



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, August 12, 2021 – 9:30 a.m.

<http://tiny.cc/RDC081221>

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**1. Roll Call**

**2. Approval of Minutes**

- A. Minutes of the Regular Meeting of Thursday, July 22, 2021

**3. Approval of Claims**

- A. Claims Allowance Request 07.27.21
- B. Claims Allowance Request 07.27.21
- C. Claims Allowance Request 08.03.21
- D. Claims Allowance Request 08.10.21

**4. Old Business**

**5. New Business**

A. River West Development Area

- 1. First Amendment to License Agreement for Musical Festival
- 2. Budget Request (TIF Neutralization – Baker Tilly)
- 3. Budget Request (Blackthorn Drainage Study)
- 4. Development Agreement (The Bakery Group, LLC)

B. River East Development Area

- 1. Budget Request (Seitz Park Phase III)
- 2. Resolution No. 3536 (Accepting Transfer of Property from BPW (3 Lots on SR23))

C. South Side Development Area

- 1. Development Agreement (Cultivating Life)

D. RDC General

- 1. Budget Request (United Way)

**6. Progress Reports**

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

**7. Next Commission Meeting:**

Thursday, August 26, 2021, 9:30 am

**8. Adjournment**



South Bend.  
**Redevelopment Commission**  
 227 West Jefferson Boulevard, Room 1308, South Bend, IN  
 46601

**SOUTH BEND REDEVELOPMENT COMMISSION  
 REGULAR MEETING**

July 22, 2021

9:30 a.m.

Presiding: Marcia Jones, President

South Bend, Indiana

The meeting was called to order at 9:35 a.m.

**1. ROLL CALL**

Members Present:	Marcia Jones, President Don Inks, Vice-President Troy Warner, Commissioner Eli Wax, Commissioner	
Members Absent:	Quentin Phillips, Secretary Leslie Wesley, Commissioner	
Legal Counsel:	Sandra Kennedy, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary	
Others Present:	Santiago Garces Tim Corcoran Andrew Netter Jeff Ryan Michael Surak Kyle Silveus Zach Hurst Charlotte Brach Conrad Damian	DCI DCI DCI Real America Real America Engineering Engineering Engineering Resident

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, July 8, 2021**

Upon a motion by Commissioner Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, July 8, 2021.

## 3. Approval of Claims

- **Claims Submitted for July 14a, July 20b, and July 20c, 2021**

Upon a motion by Vice-President Inks, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the claims for July 14a, July 20b, and July 20c, 2021 submitted on Thursday, July 22, 2021.

## 4. Old Business

## 5. New Business

### A. River West Development Area

#### 1. Purchase Agreement (RealAmerica)

Mr. Garces Presented a Purchase Agreement (RealAmerica). This is for the sale of 6 vacant lots across from the South Bend Cubs ballpark to RealAmerica in the amount of \$1,000 for potential redevelopment as a \$12,000,000 mixed-income multi-family housing complex. RealAmerica is applying for low-income housing tax credits with an application being submitted to the state of Indiana by the end of July. This has already received support from the Council if the project moves forward. This will include 60 units of affordable housing with 12 of them being reserved for those with disabilities and then adding an additional 67 units that would be market rate that would come at a later date. Just a note that the difference of the assessed value and the sale price counts as points that the applicant has towards the tax credits. Commission approval is requested.

Commissioner Wax asked about the option in the REPA to purchase even if RealAmerica does not receive the tax credits.

Mr. Garces responded that the developers are excited to do a project there regardless of receiving the tax credits.

Mr. Jeff Ryan, Vice-President of Development for RealAmerica spoke to the project stating that they are looking at the project first as the tax credits taking the lead. The goal is to complete and submit the application in July 2021 and get the awarded project in November 2021. Construction of all 127 units would then begin next Spring (2022). If they are not successful on the tax credit application, they will re-evaluate the program and may re-apply. They are very excited about the site; speaking with his market analysis this morning, he said it is a very strong

South Bend Redevelopment Commission Regular Meeting – July 22, 2021

market for the project they are looking to provide to South Bend residents.

Upon a motion by Vice-President Inks, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Purchase Agreement (RealAmerica) submitted on Thursday, July 22, 2021.

**6. Progress Reports**

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

**7. Next Commission Meeting:**

Thursday, August 12, 2021, 9:30 a.m.

**8. Adjournment**

Thursday, July 22, 2021, 9:42 a.m.

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Quentin Phillips, Secretary

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Marcia Jones, President



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

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Tuesday, July 27, 2021

Pursuant to Indiana Code 36-4-8-7, I have audited and certified the attached claims and submit them for allowance in the following amounts:

GBLN-0019239	\$48,000.00
GBLN-0019426	\$22,835.75
GBLN-0019652	\$26,646.00
Total:	<u>\$97,481.75</u>

Daniel Parker, City Controller

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

\$ 97,481.75

By: \_\_\_\_\_  
South Bend Redevelopment Commission  
Name:

Date:

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Name:

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Name:

# General journal

City of South Bend

<b>Journal batch number</b>	GBLN-0019239	<b>Reported as ready by</b>	<b>Posted</b>	Yes
<b>Name</b>	General	<b>Rejected by</b>	<b>Posted on</b>	7/14/2021 4:21:24 PM
<b>Description</b>	2021-06-30 2nd Qtr RDC Engineering Services from Fund 324 to Fund 101	<b>Approved by</b>	<b>Log</b>	

