vac
Ord#10176-12 10-11-12

Commonly Known As: 425 N. Martin Luther King Jr. Dr.

Parcel 11

Key No. 018-1003-0089

Legal Description: Lots 163 & 164 & W1/2 Vac alley E & Adj O P So Bend 14/15 Vac Ord
#10218-13 7/15/2013

Commonly Known As: 410 416 N. Main St.

Parcel 12

Key No. 018-1003-0117

Legal Description: 56x100 Ft Nw Pt Lot 115 O P South Bend

Commonly Known As: 332 N. Martin Luther King Jr. Dr.

Parcel 13

Key No. 018-1003-0118

Legal Description: 56' Ne Pt Lot 115 & S 22.75' Vac Madison St N & Adj O P South Bend

Commonly Known As: 110 E Madison St.

Exhibit H

Memorandum of Option Agreement

MEMORANDUM OF OPTION AGREEMENT

This Memorandum of Option Agreement (this “Memorandum”) is entered into as of the _____ day of _____, 2024 (the “Effective Date”), by and between South Bend Redevelopment Commission, governing body of the Department of Redevelopment of the City of South Bend, Indiana (the “Commission”), and Great Lakes Capital Development, LLC, an Indiana Limited Liability Company, with offices at 7410 Aspect Drive, Suite 100, Granger, IN 46530 (the “Developer”) (the Commission and the Developer are each sometimes referred to herein as a "Party" or collectively as the "Parties").

WITNESSETH

WHEREAS, the Developer is the owner of that certain real estate situated in the City of South Bend, County of St. Joseph and State of Indiana, comprising 13 parcels which are more particularly described on Exhibit 1, attached hereto and made a part hereof as if fully rewritten herein (the “Property”); and

WHEREAS, as of the date hereof, the Commission and the Developer entered into an Option Agreement (the “Agreement”) whereby the Developer granted the Commission an exclusive option (the “Option”) to purchase the Property (the “Option Property”) upon terms and conditions more particularly set forth in the Agreement, and pursuant to the terms of a certain Development Agreement between the Parties dated March 28, 2024 (the “Development Agreement”); and

WHEREAS, the parties are desirous of placing their interests therein as a matter of record.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and the parties intending to be legally bound thereby, the parties hereto hereby agree as follows:

1. The term of the Option commenced upon the Effective Date and shall continue until the Developer completes Phase 1 and Phase 2 of the Project by the Mandatory Completion Dates set forth in Section 4.6 of the Development Agreement and expends the full amount of Private Investment as defined in Section 1.4 of the Development Agreement for the Project by the end of the Mandatory Completion Dates, which must be evidenced by a Certificate of Completion, unless earlier terminated pursuant to terms set forth in the Agreement.

2. This Memorandum may be executed in any number of counterparts, each of which counterpart, when so executed and delivered, shall be an original, but all such counterparts when taken together shall constitute but one and the same Memorandum.

GREAT LAKES CAPITAL DEVELOPMENT LLC

Bradley J. Toothaker, Managing Member

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said State, personally appeared Bradley J. Toothaker, to me known to be the Managing Member of the Developer in the above Memorandum of Option and acknowledged the execution of the same as his free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2024.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

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

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. /s/ Danielle Campbell Weiss

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#10218-13 7/15/2013

Commonly Known As: 410 416 N. Main St.

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Key No. 018-1003-0117

Legal Description: 56x100 Ft Nw Pt Lot 115 O P South Bend

Commonly Known As: 332 N. Martin Luther King Jr. Dr.

Parcel 13

Key No. 018-1003-0118

Legal Description: 56' Ne Pt Lot 115 & S 22.75' Vac Madison St N & Adj O P South Bend

Commonly Known As: 110 E Madison St.

EXHIBIT I

Description of Developer Property

LOTS NUMBERED 289, 290 AND 291 AS SHOWN ON THE ORIGINAL PLAT OF THE TOWN, NOW CITY OF SOUTH BEND, TOGETHER WITH THE SOUTH HALF OF THE VACATED ALLEY LYING NORTH AND ADJACENT TO SAID LOT 291, IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

ALSO, THE RIGHTS AND BENEFITS OF AN AGREEMENT BY AND BETWEEN THE NATIONAL BANK AND TRUST COMPANY OF SOUTH BEND, ROBERTSON BROS. DEPARTMENT STORE, INC., AN INDIANA CORPORATION AND NATIONAL AUTO-PARK, INC., RECORDED NOVEMBER 16, 1965 AS MISCELLANEOUS RECORD 217, PAGE 170 OF THE ST. JOSEPH COUNTY RECORDS. FIRST AMENDMENT TO AGREEMENT BY AND AMONG WELLS FARGO BANK, NATIONAL ASSOCIATION, AS SUCCESSOR IN INTEREST TO THE NATIONAL BANK AND TRUST COMPANY OF SOUTH BEND, AND COYNE INVESTMENTS, LLC, AS SUCCESSOR IN INTEREST TO NATIONAL AUTO-PARK, INC., RECORDED JANUARY 30, 2012 AS INSTRUMENT NUMBER 1202558 OF THE ST. JOSEPH COUNTY RECORDS.

ALSO, THE RIGHTS AND BENEFITS OF A GRANT OF EASEMENT BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA, A MUNICIPAL CORPORATION, AND NATIONAL AUTOPARK, INC., AN INDIANA CORPORATION, DATED JUNE 22, 1992 AND RECORDED JUNE 28, 1992 AS INSTRUMENT NUMBER 9223119 OF THE ST. JOSEPH COUNTY RECORDS.

EXHIBIT J

[Form of Real Estate Purchase Agreement]