



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 6, 2022
FROM: Zach Hurst, PE
SUBJECT: First Amendment to DA – The Bakery Group

_____ 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 first amendment to the Development Agreement with The Bakery Group LLC (Ward Baking Co. Building) would allow the City's contractor to perform additional work under the City's existing contract, funded by the original Development Agreement dated August 12, 2021.

The Bakery Group LLC will pay the City \$15,393 as part of this amendment, allowing the City to execute a change order with C&S Masonry to continue work along the Portage Avenue façade.

INTERNAL USE ONLY: Project ID: PROJ 293 _____;

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

1400S County-City Building | 227 W. Jefferson Blvd. | South Bend, Indiana 46601 | p 574.235.9371 | f 574.235.9021 | www.southbendin.gov

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is made on June 9, 2022, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and The Bakery Group LLC (the "Developer") (each a "Party," and collectively the "Parties").

RECITALS

A. The Commission and the Developer entered into a Development Agreement dated effective August 12, 2021 (the "Development Agreement"), pertaining to certain local public improvements ("LPI") to renovate, rehabilitate, and activate the Developer Property, which is located in the River West Development Area (the "Project").

B. As set forth in the Development Agreement, the Commission agreed to expend no more than Three Hundred Thousand Dollars (\$300,000.00) of tax increment finance revenues to complete the LPI in support of Developer's Project (the "Funding Amount").

C. In accordance with Section 5.2(c) of the Development Agreement, bids were received for the LPI by the City of South Bend, Indiana Board of Public Works (the "Board"), as the Commission's agent, and the winning bidders were awarded contracts for various portions of the LPI, including the winning bidder for masonry work (the "Masonry Contractor").

D. In the course of performing the masonry work, additional concerns were noted related to a bay on the north side of the Developer Property, and the Developer's architect requested a quote from the Masonry Contractor for the additional brick and terra cotta repair work.

E. The change order to complete the additional repair work (the "Change Order") exceeds the remaining Funding Amount by Fifteen Thousand Three Hundred Ninety-Three Dollars (\$15,393.00) (the "Overage Amount").

F. To approve the Change Order, the Board requires an increase of the Funding Amount by the Overage Amount (the "Funding Amount Increase").

G. In consideration of the Commission's willingness to approve the Funding Amount Increase, and thereby permit the Board's approval of the Change Order, the Developer agrees to pay the Funding Amount Increase in the manner set forth in this First Amendment.

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

1. Section 1.3 shall be deleted in its entirety and replaced with the following:

1.3 Funding Amount. "Funding Amount" means an amount not to exceed Three Hundred Fifteen Thousand Three Hundred Ninety-Three Dollars (\$315,393.00) 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.

2. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of completing the LPI, including any necessary change orders to the LPI Contract, in excess of the Funding Amount, as such amount is hereby amended. The Developer hereby acknowledges that the Developer or the Developer's designee may inspect the LPI upon completion and hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of inspecting the LPI.

3. Notwithstanding any provision to the contrary, the Commission's obligations to complete the LPI will be satisfied in full upon the completion of the LPI Contract, irrespective of the final amount of the LPI Contract.

4. As an inducement for the Commission's increase of the Funding Amount under this First Amendment and as a further assurance to the Commission pursuant to Section 9.13 of the Development Agreement, prior to the Board's approval of the Change Order, the Developer shall submit funds to the Commission through staff of the Department of Community Investment in the amount of Fifteen Thousand Three Hundred Ninety-Three Dollars (\$15,393.00), which funds will be applied at an appropriate time to the LPI Contract in accordance with the Board's ordinary payment practices and applicable laws.

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

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

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

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

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

Signature Page Follows

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

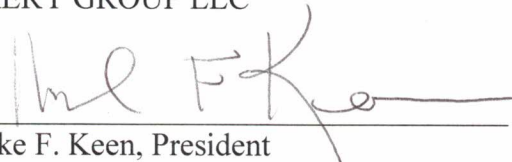
SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Marcia I. Jones, President

ATTEST:

By: _____
Troy D. Warner, Secretary

THE BAKERY GROUP LLC

By:  _____
Mike F. Keen, President

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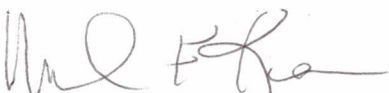
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