<b>Voucher</b>								
<b>GLJN-00001401</b>								
<b>Company accounts</b>								
<b>Date</b>	<b>Ledger account</b>	<b>Account type</b>	<b>Account name</b>	<b>Amount in transaction currency</b>		<b>Description</b>		
				<b>Debit</b>	<b>Credit</b>			
CoSB	6/30/2021	324-10-102-121-431002--	Ledger	Services & Charges- Professional-Engineering & Architectural	USD	48,000.00	0.00	2021-06-30 2nd Qtr RDC Engineering Services from Fund 324 to Fund 101
CoSB	6/30/2021	101-06-600-500-349020--	Ledger	Charges for Svcs-Other- Staff Contracts	USD	0.00	48,000.00	2021-06-30 2nd Qtr RDC Engineering Services from Fund 324 to Fund 101
<b>Total</b>				<b>48,000.00</b>		<b>48,000.00</b>		

# General journal

City of South Bend

<b>Journal batch number</b>	GBLN-0019426	<b>Reported as ready by</b>	<b>Posted</b>	Yes
<b>Name</b>	General	<b>Rejected by</b>	<b>Posted on</b>	7/15/2021 11:16:12 PM
<b>Description</b>	2021-06-30 2nd Qtr RDC Legal Services from Fund 324 to Fund 101	<b>Approved by</b>	<b>Log</b>	

<b>Voucher</b>									
<b>GLJN-00001407</b>									
<b>Company accounts</b>								<b>Description</b>	
<b>Date</b>	<b>Ledger account</b>	<b>Account type</b>	<b>Account name</b>	<b>Amount in transaction currency</b>	<b>Debit</b>		<b>Credit</b>		
CoSB	6/30/2021	324-10-102-121-431001--	Ledger	Services & Charges-Professional-Legal Services	USD	22,835.75	0.00	2021-06-30 2nd Qtr RDC Legal Services from Fund 324 to Fund 101	
CoSB	6/30/2021	101-05-050-050-349020--	Ledger	Charges for Svcs-Other-Staff Contracts	USD	0.00	22,835.75	2021-06-30 2nd Qtr RDC Legal Services from Fund 324 to Fund 101	
<b>Total</b>						<b>22,835.75</b>	<b>22,835.75</b>		



# General journal

City of South Bend

<b>Journal batch number</b>	GBLN-0019652	<b>Reported as ready by</b>	<b>Posted</b>	Yes
<b>Name</b>	General	<b>Rejected by</b>	<b>Posted on</b>	7/15/2021 11:26:12 PM
<b>Description</b>	2021-06-30 2nd Qtr RDC DCI Supervisory Services	<b>Approved by</b>	<b>Log</b>	

<b>Voucher</b>									
<b>GLJN-00001410</b>									
<b>Company accounts</b>								<b>Description</b>	
<b>Date</b>	<b>Ledger account</b>	<b>Account type</b>	<b>Account name</b>	<b>Amount in transaction currency</b>	<b>Debit</b>		<b>Credit</b>		
CoSB	6/30/2021	324-10-102-121-431000--	Ledger	Services & Charges- Professional-Other Professional Svcs	USD	26,646.00	0.00	2021-06-30 2nd Qtr RDC DCI Supervisory Services from Fund 324 to Fund 211	
CoSB	6/30/2021	211-10-101-120-349020--	Ledger	Charges for Svcs-Other- Staff Contracts	USD	0.00	26,646.00	2021-06-30 2nd Qtr RDC DCI Supervisory Services from Fund 324 to Fund 211	
<b>Total</b>						<b>26,646.00</b>	<b>26,646.00</b>		



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

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Tuesday, July 27, 2021

Pursuant to Indiana Code 36-4-8-7, I have audited and certified the attached claims and submit them for allowance in the following amounts:

GBLN-0020189	\$23,121.24
GBLN-0000000	\$0.00
Total:	<u>\$23,121.24</u>

Daniel Parker, City Controller

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

\$ 23,121.24

By: \_\_\_\_\_  
South Bend Redevelopment Commission  
Name:

Date:

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Name:

**Expenditure approval**

RDC Payments-07/27/21 Pymt Run

GBLN-0020189

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**Payment method:** ACH-Total  
**Voucher:** RDCP-00000341  
**Payment date:** 7/27/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000222	BLACK & VEATCH CORPORATION	1349402	Water Hydraulic Model Assistance	8/3/2021	\$11,152.50	430-10-102-121-431002-- PROJ00000091	PO-0005255

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00000342  
**Payment date:** 7/27/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000472	DLZ INDIANA LLC	703269	Douglas Road Lift Station	8/1/2021	\$5,048.49	435-10-102-121-431002-- PROJ00000021	PO-0006596

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00000343  
**Payment date:** 7/27/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000982	LAWSON- FISHER ASSOCIATES	202018202210585	Olive Street Reconstruction Phase 2	6/29/2021	\$2,555.00	324-10-102-121-431002-- PROJ00000059	PO-0006602
V-00000982	LAWSON- FISHER ASSOCIATES	201516102210506	AMENDMENT #2	6/30/2021	\$215.25	324-10-102-121-431002-- PROJ00000059	PO-0001774

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00000344  
**Payment date:** 7/27/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001077	MERIDIAN TITLE CORP	233223	Escrow Fees	4/16/2021	\$250.00	324-10-102-121-444000-- PROJ00000018	PO-0008915

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**Payment method:** ACH-Total  
**Voucher:** RDCP-00000345  
**Payment date:** 7/27/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00004757	Leslie M Omeeboh	5	Grant Writing and Research	7/20/2021	\$3,900.00	433-10-102-123-439300--	PO-0007401

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

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Tuesday, August 3, 2021

Pursuant to Indiana Code 36-4-8-7, I have audited and certified the attached claims and submit them for allowance in the following amounts:

GBLN-0020589	\$114,592.07
GBLN-0020577	\$4,316,007.96
Total:	<u>\$4,430,600.03</u>

Daniel Parker, City Controller

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

\$ 4,430,600.03

By: \_\_\_\_\_  
South Bend Redevelopment Commission  
Name:

Date:

