

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "Second Amendment") is made on June 24, 2021, 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 Wharf Partners LLC, an Indiana limited liability company (the "Developer") (each a "Party," and collectively the "Parties").

RECITALS

A. The Commission and the Developer entered into a Development Agreement dated February 22, 2018, which was amended by a First Amendment to Development Agreement, dated December 13, 2018 (together, the "Development Agreement"), for the development of a Project in the River East Development Area near Seitz Park.

B. Due to construction constraints, the Parties entered into a related Memorandum of Understanding, dated December 13, 2018, as the same may be amended from time to time, which set forth certain obligations of the Parties relative to each other and additional development projects in the area of Seitz Park.

C. The construction constraints are continuing and the Parties desire to modify further the Development Agreement to reflect their agreements related to their continued cooperation as set forth herein.

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

1. Section 4.5 shall be deleted in its entirety and replaced with the following:

4.5 Timeframe for Completion. The Developer hereby agrees to commence substantial elements of Phase I of the Project no later than April 30, 2018 (the "Phase I Commencement Deadline"). The Developer hereby agrees to reach substantial completion of the entirety of Phase I of the Project, in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications submitted to the Commission pursuant to Section 4.8 of this Agreement, by the date that is twenty-four months after the Effective Date of this Agreement (the "Phase I Completion Deadline"). The Developer hereby agrees to commence substantial elements of Phase II of the Project no later than June 30, 2023 (the "Phase II Commencement Deadline"). The Parties acknowledge that the City is working on another project abutting the Developer Property and that the installation of pilings and eventual construction of Phase II of the Project will impact the City's project; therefore, the Commission desires to install the pilings for Phase II of the Project as Local Public Improvements under the terms and conditions of this Agreement. The Parties agree that the timing of the Commission's installation of the pilings for Phase II of the Project as Local Public Improvements shall not be considered when determining the Developer's compliance with the Phase II Commencement Deadline. The Developer hereby agrees to reach substantial completion of the entirety of the Project, inclusive of Phase I and Parts 1

and 2 of Phase II, in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications submitted to the Commission pursuant to Section 4.8 of this Agreement, by September 30, 2025 (the "Project Completion Deadline"). For purposes of assessing the Developer's compliance with this Section 4.5, the Commission has determined that the Developer met the Phase I Commencement Deadline and the Phase I Completion Deadline. For Developer's compliance with this Section 4.5 as it applies to Phase II, the Commission will determine, in its sole discretion, the substantiality of the improvements undertaken by the Developer by the Phase II Commencement Deadline (without consideration for the Commission's installation of the pilings for Phase II, as set forth herein) and the substantiality of the Developer's completion of the Project as a whole by the Project Completion Deadline. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to meet the any deadline as required under this Section 4.5 will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

2. The Parties acknowledge that Phase I of the Project commenced on or before the Phase I Commencement Deadline rendering Section 7.3 of the Development Agreement, requiring the sale of the Property to the City or the Commission in the event of Developer's failure to meet the Phase I Commencement Deadline, obsolete. As such, Section 7.3 of the Development Agreement shall be deleted in its entirety.

3. The Developer hereby expressly reaffirms its obligations under the Development Agreement, and, unless expressly modified by this Second Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

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

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

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

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

Signature Page Follows

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

COMMISSION:

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Marcia I. Jones, President

ATTEST:

By: _____
Quentin M. Phillips, Secretary

DEVELOPER:

Wharf Partners LLC

By: _____
Frank A. Perri, Managing Member