



Department of
Community Investment

Memorandum

Tuesday, March 22, 2016

TO: *Redevelopment Commissioners*

FROM: Scott Ford, Community Investment

SUBJECT: First Amendment to Development Agreement – former College Football Hall of Fame

On April 15, 2015, the Commission approved initially the terms of a partnership with JSK / Southold LLC for the sale of the former College Football Hall of Fame and the adjoining parking lot for a mixed-use redevelopment project to include office and retail space along with a hotel. On July 16, 2015 the Commission approved a Development Agreement that outlined those terms.

Through the course of the ensuing months, JSK has worked closely with City Staff, Marriot Corporate officials, as well as with neighboring businesses to the site to hone the development and confirm specific details that were contemplated but not specified in the original agreement, such as the parking arrangement.

The program of the hotel has increased by 20 rooms, which will represent an additional \$1.7M in estimated private investment for the construction. Additionally, several design changes were made to accentuate opportunities for ground floor retail to enhance the key axis between the Century Center's main entrance and Michigan Street, as well as to improve the streetscape along St. Joseph and Jefferson streets. The additional hotel rooms and building program will generate additional tax revenues back to the community in excess of \$500,000 in the first 10 years of the project.

Consequently, the Amendment reflects the larger private investment and public assistance for site costs, for additional request of \$500,000 to be added to the Commission's original commitment of \$700,000 for site improvements.

The Amendment also:

- Provides a commitment of the Commission to offer up to 70 spaces at the Leighton Garage to be rented by JSK for use of hotel guests, for which JSK will pay the standard monthly rate. Parties will agree to reevaluate this arrangement after the first year of hotel operations.
- Increases the personal guarantee of AJ Patel to reflect the increase in the incentive associated with the project.
- Changes the closing dates for the HOF and Jefferson Lot to reflect current timetable.

Staff requests approval of this Agreement.



FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is made on March 24, 2016 (the "Effective Date"), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and Southhold, LLC, an Indiana limited liability company with its registered office at 120 Dixieway North, South Bend, Indiana (the "Developer") (each a "Party," and collectively the "Parties").

RECITALS

A. The Commission and the Developer entered into that certain Development Agreement dated July 16, 2015 (the "Development Agreement"), for the redevelopment of the Project Site (as defined in the Development Agreement), including reusing and rehabilitating the building known as the former College Football Hall of Fame and constructing a new hotel on an adjacent parcel in downtown South Bend.

B. In consideration of the Developer's ongoing planning activities concerning the project, the Parties desire to amend certain provisions of the Development Agreement in accordance with the terms of this First Amendment.

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

1. In Section 1.3 of the Development Agreement, "Seven Hundred Thousand Dollars (\$700,000)" is deleted and replaced by "One Million Two Hundred Thousand Dollars (\$1,200,000)."

2. In accordance with the above increase of the Funding Amount to One Million Two Hundred Thousand Dollars (\$1,200,000.00), each instance of "One Million Nine Hundred Thousand Dollars (\$1,900,000.00)" in Section 4.15 of the Development Agreement is deleted and replaced by "Two Million Four Hundred Thousand Dollars (\$2,400,000.00)." Further, Anant Patel, as the sole member and owner of the Developer, will execute the Amended and Restated Personal Guaranty attached hereto as Exhibit 1.

3. In the first sentence of Section 3.1 of the Development Agreement, "January 1, 2016" is deleted and replaced by "April 1, 2016."

4. In the second sentence of Section 3.3.2 of the Development Agreement, "the Jefferson Lot Closing Date" is deleted and replaced by "August 11, 2016."

5. The following new Section is inserted immediately following Section 5.8 of the Development Agreement:

5.9 Parking Accommodations. The Commission hereby agrees to make available to the Developer, upon the Developer's request, no greater than seventy (70) reserved parking spaces in the Leighton Parking Garage located in South Bend, Indiana, and dedicated for use by the Developer or its designees for the Project Site for the period commencing on the date the Project Site is operational ("Operation Commencement Date," which date the Developer will certify in writing to the Commission) and expiring on the first anniversary of the Operation Commencement Date (the "Initial Reserved Parking Period"). The Commission will make such reserved parking spaces available to Developer during the Initial Reserved Parking Period for a per-space-per-month rate at the lesser of (a) the standard monthly space rate for reserved spaces in the Leighton Parking Garage in effect on the Operation Commencement Date and (b) a new residential space rate in effect on the Operation Commencement Date after adoption by the South Bend Board of Public Works and approval by the South Bend Common Council. At least sixty (60) days before the expiration of the Initial Reserved Parking Period, the Developer and the Commission will negotiate in good faith concerning parking accommodations after the expiration of the Initial Reserved Parking Period on terms and conditions as mutually agreed upon by the Developer and the Commission.