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**Expenditure approval**

RDC Payments-8/3/21 Pymt Run

GBLN-0020589

**Payment method:** ACH-Total  
**Voucher:** RDCP-00000351  
**Payment date:** 8/3/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000019	ABONMARCHE CONSULTANTS OF IN	135775	CORBITT - 17JL01 LLW CHARLES MARTIN INTERSECTION	7/27/2021	\$4,200.00	324-10-102-121-431002-- PROJ00000047	PO-0000035
V-00000019	ABONMARCHE CONSULTANTS OF IN	135777	Design Services	7/8/2021	\$612.50	429-10-102-121-431002-- PROJ00000167	PO-0005886
V-00000019	ABONMARCHE CONSULTANTS OF IN	135350	CORBITT - 17JL01 LLW CHARLES MARTIN INTERSECTION	6/3/2021	\$12,687.50	324-10-102-121-431002-- PROJ00000047	PO-0000035
V-00000019	ABONMARCHE CONSULTANTS OF IN	135350	Amendment K	6/3/2021	\$1,512.50	324-10-102-121-431002-- PROJ00000047	PO-0000035

**Payment method:** CHK-Total  
**Voucher:** RDCP-00000352  
**Payment date:** 8/3/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000429	DA DODD INC	28480	Raw Water Header Replacement	4/30/2021	\$15,950.00	324-10-102-121-443001-- PROJ00000056	PO-0006085

**Payment method:** CHK-Total  
**Voucher:** RDCP-00000353  
**Payment date:** 8/3/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000918	JONES PETRIE RAFINSKI	40457	Design Services	8/13/2021	\$16.62	324-10-102-121-431002-- PROJ00000208	PO-0003358

**Payment method:** CHK-Total

**Voucher:** RDCP-0000354  
**Payment date:** 8/3/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-0000982	LAWSON-FISHER ASSOCIATES	202109002210697	Coal Line Trail - Construction Inspection Services	7/30/2021	\$6,389.28	324-10-102-121-444000-- PROJ00000018	PO-0008430
V-0000982	LAWSON-FISHER ASSOCIATES	212109002215108	Coal Line Trail - Construction Inspection Services	6/30/2021	\$8,519.04	324-10-102-121-444000-- PROJ00000018	PO-0008430

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**Payment method:** ACH-Total  
**Voucher:** RDCP-0000355  
**Payment date:** 8/3/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001722	UNITED CONSULTING	1640655	CHRIS - 16J008 ENGINEERING SERVICE PH I FOR	8/13/2021	\$21,043.74	324-10-102-121-443001-- PROJ00000018	PO-0000011
V-00001722	UNITED CONSULTING	164070211	CHRIS - KYLE SCOPE INCLUDES RIGHT OF WAY SERVICES	8/13/2021	\$4,716.89	324-10-102-121-443001-- PROJ00000018	PO-0000358
V-00001722	UNITED CONSULTING	1640740	CHRIS - 16J008 ENGINEERING SERVICE PH II FOR	8/13/2021	\$25,530.00	324-10-102-121-443001-- PROJ00000018	PO-0000011
V-00001722	UNITED CONSULTING	1640739	CHRIS - 16J008 ENGINEERING SERVICE PH II FOR	7/16/2021	\$13,414.00	324-10-102-121-443001-- PROJ00000018	PO-0000011

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**Expenditure approval**

2021-07-29 Debt Service Wire Payments - RDC

GBLN-0020577

**Payment method:** Wire-Singl  
**Voucher:** RDCP-00000346  
**Payment date:** 7/29/2021  
**Payment reference:** DS0054

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	11269	2015 Eddy St Commons Bonds Lease Rental Payment - Transfer to Fund 752	8/1/2021	\$1,233,000.00	436-10-102-121-452000- DS0054-	

**Payment method:** Wire-Total  
**Voucher:** RDCP-00000347  
**Payment date:** 7/29/2021  
**Payment reference:** DS0169

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	1788696	2018 Redevelopment District Bonds (TIF Park Bonds)	8/1/2021	\$345,000.00	324-10-102-121-438100- DS0169-	
V-00001743	US BANK	1788696	2018 Redevelopment District Bonds (TIF Park Bonds)	8/1/2021	\$148,725.00	324-10-102-121-438200- DS0169-	

**Payment method:** Wire-Total  
**Voucher:** RDCP-00000348  
**Payment date:** 7/27/2021  
**Payment reference:** DS0210

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	1776061	2020 TIF Library Bonds	7/28/2021	\$75,000.00	324-10-102-121-438100- DS0210-	
V-00001743	US BANK	1776061	2020 TIF Library Bonds	7/28/2021	\$40,053.21	324-10-102-121-438200- DS0210-	

**Payment method:** Wire-Total  
**Voucher:** RDCP-00000349  
**Payment date:** 7/29/2021  
**Payment reference:** DS0005 & DS0006

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
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V-00000187	BANK OF NEW YORK MELLON	INV 6/4/21	IBB Special Program Bonds, Series 2011A (TIF A)	8/1/2021	\$805,000.00	324-10-102-121-438100-DS0005-
V-00000187	BANK OF NEW YORK MELLON	INV 6/4/21	IBB Special Program Bonds, Series 2011A (TIF A)	8/1/2021	\$154,684.25	324-10-102-121-438200-DS0005-
V-00000187	BANK OF NEW YORK MELLON	INV 6/4/21	IBB Special Program Bonds, Series 2011A (TIF B)	8/1/2021	\$460,000.00	324-10-102-121-438100-DS0006-
V-00000187	BANK OF NEW YORK MELLON	INV 6/4/21	IBB Special Program Bonds, Series 2011A (TIF B)	8/1/2021	\$88,170.50	324-10-102-121-438200-DS0006-

**Payment method:** Wire-Singl  
**Voucher:** RDCP-00000350  
**Payment date:** 7/29/2021  
**Payment reference:** DS0163

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	1788713	2017 Eddy St Commons Bonds - Transfer to Fund 760	8/1/2021	\$966,375.00	436-10-102-121-452000-DS0163-	



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

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Tuesday, August 10, 2021

Pursuant to Indiana Code 36-4-8-7, I have audited and certified the attached claims and submit them for allowance in the following amounts:

GBLN-0021011	\$5,345.95
GBLN-0000000	\$0.00

Total:	<u>\$5,345.95</u>
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Daniel Parker, City Controller

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

\$ 5,345.95

By: \_\_\_\_\_  
South Bend Redevelopment Commission  
Name:

Date:

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**Expenditure approval**

RDC Payments-8/10/21 Pymt Run

GBLN-0021011

**Payment method:** ACH-Total  
**Voucher:** RDCP-00000356  
**Payment date:** 8/10/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000019	ABONMARCHE CONSULTANTS OF IN	136257	Amendment #1	8/5/2021	\$1,920.50	324-10-102-121-442001-- PROJ00000046	PO-0006600

**Payment method:** CHK-Total  
**Voucher:** RDCP-00000357  
**Payment date:** 8/10/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000074	ALLIANCE ARCHITECTS INC	6	PSA - Salvation Army Roof Repairs	8/15/2021	\$49.05	324-10-102-121-443001-- PROJ00000073	PO-0004341
V-00000074	ALLIANCE ARCHITECTS INC	6	Amendment #1	8/15/2021	\$576.40	324-10-102-121-443001-- PROJ00000073	PO-0004341

**Payment method:** ACH-Total  
**Voucher:** RDCP-00000358  
**Payment date:** 8/10/2021

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00005109	Electric Housing LLC	1005	Training / Small Business Dev Pokagon	7/30/2021	\$2,800.00	433-10-102-123-439300--	PO-0011034

**FIRST AMENDMENT TO LICENSE AGREEMENT FOR USE**

This First Amendment to License Agreement For Use (this “First Amendment”) is dated August 12, 2021 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and M & M Promotions, LLC (the “Company”) (each a “Party” and collectively the “Parties”).

RECITALS

- A. The Commission and the Company entered into a License Agreement For Use dated January 28, 2021 (the “Agreement”) with regard to the Property; and
- B. The Company desired temporary access to portions of the Commission Property during a ticketed public event occurring on September 18, 2021 (the “Event”),
- C. The Parties now wish to amend the Agreement to change the date of the event.

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

- 1. Recital A of the Agreement shall be deleted in its entirety and replaced with the following:  

The Licensee desires temporary access to portions of the Commission Property during a ticketed public event occurring on May 14, 2022 (the “Event”)
- 2. Section 2 of the Agreement shall be deleted in its entirety and replaced with the following:  

Term and Termination. The Licensee’s license to use the Property shall be effective at 12:00 a.m. on May 7, 2022 and shall terminate at 11:59 p.m. on May 21, 2022 (the “Term”).
- 3. Unless expressly modified by this First Amendment, the terms and provisions of the Agreement remain in full force and effect.
- 4. Capitalized terms used in this First Amendment will have the meanings set forth in the Agreement unless otherwise stated herein.

*Signature Page Follows*

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to License Agreement for Temporary Parking to be effective as of the Effective Date stated above.

**M&M PROMOTIONS, LLC.**

**SOUTH BEND REDEVELOPMENT COMMISSION**

\_\_\_\_\_  
Doug Michael, Partner

\_\_\_\_\_  
Marcia I. Jones, President

\_\_\_\_\_  
Steve Mihaljevic, Partner

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 8/12/2021  
FROM: Amanda Pietsch  
SUBJECT: 2021 Annual TIF Neutralization Budget Request

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

Date: \_\_\_\_\_

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) River West; River East; South Side; Douglas Road; West Washington; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

### Purpose of Request:

Requesting \$15,000 for the 2021 annually required TIF Neutralization analysis and reporting, prepared by Baker Tilly Municipal Advisors.

INTERNAL USE ONLY: Project ID: PROJ \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$ \_\_\_\_\_;

Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_;

Funding Limits: Engineering: \$ \_\_\_\_\_; Other Prof Serv Amt \$ \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_; Street Const Amt \$ \_\_\_\_\_;

Building Imp Amt \$ \_\_\_\_\_; Sewers Amt \$ \_\_\_\_\_; Other (specify) Amt \$ \_\_\_\_\_



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 8/12/2021  
FROM: Kara Boyles, City Engineer  
SUBJECT: Budget Request (Blackthorn Drainage Study)

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

Date: \_\_\_\_\_

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) **River West**; River East; South Side; Douglas Road; West Washington; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

### Purpose of Request:

This request for \$30,000 will allow for engineering services related to the Blackthorn Golf Club Drainage Study. An analysis of the contributing watershed to the existing drainage basin as shown in the attached Figure 1 will estimate the capacity of the basin under existing conditions contrasted with anticipated future development, including the current development known as the Claeys' Candy site. During the review of this site, the City was unable to locate as-built drawings which would have confirmed the basin design and potential capacity. The City allowed Claeys' Candy to connect to the basin based on the understanding that Engineering would need to perform an evaluation of the basin to verify that it could serve Claeys' Candy as well as additional adjacent properties in the future.

We request \$30,000 for this study, which will verify the ability of the basin to fully or partially serve as a master detention basin for future development conditions based on the City's current stormwater standards.

INTERNAL USE ONLY: Project ID: PROJ \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$ \_\_\_\_\_;

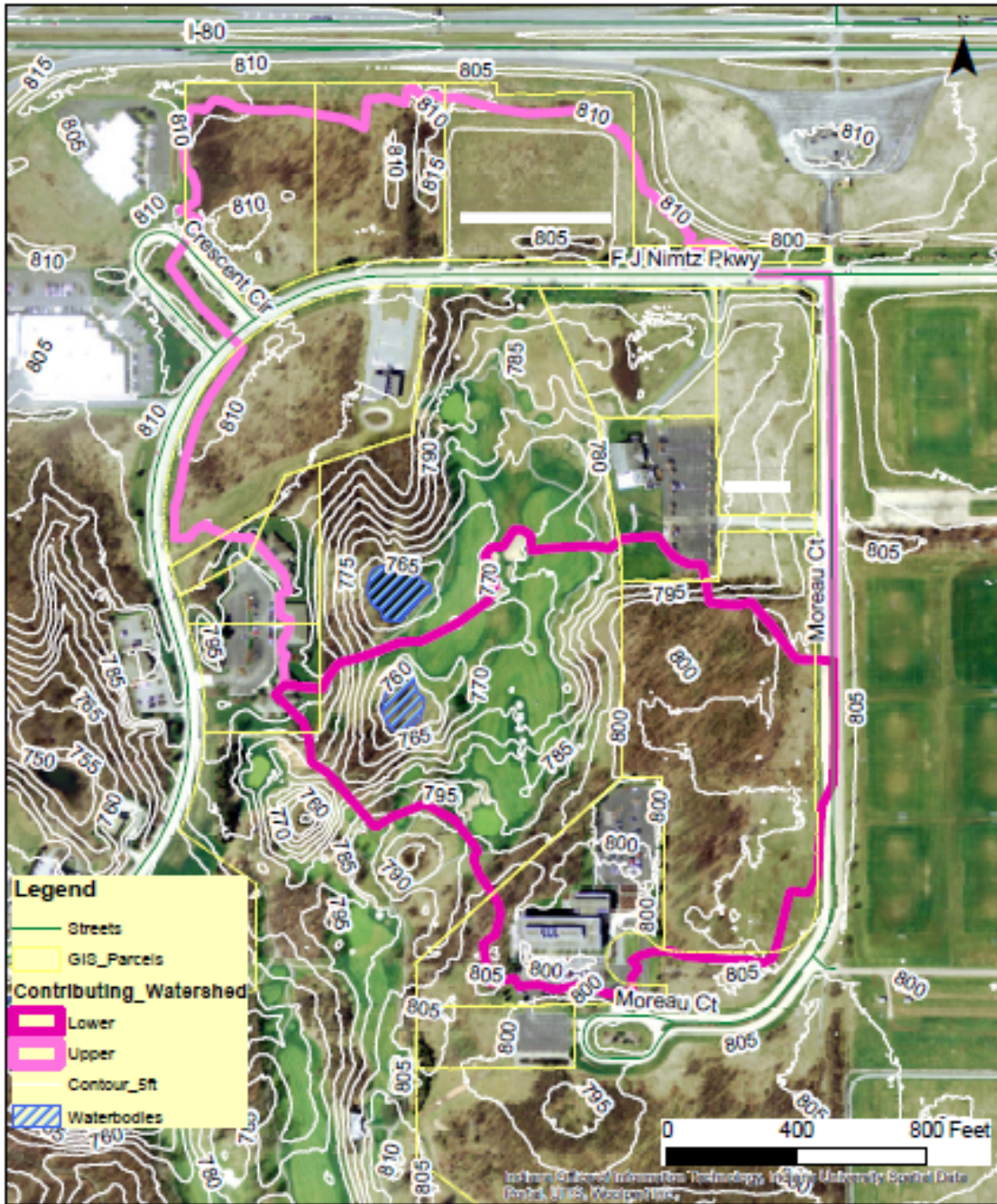
Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_;

Funding Limits: Engineering: \$ \_\_\_\_\_; Other Prof Serv Amt \$ \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_; Street Const Amt \$ \_\_\_\_\_;

Building Imp Amt \$ \_\_\_\_\_; Sewers Amt \$ \_\_\_\_\_; Other (specify) Amt \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT



Prepared by:  
 McCormick Engineering, LLC  
 234 N. Ironwood Drive  
 South Bend, IN 46615  
 P: 574.232.6800

Prepared for:



City of South Bend Dept of Public Works  
 227 W. Jefferson Blvd.  
 South Bend, IN 46601  
 P: 574.235.9251

**Figure 1**  
**Blackthorn Drainage Master Plan**  
**Location Map**



**DEVELOPMENT AGREEMENT**

This Development Agreement (this “Agreement”), is effective as of August 12, 2021 (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 The Bakery Group LLC, an Indiana limited liability company, with offices at 1012 Riverside Drive, South Bend, Indiana 46616 (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 Developer owns certain vacant and inactive real property described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”); and

WHEREAS, the Developer currently has private financing and desires to construct, renovate, or otherwise rehabilitate certain elements of the Developer Property (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as **Exhibit B** in order to activate the Developer Property and create a positive effect in the neighborhood; and

WHEREAS, the Developer 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; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in **Exhibit C** (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

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

**SECTION 1. DEFINITIONS.**

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means a total amount over the course of the Project equaling no less than Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property.

## **SECTION 2. INTERPRETATION, TERMS, AND RECITALS.**

### **2.1 Interpretation.**

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

## **SECTION 3. ACCESS.**

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer 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.

#### **SECTION 4. DEVELOPER'S OBLIGATIONS.**

4.1 Generally. The Parties acknowledge and agree that the Commission's agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

#### 4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the City Planner, or his designee, pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend at least One Million Dollars (\$1,000,000.00) of the Private Investment to complete the first portion of the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the Commission's efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement, including the activation of a portion of the Developer Property as set forth in the Project Plan, by the date that is thirty-six (36) months after the Effective Date of this Agreement (the "Mandatory Project Completion Date"). Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to complete the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

#### 4.6 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the Commission the number of local contractors and local laborers involved in the Project, the amount of bid awards for each contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report 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, and (iii) an itemized accounting generally identifying the Private Investment to date.

4.7 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, and prior to the Commission's expenditure of the Funding Amount, the Developer shall deliver a complete set thereof to the City Planner, or his designee, who may request revisions or amendments to be made to the same and may approve or disapprove of such plans as they relate to the overall plan for the area and neighborhood, if any.

4.8 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of planning, construction, management, and all other activities or purposes associated with the Project (including legal, architectural, and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.9 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department review the bid specifications in accordance with City requirements or policies and may request revisions or amendments to be made to the same. The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion based upon their conformance with such City requirements or policies. The Commission shall not be required to expend the Funding Amount unless the Engineering Department has approved of all bid specifications.

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

4.11 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer

shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in **Exhibit E** attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.12 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

## **SECTION 5. COMMISSION'S OBLIGATIONS.**

5.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in this Agreement.

### 5.2 Completion of Local Public Improvements.

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit 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.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.8 of this Agreement, and (b) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount. In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and

related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

## **SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

## **SECTION 7. DEFAULT.**

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control

of the Party to be excused (each, an event of “Force Majeure”). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

**SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.**

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Project.

**SECTION 9. MISCELLANEOUS.**

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

9.2 Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

9.3 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.4 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

9.5 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.6 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.7 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the



same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.8 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: The Bakery Group LLC  
1012 Riverside Drive  
South Bend, IN 46616  
Attn: President

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

Commission: South Bend Redevelopment Commission  
1400 S. 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  
1200 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Attn: Corporation Counsel

9.9 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise,

and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.12 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.13 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

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

9.15 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.16 Time. Time is of the essence of this Agreement.

**Signature Page Follows**

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT  
COMMISSION

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

THE BAKERY GROUP LLC

By: \_\_\_\_\_  
Mike F. Keen, President

## EXHIBIT A

### **Description of Developer Property**

Real property in St. Joseph County, Indiana, commonly known as 906-910 Portage Avenue and 736 California in South Bend, Indiana, being more particularly described as follows:

**906 Portage Avenue:** Lot 33 of Shetterly Place Second Addition and 21 1-4' of the East End of Lot A, comprising approximately 0.20 acres.

*Parcel ID:* 018-1060-2536

**908 Portage Avenue:** 81.1' of the West End of Lot A and Lots 113-114-115 of Shetterly Place Second Addition, comprising approximately 0.67 acres.

*Parcel ID:* 018-1060-2535

**736 California:** Lot 112 and 72' West End Ex 20' West End of Shetterly Place Third Addition, comprising approximately .06 acres.

*Parcel ID:* 018-1062-2658

## **EXHIBIT B**

### **Project Plan**

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

Renovation and activation of the former Ward Bakery/Ford Distributing Building into a community and commercial center, with a focus on small businesses and individual entrepreneurs.

## **EXHIBIT C**

### **Description of Local Public Improvements**

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

1. Windows and Doors/Storefront Primary elevations, Portage-West Facade, South Facade and North Façade) Alternate for the alley elevation
2. Masonry Repair and Rehabilitation: Primary elevations, Portage-West facade, South facade and North Façade) Alternate for the alley elevation

**EXHIBIT D**

**Form of Easement**

## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Effective Date”), by and between The Bakery Group, LLC, an Indiana limited liability company with offices at 1012 Riverside Drive, South Bend, Indiana 46616 (the “Grantor”), and 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 “Grantee”).

### WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”), together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated \_\_\_\_\_, 2021 (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:

THE BAKER GROUP LLC

\_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ 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 \_\_\_\_\_, 202\_\_.

\_\_\_\_\_

\_\_\_\_\_, Notary Public  
Residing in \_\_\_\_\_ County, IN

My Commission Expires: \_\_\_\_\_

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, City of South Bend, Indiana, 227 W. Jefferson Blvd., Ste. 1200S, South Bend, IN 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. \_\_\_\_\_.

EXHIBIT 1

Description of Property

Real property in St. Joseph County, Indiana, commonly known as 906-910 Portage Avenue and 736 California in South Bend, Indiana, being more particularly described as follows:

**906 Portage Avenue:** Lot 33 of Shetterly Place Second Addition and 21 1-4' of the East End of Lot A, comprising approximately 0.20 acres.

*Parcel ID:* 018-1060-2536

**908 Portage Avenue:** 81.1' of the West End of Lot A and Lots 113-114-115 of Shetterly Place Second Addition, comprising approximately 0.67 acres.

*Parcel ID:* 018-1060-2535

**736 California:** Lot 112 and 72' West End Ex 20' West End of Shetterly Place Third Addition, comprising approximately .06 acres.

*Parcel ID:* 018-1062-2658

**EXHIBIT E**

**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



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: August 12, 2021  
FROM: Santiago Garces  
SUBJECT: Seitz Park Phase III

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

Date: \_\_\_\_\_

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) River West; **River East**; South Side; Douglas Road; West Washington; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

#### Purpose of Request:

The City is seeking to appropriate \$700,000 to complete the design and construction of Seitz Park Phase III. This project aims at improving access to the new park, considering improvements to parking, sidewalks, and curbs.

This project aims at restoring public facilities impacted by the construction of the park, and improving the entrance to the park and trail system.

INTERNAL USE ONLY: Project ID: PROJ00000079 \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$700,000 \_\_\_\_\_;

Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_;

Funding Limits: Engineering: \$ \_\_\_\_\_; Other Prof Serv Amt \$ \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_; Street Const Amt \$ \_\_\_\_\_;

Building Imp Amt \$ \_\_\_\_\_; Sewers Amt \$ \_\_\_\_\_; Other (specify) Amt \$ \_\_\_\_\_



# CITY OF SOUTH BEND

## COMMUNITY INVESTMENT

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**Santiago Garces, Executive Director**

### Memorandum

DATE: August 11, 2021

TO: Redevelopment Commission

FROM: Andrew Netter, Department of Community Investment

SUBJECT: Resolution Accepting the Transfer of Property From BPW

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The Department of Community Investment is asking for the Redevelopment Commission to approve the resolution, accepting the transfer of 3 lots along South Bend Ave (State Road 23) from the Board of Public Works.

The Board of the Public Works acquired these properties in 2018 after South Bend Ave. (State Road 23) was realigned by the State Department of Transportation. With increased interest in redevelopment of property within this area of the River East Development area, the Department of Community Investment feels that it is within the best interest of the City to transfer the property to the Redevelopment Commission for eventual disposition.

## RESOLUTION NO. 3536

### A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION ACCEPTING THE TRANSFER OF REAL PROPERTY FROM THE SOUTH BEND BOARD OF PUBLIC WORKS

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) is the governing body of the City of South Bend, Indiana (the “City”), Department of Redevelopment and exists and operates pursuant to Indiana Code Section 36-7-14 (the “Act”); and

WHEREAS, the South Bend Board of Public Works (the “Board”) exists and operates pursuant to Indiana Code Section 36-4-9-5, holds real property owned by the City pursuant to Indiana Code Section 36-9-6-3, and is authorized to transfer such property to another governmental entity pursuant to Indiana Code Section 36-1-11-8; and

WHEREAS, the Board owns three (3) parcels of real property in the River East Development Area of the City along South Bend Avenue (State Road 23), which are more particularly described on Exhibit A (together, the “Property”); and

WHEREAS, pursuant to declaratory resolutions previously adopted and amended from time to time, the Commission has declared a certain area of the City known as the “River East Development Area” as a redevelopment area and an allocation area under the Act and approved an economic development plan for the Area; and

WHEREAS, the Commission desires to obtain title to the Property to encourage the redevelopment of the property and for any other purpose authorized by the Act; and

WHEREAS, the Board approved the conveyance of the Property pursuant to its Resolution \_\_\_-2021 at its regular meeting held on August 10, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission hereby accepts the conveyance of the Property from the Board pursuant to I.C. 36-1-11-8 in the form of a quit claim deed substantially similar to the document attached hereto as Exhibit B, conveying all of the Board’s right, title, and interest in the Property to the Commission.

2. The Commission authorizes Andrew Netter of the City’s Department of Community Investment to act on behalf of the Commission in presenting the deed for recordation in the Office of the Recorder of St. Joseph County, Indiana and executing any other document necessary to affect the Commission’s acceptance of the Property.

3. This Resolution will be in full force and effect upon its adoption by the Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on August 12, 2021.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Quentin M. Phillips, Secretary

**EXHIBIT A**

**Legal Description**

**Parcel Number:** 71-09-06-154-004.000-026

**Tax ID:** 018-5095-3334

**Legal Description:** Lot 4 Talbots Plat EX parts sold to state 19/20 ROW #1159 6/13/18

**Commonly Known As:** 1210 South Bend Avenue, South Bend, IN 46617

**Parcel Number:** 71-09-06-154-003.000-026

**Tax ID:** 018-5095-3335

**Legal Description:** Lot 5 Talbots Plat EX parts sold to state 19/20 ROW #1159 6/13/18

**Commonly Known As:** 1214 South Bend Avenue, South Bend, IN 46617

**Parcel Number:** 71-09-06-154-001.000-026

**Tax ID:** 018-5095-3337

**Legal Description:** Lot 7 Talbots Plat EX parts sold to state 19/20 ROW #1159 6/13/18

**Commonly Known As:** 1220 South Bend Avenue, South Bend, IN 46617



**EXHIBIT B**

**Form of Quit Claim Deed**

**DEVELOPMENT AGREEMENT**

This Development Agreement (this “Agreement”), is effective as of August 12, 2021 (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 The Nexus Center LLC, an Indiana limited liability company, with its registered address at 21710 Ravenna Drive, South Bend, Indiana 46628 (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 Developer owns certain vacant and inactive real property described in **Exhibit A**, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”); and

WHEREAS, the Developer currently has private financing and desires to construct, renovate, or otherwise rehabilitate certain elements of the Developer Property (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as **Exhibit B** in order to activate the Developer Property and create a positive effect in the neighborhood; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the South Side 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; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in **Exhibit C** (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

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

**SECTION 1. DEFINITIONS.**

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means a total amount over the course of the Project equaling no less than One Million Dollars (\$1,000,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property.

## **SECTION 2. INTERPRETATION, TERMS, AND RECITALS.**

### **2.1 Interpretation.**

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

## **SECTION 3. ACCESS.**

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer 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.

#### **SECTION 4. DEVELOPER'S OBLIGATIONS.**

4.1 Generally. The Parties acknowledge and agree that the Commission's agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

##### 4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the City Planner, or his designee, pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the first portion of the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the Commission's efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement, including the activation of a portion of the Developer Property as set forth in the Project Plan, by the date that is thirty-six (36) months after the Effective Date of this Agreement (the "Mandatory Project Completion Date"). Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to complete the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

#### 4.6 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the Commission the number of local contractors and local laborers involved in the Project, the amount of bid awards for each contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report 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, and (iii) an itemized accounting generally identifying the Private Investment to date.

4.7 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, and prior to the Commission's expenditure of the Funding Amount, the Developer shall deliver a complete set thereof to the City Planner, or his designee, who may request revisions or amendments to be made to the same and may approve or disapprove of such plans as they relate to the overall plan for the area and neighborhood, if any.

4.8 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of planning, construction, management, and all other activities or purposes associated with the Project (including legal, architectural, and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.9 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department review the bid specifications in accordance with City requirements or policies and may request revisions or amendments to be made to the same. The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion based upon their conformance with such City requirements or policies. The Commission shall not be required to expend the Funding Amount unless the Engineering Department has approved of all bid specifications.

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

4.11 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer

shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in **Exhibit E** attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.12 **Information.** The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

4.13 **Other Incentives.** The Developer agrees that, for its completion of the Project, as defined in the Project Plan, the Developer will not request or pursue any financial incentive or support from the City other than the Commission's commitment of the Funding Amount under this Agreement, including without limitation any tax abatement with respect to the Developer Property or any other property associated with the Project.

## **SECTION 5. COMMISSION'S OBLIGATIONS.**

5.1 **Generally.** The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in this Agreement.

### **5.2 Completion of Local Public Improvements.**

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit 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.

(b) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.8 of this Agreement, and (b) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public

Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount. In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

## **SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

## **SECTION 7. DEFAULT.**

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of “Force Majeure”). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

**SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.**

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Project.



## **SECTION 9. MISCELLANEOUS.**

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

9.2 Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

9.3 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.4 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

9.5 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.6 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

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

9.8 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: The Nexus Center LLC  
21710 Ravenna Drive  
South Bend, IN 46628  
Attn: Manager

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

Commission: South Bend Redevelopment Commission  
1400 S. 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  
1200 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Attn: Corporation Counsel

9.9 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.12 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.13 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

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

9.15 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.16 Time. Time is of the essence of this Agreement.

**Signature Page Follows**

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT  
COMMISSION

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

THE NEXUS CENTER LLC

By: \_\_\_\_\_  
David R. Buggs, Sr., Manager

## **EXHIBIT A**

### **Description of Developer Property**

Real property in St. Joseph County, Indiana, commonly known as 3607 S. Main Street, South Bend, Indiana, and more particularly described as Lots 1 through 5 of the Ida M. Walz Subdivision and Lots D & E of the J E Walz Revised and the vacated Street and vacated alley, along with Tr 28'N Side of Tr 200' East and West East of Jains Addition, also vacated alley N and Adjacent sec. 24-37-2e.

Parcel Nos. 018-8019-079701 and 018-8019-079804

## **EXHIBIT B**

### **Project Plan**

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

Renovation and activation of the Developer Property into a cultural, community, and commercial center, with a focus on family health and wellness, economic development, financial literacy, education, and crime prevention.

## **EXHIBIT C**

### **Description of Local Public Improvements**

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations such local public improvements as agreed upon between the parties.

**EXHIBIT D**

**Form of Easement**



## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Effective Date”), by and between Cultivating Life, Inc., an Indiana nonprofit corporation with a registered office at 1042 Western Avenue, South Bend, Indiana 46601 (the “Grantor”), and 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 “Grantee”).

### WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”), together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated August 12, 2021 (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:

CULTIVATING LIFE, INC.

\_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ 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 \_\_\_\_\_, 202\_\_.

\_\_\_\_\_

\_\_\_\_\_, Notary Public  
Residing in \_\_\_\_\_ County, IN

My Commission Expires: \_\_\_\_\_

This instrument was prepared by Sandra L. Kennedy, Corporation Counsel, City of South Bend, Indiana, 227 W. Jefferson Blvd., Ste. 1200S, South Bend, IN 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. \_\_\_\_\_.

EXHIBIT 1

Description of Property

Real property in St. Joseph County, Indiana, commonly known as 3607 S. Main Street, South Bend, Indiana, and more particularly described as Lots 1 through 5 of the Ida M. Walz Subdivision and Lots D & E of the J E Walz Revised and the vacated Street and vacated alley, along with Tr 28'N Side of Tr 200' East and West East of Jains Addition, also vacated alley N and Adjacent sec. 24-37-2e.

Parcel Nos. 018-8019-079701 and 018-8019-079804

## EXHIBIT E

### 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<br>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                                      |



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: August 12, 2021  
FROM: Brian Donoghue  
SUBJECT: Funding Request: United Way Programs

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

Date: \_\_\_\_\_

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) River West; River East; South Side; Douglas Road; West Washington; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

**Purpose of Request:** Disbursement of funds for programmatic collaboration between City of South Bend and United Way of St Joseph County

Specifics: Requesting \$150K from Redevelopment Commission-controlled Pokagon fund

Request for funding is related to the continued strategic partnership between the City of South Bend and the United Way of St. Joseph County that aspires to making affordable and safe childcare available community-wide. Support for pathways of credentialing entry-level support professionals, additional grant-writing capacity, and continued support for the United Way's Quality Improvement Grants program will help us move toward those unified goals.

The UW Quality Improvement Grants program was designed to increase the number of designated "high-quality" early childhood education providers within the City of South Bend, and by so doing also increase the number of State-funded early childhood education scholarships available to children in the City of South Bend. Program goals are to:

- (a) provide financial and technical support for eligible providers to implement service improvements that will positively impact quality ratings on the Indiana "Paths to Quality" rating system. Service improvements can include physical space improvements, tuition funding for teachers, materials, and other expenditures deemed appropriate by the Organization in coordination with the City.
- (b) prioritize providers in areas of South Bend with limited access to high-quality early childhood education.
- (c) monitor Program impact on providers and South Bend early childhood landscape.

INTERNAL USE ONLY: Project ID: \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$150,000 \_\_\_\_\_;

Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_;

Funding Limits: Engineering: \$ \_\_\_\_\_; Other Prof Serv Amt \$ \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_; Street Const Amt \$ \_\_\_\_\_;

Building Imp Amt \$ \_\_\_\_\_; Sewers Amt \$ \_\_\_\_\_; Other (specify) Amt \$ \_\_\_\_\_