6. Immediately following the first sentence of Section 10.7 of the Development Agreement, the following sentence is inserted: "Each Party may modify its address(es) or representative(s) stated below by written notice to the other Party." Pursuant to Section 10.7 of the Development Agreement as amended by this First Amendment, the Developer hereby instructs the Commission to direct copies of all notices, demands, or other communications required or permitted under the terms of the Development Agreement to Barnes & Thornburg LLP, 121 West Franklin Street, Suite 200, Elkhart, IN 46516, Attn: Joel D. Duthie, as the Developer's legal counsel replacing Warrick & Boyn, LLP.

7. Unless expressly modified by this First Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

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

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Development Agreement to be effective on the Effective Date stated above.

COMMISSION:

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

DEVELOPER:

Southhold, LLC



Anant Patel, Sole Member

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EXHIBIT 1

Form of Amended and Restated Personal Guaranty

AMENDED AND RESTATED PERSONAL GUARANTY

This Amended and Restated Personal Guaranty (this "Guaranty") dated March 24, 2016 (the "Effective Date"), is made by Anant Patel, an Indiana resident (the "Guarantor"), in favor of the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the "Commission") and the City of South Bend, a municipal corporation (the "City," and together with the Commission, the "Guaranteed Parties").

RECITALS

WHEREAS, the Guarantor is the sole member and owner of Southhold, LLC (the "Company"); and

WHEREAS, the Company and the Commission entered into a Development Agreement dated as of July 16, 2015, as amended by the First Amendment to Development Agreement dated March 24, 2016 (collectively, the "Development Agreement") concerning the redevelopment of certain real property located in the City of South Bend, Indiana (the "Hall of Fame Property"); and

WHEREAS, pursuant to the Development Agreement, the Company will purchase the Hall of Fame Property from the Commission in order to integrate the Hall of Fame Property into the Company's development of adjacent real property (the "Project"); and

WHEREAS, to induce the Commission to sell the Hall of Fame Property to the Company for inclusion in the Project, the Guarantor now offers this Guaranty regarding the Company's obligation to purchase the Hall of Fame Property from the Commission; and

NOW THEREFORE, the Guarantor makes this Guaranty on the following terms:

1. The Guarantor represents and warrants that he is the sole member and owner of the Company.
2. As an inducement for the Commission to enter into the Development Agreement with the Company, the Guarantor hereby unconditionally and absolutely guarantees to the Guaranteed Parties the full and prompt payment when due, upon written demand from either of the Guaranteed Parties to the Guarantor, any and all amounts (a) payable to the Commission under the Development Agreement and (b) actually expended by the Commission in completing the Local Public Improvements (as defined in the Development Agreement) to the date of the Commission's demand (collectively, the "Guaranteed Obligations").
3. The amount of the Guaranteed Obligations shall not exceed Two Million Four Hundred Thousand Dollars (\$2,400,000.00) and shall be reduced from time to time in accordance with the amount of any payment made by the Guarantor to the Guaranteed Parties to be applied to the Guaranteed Obligations. This Guaranty supersedes and replaces the Personal Guaranty of Guarantor in favor of the Commission dated July 16, 2015.

4. The Guarantor hereby waives any and all notices concerning the Guaranteed Obligations, including notice of acceptance of this Guaranty, notice of any liability to which it may apply, notice of protest, and notice of dishonor or nonpayment of any such liability. Further, the Guarantor hereby waives any right to require the Guaranteed Parties to proceed first against the Company in the event of the Company's failure to pay any amount owing to the Commission.

5. The Guarantor will not exercise any right of reimbursement or contribution from the Company until all obligations owing to the Commission are paid in full.

6. The Guarantor agrees that his liability as Guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference, or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise.

7. This Guaranty will remain in full force and effect until all of the Guaranteed Obligations are fully paid and satisfied.

8. This Guaranty will be interpreted according to and governed by the laws of the State of Indiana.

9. This Guaranty may not be changed, waived, discharged or terminated except by a written instrument signed by the Guarantor and the Commission.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty Agreement to be effective on the Effective Date stated above.

Guarantor:


Anant Patel

ACCEPTED:

South Bend Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

Dated: