



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, October 13, 2022 – 9:30 a.m.

[http://tiny.cc/RDC\\_](http://tiny.cc/RDC_) or BPW Conference Room 13<sup>th</sup> Floor

### 1. Roll Call

### 2. Approval of Minutes

- A. Minutes of the Regular Meeting of Thursday, September 22, 2022

### 3. Approval of Claims

- A. Claims Allowance Request 09.20.22
- B. Claims Allowance Request 09.27.22
- C. Claims Allowance Request 10.11.22

### 4. Old Business

### 5. New Business

#### A. River West Development Area

- 1. Development Agreement (MarMain)
- 2. Second Amendment to Development Agreement (Greenleaf Co.)
- 3. Termination and Release of Deed Covenants (SBCC Development Corp)
- 4. Authorizing Use of TIF Revenues and Approving Form of Loan Agreement (Indiana Dinosaur Museum and SBCC Development Corp)
- 5. First Amendment to Development Agreement (SBCC Development Corp)
- 6. Updated Tree Nursery Agreement

#### B. River East Development Area

- 1. Budget Request (Angela Blvd. Roadway)
- 2. Budget Request (Downtown to ND Trail)

### 6. Progress Reports

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

### 7. Next Commission Meeting:

Thursday, October 20, 2022, 9:30 am



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

**SOUTH BEND REDEVELOPMENT COMMISSION  
 RE-SCHEDULED REGULAR MEETING**

September 22, 2022 – 9:30 am  
<https://tinyurl.com/RDC> or BPW Conference Room 13<sup>th</sup> Floor

Presiding: Marcia Jones, President

The meeting was called to order at 9:30 a.m.

**1. ROLL CALL**

Members Present:	Marcia Jones, President – IP Troy Warner, Secretary – IP Eli Wax, Commissioner – IP Leslie Wesley, Commissioner - V	IP = In Person V = Virtual
Members Absent:	Donald Inks, Vice-President Vivian Sallie, Commissioner	
Legal Counsel:	Sandra Kennedy, Esq. Danielle Campbell-Weiss, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary Joseph Molnar, RDC Staff	
Others Present:	Erik Glavich Laura Althoff Chris Dressel Finn Cavanaugh Zach Hurst Charlotte Brach Conrad Damian Anne Hayes Leslie Biek Rachel Boyles	DCI – IP DCI – V DCI – IP DCI – IP Engineering – IP Engineering – V Resident – V Sibley Machine – V Engineering – V DCI - V

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, September 8, 2022**

Upon a motion by Commissioner Wax, seconded by Secretary Warner, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, September 8, 2022.

## 3. Approval of Claims

- **Claims Submitted for September 6 and September 13, 2022**

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the claims for September 6 and September 13, 2022, submitted on Thursday, September 22, 2022.

## 4. Old Business

## 5. New Business

### A. River West Development Area

#### 1. **Resolution No. 3558 (Disposition Offering Price 117/119 Lafayette)**

Mr. Molnar presented Resolution No. 3558 (Disposition Offering Price 117/119 Lafayette). This Resolution sets the Disposition Offering Price for 117/119 Lafayette Building and the adjacent parking lot. The city acquired the Lafayette building from delinquent taxes through the county in 2018. The city has put approximately \$1M into the building just to stabilize it which includes a brand-new roof, repairing the skylight, brick, and masonry repair as well as an improved drainage system so the building is watertight. There is a significant amount of renovation that needs to be done inside. While the building sat vacant, there was a lot of water damage, and it was vandalized several times. The inside needs a complete overhaul, but the city believes it is a good place to see if there is interest from private investors.

The RFP staff put together will be presented differently than in previous RFPs. The appraisal for the building and parking lot is \$392,010 which is the average appraisal price. We will be doing various things to publicize the availability of the property. On October 18, 2022, the building will be open for tours. Individuals will have to sign a release for safety. We have extended the bid date to January 26, 2023, to hopefully receive some good bids as it is a beautiful building. In the past we have done 30-to-60-day RFPs and the feedback received was that is not long enough for investors to get a good look at properties.

Bids can be submitted in person at the 14<sup>th</sup> floor office of Community Investment, mailed or emailed. We have set up a specific email address just for the RFPs. The RFPs will be sealed until the meeting on January 26, 2023, in which they will be opened in front of the Commission and read. Staff will then take the RFPs for

South Bend Redevelopment Commission Regular Meeting – September 22, 2022

review and return with a recommendation on March 9, 2023.

The RFP contains background on the building that provides project objectives along with desired use. There are forms to fill out and we have included helpful attachments including a full layout of the building from Kil architecture from when the city purchased the building. We are open to any use as long it fits within zoning. The city does ask that the RFP include preservation of the skylight. We feel this is an exceptional feature of the building. The city has set up a specific website for this and all future RFPs. Commission approval is requested.

Commissioner Wax asked what the city's intentions were when they acquired the building and put dollars into it.

Mr. Molnar stated that the city's intention was to stabilize the building and put it out to RFP for productive use. The private investor will have to put in a substantial amount.

Commissioner Wax asked if the city was less focused on return of investment and more on stabilization of the building.

Mr. Molnar replied yes, the building is a landmark that should be protected.

Secretary Warner noted in 2018 the focus was on stabilizing the building so it would not have to be torn down.

Mr. Molnar stated that the building was the first dedicated office building (1901) and we would like to preserve it instead of tearing it down. There is also significant African American history in the building in which it housed the first African American lawyer in the city; his name and information is on a monument outside of the building. The building is historically designated both locally and nationally as part of the National Washington district.

Commissioner Wax noted that he likes the skylight. He is wondering if there could be any adjustment to the RFP amount.

Mr. Molnar noted that if the RFPs do not come in at the appraisal amount, the board has the power to accept or reject any bids.

Secretary Warner asked will investors be able to ask about TIF dollars or tax abatements?

Mr. Molnar stated that the city is asking investors to be up front about asking for TIF or tax abatements during the RFP process.

President Jones opened questions to the public.

Matt Barrett, resident asked if the bids stay sealed.

Mr. Molnar stated the bids will be sealed until the January date and opened during the commission meeting and will be read into the minutes. In March we will have



a recommendation to the Commission.

Mr. Barrett asked once the bids are opened can an investor make a higher bid or do they need to make their best bid.

Mr. Molnar states that yes, investors need to make their best bid by January 26, 2023. Mr. Molnar will be the point of contact to answer any questions from the investors up until that date. The city will put out a press release and put into the media casting out a wide net for possible investors. The information will be available during South Bend's hosting of the Historic convention.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Resolution No. 3558 (Disposition Offering Price 117/119 Lafayette) submitted on Thursday, September 22, 2022.

**2. Approval of Bid Specifications (117/119 Lafayette)**

Mr. Molnar presented Approval of Bid Specifications (117/119 Lafayette). Commission approval is requested.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Bid Specifications (117/119 Lafayette) submitted on Thursday, September 22, 2022.

**3. Request to Advertise (117/119 Lafayette)**

Mr. Molnar presented a Request to Advertise (117/119 Lafayette). Upon approval, staff will request the disposition posting in the South Bend Tribune on September 30, 2022, and October 7, 2022. Commission approval is requested.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved a Request to Advertise (117/119 Lafayette) submitted on Thursday, September 22, 2022.

**4. Temporary Access Agreement (VPA)**

Mr. Molnar presented a Temporary Access Agreement (VPA). The Venue Parks and Arts Department have requested a temporary access agreement to use the parking lot outside of the old football hall of fame for Best Week Ever which is happening September 28 through October 2, 2022. Commission approval is requested.

Secretary Warner noted that the agreement mentions funding.

Mr. Molnar states that there is no money being exchanged for the use of the lot. Any money for the event will come from VPA.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved a Temporary Access Agreement (VPA) submitted on Thursday, September 22, 2022.

**5. First Amendment to Development Agreement (Sibley)**

Mr. Hurst presented the First Amendment to the Development Agreement (Sibley). There has been an unforeseen condition that necessitates the replacement of the steel lentsils above the existing windows. There is extra brick above the parapet that is adding too much weight. The steel lentsils need to be replaced with the reduction of some brick. The construction budget had \$17k left but the total cost is \$19,240. This amendment will update the funding amount the city will invest, and the Sibley Center will reimburse the city the remaining balance of \$2,240. Commission approval is requested.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the First Amendment to Development Agreement (Sibley) submitted on Thursday, September 22, 2022.

**6. Budget Request (Coal Line Multiuse Trail)**

Mr. Dressel presented a Budget Request (Coal Line Multiuse Trail). This is a budget request in the amount of \$300k to build Phase II of the Coal Line Multiuse project. The construction on Phase II would begin in Spring 2023. Mr. Dressel presented a PowerPoint to the Commission showing a map of the trail and where construction has been completed in Phase I. The presentation also showed the Commission where Phase II would begin work and eventually connect to 933 and the East Bank Trail. We have added branding and signage along with benches and bike racks along the trail. Lighting has been integrated within the poles along the bridgeway. Commission approval is requested.

Secretary Warner asked about security that was talked about on Phase I, will that be included in Phase II?

Mr. Cavanaugh stated that they installed trail counters and lighting. There are no cameras installed.

Secretary Warner asked about the safety of the pylons on the bridge.

Mr. Cavanaugh stated that there have been detailed inspections by our engineers and these details have been passed on to the construction team.

Secretary Warner asked if there has been a discussion connecting the trail to flow along the North Shore Drive that runs in front of the previous mayor's home.

Mr. Cavanaugh stated that we have applied for state funding along that stretch, but we do not have the funding for that yet.

Matt Barrett, resident, stated the plan says to include a trail along Angela all the way up to the old St Joe High School site. And what about the Leeper Park bridge because that prevents the connection.

Mr. Dressel states that is part of Phase II. We are following the historic rail corridor. The Leeper Park bridge will be repaired the contract just went through BPW.

Commissioner Wax asked once completed, how long will the trail be?

Mr. Dressel states the trail will be 1.5.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Budget Request (Coal Line Multiuse Trail) submitted on Thursday, September 22, 2022.

## **B. Other Development Area**

### **1. TIF Neutralization (2022 Baker Tilly)**

Mr. Molnar gave the Commission an overview on the 2022 TIF Neutralization from Baker Tilly. This item is just for information purposes. The estimated TIF capture will depend on the 2023 tax rates and the 2023 circuit breaker losses that are released by the state sometime between January to March of 2023.

## **6. Progress Reports**

### **A. Tax Abatement**

1. Mr. Glavich noted on September 12, 2022, the Common Council approved a declaratory resolution for a personal property tax abatement to Steel Warehouse. The facility is located on Tucker Drive. They will be purchasing new machinery in the amount of \$3.7M. This will allow them to hire 12 new positions and to train existing employees on the new machinery. Steel Warehouse will be spending \$200k to expand their facility to house the new equipment.

### **B. Common Council**

### **C. Other**

1. Mr. Molnar noted that the Ready Grants were announced including the expanded Memorial Lifestyle Center for the two blocks South of the campus received, a little over \$11M, the Morris Performing Arts Center expansion also received funding as well as the Ward Bakery Building project.
2. Mr. Matt Barrett asked if there were any updates on the Matthews situation?
3. Mr. Molnar states that he has heard nothing new.

South Bend Redevelopment Commission Regular Meeting – September 22, 2022

4. Mr. Barrett noted that there is another development in Warsaw that was in the Warsaw Times. There are reports of a failed project involving Mr. Matthews. It was noted in the Warsaw Redevelopment Commission as well as the Northeast Indiana Regional Development Authority. There is a pattern with Mr. Matthews. Mr. Matthews did attend the South Streetscape public meeting. He chooses not to attend the other meetings he is requested at which is not a good reflection. Mr. Barrett also noted further research indicates that on Sycamore Street there was a tax abatement complete for 2 years, a partial for 5 years in addition there were tax delinquencies in 2019 and 2020. He believes on behalf of the taxpayers in the city of South Bend that is a call for action.

**7. Next Commission Meeting:**

Thursday, October 13, 2022

**8. Adjournment**

Thursday, September 22, 2022, 10:19 a.m.

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Troy Warner, 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, September 20, 2022

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-0044341	\$61,501.31
GBLN-0000000	\$0.00
GBLN-0000000	\$0.00
Total:	<u>\$61,501.31</u>

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Daniel Parker, City Controller

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The attached claims described above were allowed in the following total amount at a public meeting on the date stated below: \$ 61,501.31

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

Date:

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Name:

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Name:

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Name:

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Name:

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Name:







**Expenditure approval**RDC Payments-9/20/22 Pymt Run  
GBLN-0044341**Payment method:** ACH-Total  
**Voucher:** RDCP-00010415  
**Payment date:** 9/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000019	ABONMARCHE CONSULTANTS OF IN	142242	Design Services	9/28/2022	\$5,400.00	429-10-102-121-431002-- PROJ00000167	PO-0005886
V-00000019	ABONMARCHE CONSULTANTS OF IN	142242	Amendment 8-9-22	9/28/2022	\$50,820.00	429-10-102-121-431002-- PROJ00000167	PO-0005886

**Payment method:** CHK-Total  
**Voucher:** RDCP-00010416  
**Payment date:** 9/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000788	HWC ENGINEERING INC	2021031S0000005	PSA for 10% Design Services	9/28/2022	\$3,781.31	324-10-102-121-431002-- PROJ00000309	PO-0013616

**Payment method:** CHK-Total  
**Voucher:** RDCP-00010417  
**Payment date:** 9/20/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001743	US BANK	6641324	523991 - Trust, Fiduciary, and Custody Activities	9/24/2022	\$1,500.00	436-10-102-121-438300-- DS0163-	



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

To: South Bend Redevelopment Commission  
From: Daniel Parker, City Controller  
Date: Tuesday, September 27, 2022

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-0044661	\$350,133.33
GBLN-0000000	\$0.00
GBLN-0000000	\$0.00
Total:	<u>\$350,133.33</u>

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Daniel Parker, City Controller

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The attached claims described above were allowed in the following total amount at a public meeting on the date stated below: \$ 350,133.33

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

Date:

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Name:

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Name:

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Name:

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Name:

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Name:





**Expenditure approval**RDC Payments-9/27/22 Pymt Run  
GBLN-0044661**Payment method:** CHK-Total  
**Voucher:** RDCP-00010615  
**Payment date:** 9/27/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000918	JONES PETRIE RAFINSKI	43940	Design	9/11/2022	\$29,231.25	429-10-102-121-431002-- PROJ00000317	PO-0013624
V-00000918	JONES PETRIE RAFINSKI	42731	Design	5/21/2022	\$28,242.50	429-10-102-121-431002-- PROJ00000317	PO-0013624
V-00000918	JONES PETRIE RAFINSKI	43369	Design	7/15/2022	\$11,308.75	429-10-102-121-431002-- PROJ00000317	PO-0013624
V-00000918	JONES PETRIE RAFINSKI	43677	Design	8/24/2022	\$18,906.25	429-10-102-121-431002-- PROJ00000317	PO-0013624

**Payment method:** CHK-Total  
**Voucher:** RDCP-00010616  
**Payment date:** 9/27/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001384	RECREATION INSITES LLC	738	Playground Equipment	10/4/2022	\$66,086.67	324-10-102-121-444000-- PROJ00000249	PO-0013569

**Payment method:** CHK-Total  
**Voucher:** RDCP-00010617  
**Payment date:** 9/27/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001411	RIETH RILEY CONSTRUCTIO N	APP #7	120-009 Dubail Avenue Streetscape	10/1/2022	\$148,527.45	430-10-102-121-442001-- PROJ00000083	PO-0011413
V-00001411	RIETH RILEY CONSTRUCTIO N	APP #7	120-009 Dubail Avenue Streetscape	10/1/2022	\$38,523.46	324-10-102-121-442001-- PROJ00000083	PO-0011413

**Payment method:** ACH-Total

**Voucher:** RDCP-00010618  
**Payment date:** 9/27/2022

<b>Vendor #</b>	<b>Name</b>	<b>Invoice #</b>	<b>Line description</b>	<b>Due date</b>	<b>Invoice amount</b>	<b>Financial dimensions</b>	<b>Purchase order</b>
V-00001496	SHIVE HATTERY INC	21722018702	Fire Station 8 PSA	9/24/2022	\$9,307.00	430-10-102-121-431002-- PROJ00000355	PO-0017718

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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, October 11, 2022

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-0045349	\$19,739.55
GBLN-0000000	\$0.00
GBLN-0000000	\$0.00
Total:	<u>\$19,739.55</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:

\$ 19,739.55

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

Date:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:





**Expenditure approval**

RDC Payments-10/11/22 Pymt Run

GBLN-0045349

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00011015  
**Payment date:** 10/11/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000222	BLACK & VEATCH CORPORATION	1380397	Amendment #1	10/16/2022	\$11,689.55	324-10-102-121-431002-- PROJ00000056	PO-0005261

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00011016  
**Payment date:** 10/11/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000476	DONOHUE & ASSOCIATES	1329819	SUE - 17J022 SOUTH WELL FIELD IMPROVEMENTS	7/15/2022	\$3,220.00	430-10-102-121-431002-- PROJ00000082	PO-0000038
V-00000476	DONOHUE & ASSOCIATES	1329820	SUE - 17J022 SOUTH WELL FIELD IMPROVEMENTS	8/13/2022	\$4,830.00	430-10-102-121-431002-- PROJ00000082	PO-0000038

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# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 10/11/22  
FROM: Erik Glavich  
SUBJECT: MarMain (JV), LLC Development Agreement

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

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

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

Approved  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Development Agreement for property located at 125 West Marion Street, South Bend, Indiana 46613

SPECIFICS: The Commission will consider a Development Agreement with MarMain, LLC, which is the owner of an apartment building at the northeast corner of North Main and West Marion Streets. MarMain will remodel the building, and this Agreement specifies that (1) the Funding Amount provided by Redevelopment Commission will not exceed \$550,000 and (2) the Private Investment by the Developer will be no less than \$4.5 million. The Developer also agrees to complete the project by the end of 2024.

Through a Memorandum of Understanding with the South Bend Housing Authority on September 15, 2022, MarMain agreed to set aside 40% of the units—at least 48 total units—for use by qualified Section 8 Housing Choice Voucher Holders. This is double the commitment of 20% that MarMain had previously made in April 2022.

Staff recommends approval of this Development Agreement.

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

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

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

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

\_\_\_\_\_ Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), is effective as of September 13, 2022 (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 MarMain (JV), LLC a Delaware limited liability company with offices at 125 West Marion Street, South Bend, Indiana 46601 (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 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; 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 Developer has entered into a Memorandum of Understanding with South Bend Housing Authority whereby Developer has agreed to maintain forty percent (40%) of its units, which amounts to 48 units, for Section 8 Housing Choice Voucher Holders for a term of fifteen years beginning on September 15, 2022; 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 Five Hundred Fifty Thousand Dollars (\$550,000.00) 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 an amount no less than Four Million Five Hundred Thousand Dollars (\$4,500,000.00) 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.



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 10/11/22  
FROM: Erik Glavich  
SUBJECT: MarMain (JV), LLC Development Agreement

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

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

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

Approved  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

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Staff recommends approval of this Development Agreement.

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

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

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

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

\_\_\_\_\_. Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

### 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 accepted by the City Planner, or his designee, pursuant to Section 4.7 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 Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be accepted by the Commission pursuant to Section 4.7 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 by December 31, 2024 (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, in the format set forth as Exhibit E, demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

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 accept or not accept said plans and specifications for the Project in his or her sole discretion and may request revisions or amendments to be made to the same.

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 may accept or not accept said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same. 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 F 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, including, but not limited to, a confirmation of the Developer's compliance with its Memorandum of Understanding with South Bend Housing Authority.

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 4.7 of this Agreement, and (b) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and accepted the same in accordance with Section 4.9 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, (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, or (c) to comply substantially with its obligations to the South Bend Housing Authority, 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. This Section 7.2 shall survive the termination of this Agreement.

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 Local Public Improvements or 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: MarMain (JV), LLC  
125 West Marion Street  
South Bend, IN 46601  
Attn: \_\_\_\_\_

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:

\_\_\_\_\_  
Troy Warner, Secretary

MARMAIN (JV), LLC

By:   
Name: Michael Serposs  
Title: Manager



**EXHIBIT A**

**Description of Developer Property**

**Tax ID No.** 018-1009-0359

**Parcel Key No.** 71-08-01-305-020.000-026

**Legal Description:** LOTS 151 152 153 ORIGINAL PLAT SOUTH BEND

**Commonly known as:** 125 West Marion Street



## **EXHIBIT B**

### **Project Plan**

The Developer acknowledges that it has entered into a Memorandum of Understanding with the South Bend Housing Authority whereby Developer has agreed to maintain forty (40%) of its units, which equals at least 48 units, for Section 8 Housing Choice Voucher Holders for a term of fifteen years beginning on September 15, 2022. Said units shall benefit from the improvements set forth in this Project Plan.

Furthermore, the Developer will complete Four Million Five Hundred Thousand Dollars (\$4,500,000.00) in private investment for improvements at the site, in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations. Said improvements shall include the following:

- Total unit renovation of 120 apartment units, to include new bathroom and kitchen fixtures and appliances;
- Electrical upgrades including additional GFI units, upsizing service to 4,000 amps, installing individual meters, replacing all junction boxes;
- Replacement of 850 windows with vinyl replacements; and
- Masonry repairs to the building's exterior, including repair of cracked parapet.

## **EXHIBIT C**

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

The Commission will complete, or cause to be completed Five Hundred Fifty Thousand Dollars (\$550,000.00) of work towards a complete system replacement of the building's roof, with potential replacement of the wood decking in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations.



**EXHIBIT D**

**Form of Easement**

## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between MarMain (JV), LLC, a Delaware limited liability company with offices at 125 West Marion Street, 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 \_\_\_\_\_, 2022 (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:

MarMain (JV), LLC,  
a Delaware Limited Liability Corporation

Michael Serposs

Printed: Michael Serposs

Its: Manager

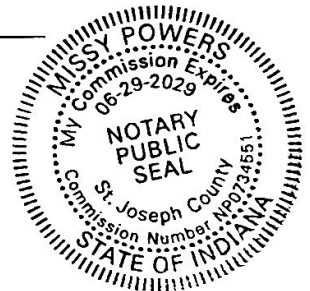
STATE OF INDIANA )  
 ) SS:  
COUNTY OF ST. JOSEPH )

Before me, the undersigned, a Notary Public in and for said State, personally appeared Michael Serposs, to me known to be the Manager 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 7th day of October, 2022.

Missy Powers, Notary Public  
Residing in St. Joseph County, IN

My Commission Expires: June 29, 2029



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. Danielle Campbell Weiss.

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



**EXHIBIT 1**

**Description of Property**

**Tax ID No.** 018-1009-0359

**Parcel Key No.** 71-08-01-305-020.000-026

**Legal Description:** LOTS 151 152 153 ORIGINAL PLAT SOUTH BEND

**Commonly known as:** 125 West Marion Street



**EXHIBIT E**

**Form of Report to Commission**

## EXHIBIT F

### Minimum Insurance Amounts

- |      |                                    |                      |                                                      |
|------|------------------------------------|----------------------|------------------------------------------------------|
| A.   | Worker's Compensation              |                      |                                                      |
|      | 1.                                 | State                | Statutory                                            |
|      | 2.                                 | Applicable Federal   | Statutory                                            |
|      | 3.                                 | Employer's Liability | \$100,000.00                                         |
| <br> |                                    |                      |                                                      |
| 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                                     |
| <br> |                                    |                      |                                                      |
| 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: 10/11/22  
FROM: Erik Glavich  
SUBJECT: Greenleaf Holdco, LLC Development Agreement

\_\_\_\_\_  
Pres/V-Pres  
ATTEST: \_\_\_\_\_ Secretary  
Date: \_\_\_\_\_  
 Approved  Not Approved  
*SOUTH BEND REDEVELOPMENT COMMISSION*

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Second Amendment to Development Agreement for property located at 3820 West Calvert Street, South Bend, Indiana 46613

SPECIFICS: The Commission will consider a Second Amendment to the Development Agreement with Greenleaf Holdco, LLC. The Commission on October 22, 2020, entered into an Agreement that specified that (1) the Funding Amount provided by Commission would be no more than \$500,000 and (2) the Private Investment by the Developer would be no less than \$15.5 million. On October 14, 2021, the agreement was amended to lengthen the Time of Completion for the project to 24 months from 12 months.

This new Second Amendment would update the Agreement to specify that (1) the Funding Amount provided by the Commission is increased to \$657,000 from \$500,000, (2) the Developer is increasing its investment in the property to \$25 million from \$15.5 million, and (3) the Time of Completion for the project is now 36 months.

Staff recommends approval of this Second Amendment.

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

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

**SECOND AMENDMENT TO DEVELOPMENT  
AGREEMENT**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "Second Amendment") is made on October 13, 2022, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and Greenleaf Holdco, LLC (the "Developer") (each a "Party," and collectively the "Parties").

**RECITALS**

A. The Commission and the Developer entered into a Development Agreement dated effective October 22, 2020 (the "Development Agreement"), as amended by the First Amendment to the Development Agreement dated October 14, 2021, pertaining to certain Local Public Improvements ("LPI") to a fully automated, large-scale, hydroponic greenhouse in the River West Development Area (the "Project").

B. The Parties agreed to a Substantial Completion Date of twenty-four (24) months from the date of the Development Agreement; however, due to an expansion of project scope, the Developer will be unable to meet the Substantial Completion Date.

C. The Parties agreed that tax increment finance revenues would be used for paying the costs associated with the construction, equipping, inspection, and delivery of LPI; however, due to the expansion of project scope, the Commission believes an increase in the Funding Amount is now appropriate.

D. The Parties desire to amend the Development Agreement to modify the Substantial Completion Date, Funding Amount, and Private Investment.

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

1. Section 4.5, Timeframe for Completion, shall be modified to delete the phrase "twenty-four (24) months" and shall be replaced by the phrase "thirty-six (36) months."

2. Section 1.3, Funding Amount, shall be modified to delete the phrase "Five Hundred Thousand Dollars (\$500,000.00)" and shall be replaced by the phrase "Six Hundred Fifty Seven Thousand Dollars (\$657,000.00)."

3. Section 1.4 Private Investment, shall be modified to delete the phrase "Fifteen Million Five Hundred Thousand Dollars (\$15,500,000.00)" and shall be replaced by the phrase "Twenty-Five Million Dollars (\$25,000,000.00)."

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



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

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

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

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



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

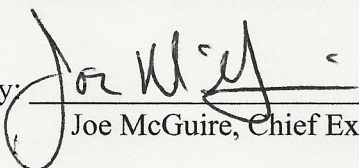
SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

By: \_\_\_\_\_  
Troy D. Warner, Secretary

GREENLEAF HOLDCO LLC

By:  \_\_\_\_\_  
Joe McGuire, Chief Executive Officer

## **DEVELOPMENT AGREEMENT**

This Development Agreement (this “Agreement”), is effective as of October 22, 2020 (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 Greenleaf Holdco LLC, a Delaware limited liability company, with an address of 3820 W. Calvert Street, South Bend, Indiana 46613 (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 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**; 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 Five Hundred Thousand Dollars (\$500,000.00) 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 an amount no less than Fifteen Million Five Hundred Thousand Dollars (\$15,500,000.00) 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 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 by the date that is twelve (12) 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 Developer's Employment Obligations. The Developer shall create twenty (20) new full-time jobs located at the Developer Property during Phase I of the Project, with average hourly wages that will meet or exceed the City's minimum wage (the "Job Creation Requirement") by the date that is twenty-four (24) months after the Effective Date of this Agreement (the "Job Creation Deadline") and maintain said jobs for at least the period of time described in Section 4.7(c) below. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy

the Job Creation Requirement by the Job Creation Deadline will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.7 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, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

(c) On or before April 15 of the year that is one year after substantial completion of the Project and on each April 15 thereafter until April 15 of the year which is five (5) years after substantial completion of the Project, the Developer shall submit to the Commission a report with the following information: (i) the number of jobs created as a result of the Project and wage and benefit information for the jobs created; and (ii) a detailed description of the of the job and wage details for the number of people employed by the Developer in connection with the Project.

4.8 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, and prior to the Commission's expenditure of the Funding Amount, the Developer shall deliver a complete set thereof to the City Planner, or his designee, who may approve or disapprove said plans and specifications for the Project as they pertain to the Local Public Improvements in his or her sole discretion and may request revisions or amendments to be made to the same.

4.9 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.

4.10 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 may approve or



disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same. The Commission shall not be required to expend the Funding Amount unless the Engineering Department has approved of all bid specifications.

4.11 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.

4.12 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).

4.13 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 acknowledged 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. In the event that the Developer fails to satisfy the Job Creation Requirement by the Job Creation Deadline, then upon the written demand of the Commission, the Developer will repay the Commission an amount equal to Twenty One Thousand Dollars (\$21,000.00) multiplied by the number of jobs by which the Developer fell short of the Job Creation Requirement 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 Local Public Improvements or 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: Greenleaf Holdco LLC  
806 Howard St.  
South Bend, IN 46617  
Attn: Joe McGuire, CEO

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.

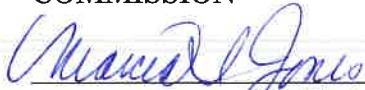
9.14 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

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.

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

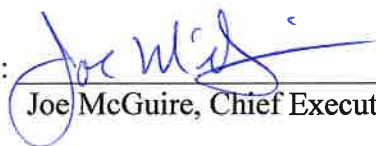
SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

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

GREENLEAF HOLDCO LLC

By:   
\_\_\_\_\_  
Joe McGuire, Chief Executive Officer

## EXHIBIT 1

### Description of Property

Part of the South Half of Section 16, Township 37 North, Range 2 East, Portage Township, St. Joseph County, Indiana (all monuments referenced herein are set or found on a Lang, Feeney & Associates, Inc. survey Job #137-64) being more particularly described as follows: Beginning at the South Quarter corner of said Section 16, said point being a stone found; thence North 89°19'06" West along the south line of said Section, a distance of 1128.38 feet to a point on the easterly right-of-way line of the New Jersey, Indiana & Illinois railroad; thence North 22°36'49" East along said right-of-way, a distance of 1402.66 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the south right-of-way line of Calvert Street; thence South 89°43'52" East along said south line, a distance of 579.47 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the North-South centerline of said Section 16; thence continuing South 89°43'52" East along said south right-of-way line, a distance of 1323.02 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the east line of the Southwest Quarter of the Southeast Quarter of said Section 16; thence South 00°11'35" East along said east line, a distance of 1297.61 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the south line of said Section 16; thence South 89°55'32" West along said south line, a distance of 1317.89 feet to the point of beginning.



## EXHIBIT A

### Description of Developer Property

Part of the South Half of Section 16, Township 37 North, Range 2 East, Portage Township, St. Joseph County, Indiana (all monuments referenced herein are set or found on a Lang, Feeney & Associates, Inc. survey Job #137-64) being more particularly described as follows: Beginning at the South Quarter corner of said Section 16, said point being a stone found; thence North 89°19'06" West along the south line of said Section, a distance of 1128.38 feet to a point on the easterly right-of-way line of the New Jersey, Indiana & Illinois railroad; thence North 22°36'49" East along said right-of-way, a distance of 1402.66 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the south right-of-way line of Calvert Street; thence South 89°43'52" East along said south line, a distance of 579.47 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the North-South centerline of said Section 16; thence continuing South 89°43'52" East along said south right-of-way line, a distance of 1323.02 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the east line of the Southwest Quarter of the Southeast Quarter of said Section 16; thence South 00°11'35" East along said east line, a distance of 1297.61 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the south line of said Section 16; thence South 89°55'32" West along said south line, a distance of 1317.89 feet to the point of beginning.

## **EXHIBIT B**

### **Project Plan**

The Developer will construct a fully automated, large-scale, hydroponic greenhouse on the Developer Property in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations.

## **EXHIBIT C**

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

The Commission will complete, or cause to be completed, the following work or payments in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations: construction of a retention pond, asphalt paving of drives and parking lots, installation of landscaping elements, and any other Redevelopment staff-approved public improvements related to the Developer Property.

**EXHIBIT D**

**Form of Easement**

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## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the 24<sup>th</sup> day of October, 2020 (the "Effective Date"), by and between Greenleaf Holdco LLC, a Delaware limited liability company, with offices at 806 Howard Street, South Bend, Indiana 46617 (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 October 22, 2020 (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.





**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. \$1,000,000.00 Each Occurrence
    - b. \$1,000,000.00 Annual Aggregate Products and Completed Operation
  
  - 2. Property Damage
    - a. \$1,000,000.00 Each Occurrence
    - b. \$1,000,000.00 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

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is made on October 14, 2021, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and Greenleaf Holdco, LLC (the "Developer") (each a "Party," and collectively the "Parties").

### RECITALS

A. The Commission and the Developer entered into a Development Agreement dated effective October 22, 2020 (the "Development Agreement"), pertaining to certain local public improvements ("LPI") to a fully automated, large-scale, hydroponic greenhouse in the River West Development Area (the "Project").

B. The Parties agreed to a Substantial Completion Date of twelve (12) months from the date of the Development Agreement; however, due to unforeseen circumstances, the Developer will be unable to meet the Substantial Completion Date.

C. The Parties desire to modify the Development Agreement to modify the Substantial Completion Date.

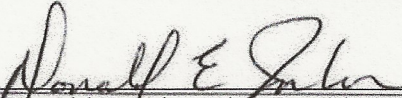
NOW, THEREFORE, in consideration of the mutual promises and obligations stated in the Development Agreement and this First Amendment, the adequacy of which is hereby acknowledged, the Parties agree as follows:

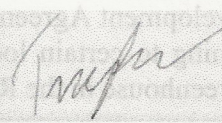
1. Section 4.5, Timeframe for Completion, shall be modified to delete the phrase "twelve (12) months" and replace it with "twenty-four (24) months."
2. The Developer hereby expressly reaffirms its obligations under the Development Agreement, and, unless expressly modified by this First Amendment, the terms and provisions of the Development Agreement remain in full force and effect.
3. Capitalized terms used in this First Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.
4. The recitals set forth above are hereby incorporated into the operative provisions of this First Amendment.
5. This First Amendment will be governed and construed in accordance with the laws of the State of Indiana.
6. 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.



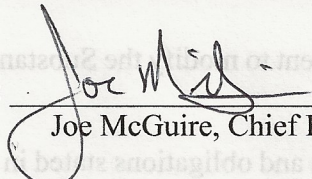
IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Development Agreement as of the first date stated above.

**SOUTH BEND REDEVELOPMENT COMMISSION**

By:   
Donald E. Inks, Vice-President

ATTEST:   
By: Troy D. Warner, Secretary

**GREENLEAF HOLDCO LLC**

By:   
Joe McGuire, Chief Executive Officer

**Cross References: Instrument No. 1718969**

**TERMINATION AND RELEASE  
OF DEED COVENANTS**

WHEREAS, the City of South Bend, Department of Development, by and through its governing body, the South Bend Redevelopment Commission ("South Bend"), is the grantor of certain real property subject to conditions, covenants and reversionary interests (the "Deed Covenants") set forth that certain Quit Claim Deed recorded on July 19, 2017 as Instrument Number 1718969 in the Office of the Recorder of St. Joseph County, Indiana ("Deed").

WHEREAS, South Bend is the benefitting party of the Deed Covenants.

THEREFORE, South Bend hereby terminates the Deed Covenants, releases all of the Property described in the Deed from the Deed Covenants, and acknowledges and declares that the Deed Covenants are of no further force and effect.

The undersigned person executing this Termination and Release of Deed Covenants represents and certifies that s/he has been fully empowered to execute and deliver this Termination and Release of Deed Covenants; and that all necessary corporate action for the making of such release has been taken and done.

**[SIGNATURE APPEARS ON FOLLOWING PAGE.]**



This instrument was prepared by Annie R. Xie, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Annie R. Xie



LOAN AGREEMENT

AMONG

THE SOUTH BEND CHOCOLATE COMPANY, INC.,

INDIANA DINOSAUR MUSEUM INC.,

AND

CITY OF SOUTH BEND, INDIANA

Dated as of November 1, 2022

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## LOAN AGREEMENT

This is a LOAN AGREEMENT dated as of November 1, 2022 ("Loan Agreement") among The South Bend Chocolate Company, Inc. an Indiana corporation duly organized and existing under the laws of the State of Indiana ("SBCC"), Indiana Dinosaur Museum Inc., an Indiana nonprofit corporation ("IDM" and jointly and severally with SBCC, the "Borrower"), and CITY OF SOUTH BEND, INDIANA ("City"), a political subdivision and municipal corporation duly organized and validly existing under the laws of the State of Indiana.

### PRELIMINARY STATEMENT

Indiana Code, Title 36, Article 7, Chapters 11.9, 12 and 14, as in effect on the date the first series of the Series 2022 Note is funded (collectively, "Act"), have been enacted by the General Assembly of Indiana.

The Act provides that a political subdivision may make direct loans to users or developers for the cost of acquisition, construction, or installation of economic development facilities, including infrastructure improvements, with such loans to be secured by the pledge of secured or unsecured debt obligations of the users or developers, for diversification of economic development and promotion of job opportunities in or near the City.

The South Bend Redevelopment Commission ("Redevelopment Commission") adopted a declaratory resolution on February 23, 1990 establishing the Airport Economic Development Area and the Airport Economic Development Area Allocation Area No. 1 ("1990 Declaratory Resolution"), which was effective as of that date and was confirmed by a confirmatory resolution adopted on June 27, 1990 ("1990 Confirmatory Resolution"). The South Bend Redevelopment Commission further adopted a declaratory resolution on April 16, 1993 establishing the Sample-Ewing Development Area and the Sample-Ewing Allocation Area (South Bend Allocation Area No. 8) ("1993 Declaratory Resolution"), which was effective as of that date and was confirmed by a confirmatory resolution adopted on May 21, 1993 ("1993 Confirmatory Resolution" and collectively with the 1990 Declaratory Resolution, the 1990 Confirmatory Resolution, the 1993 Declaratory Resolution and the 1993 Confirmatory Resolution hereinafter referred to as the "Original Declaratory Resolution"). The Redevelopment Commission on June 19, 2007, adopted an amending declaratory resolution, as further amended on August 28, 2014 and April 11, 2019 (collectively, as amended, "Amending Declaratory Resolution"), as confirmed by an amending confirmatory resolution adopted on July 20, 2007, as further amended on November 10, 2014 and June 13, 2019 (collectively, "Amending Confirmatory Resolution" and collectively with the Original Declaratory Resolution, the Amending Declaratory Resolution and the Amending Confirmatory Resolution hereinafter referred to as the "Area Resolution"), removing, transferring, consolidating, expanding and renaming the consolidated and expanded area the River West Development Area ("Area"), as an economic development area under IC 36-7-14 and IC 36-7-25;

The Area Resolution approved the economic development plan, as amended ("Plan") for the Area which Plan contained specific recommendations for economic development in the Area, and the Area Resolution removed, transferred, consolidated, expanded and renamed consolidated and expanded allocation area the River West Development Area Allocation Area No. 1 in accordance with IC 36-7-14-39 ("Allocation Area") for the purpose of capturing property taxes

generated from the incremental assessed value of real and depreciable personal property located in the Allocation Area ("Tax Increment").

The City, upon finding that the Facilities (as hereinafter defined) and the proposed financing of the construction and reconstruction of the Project (as hereinafter defined) to support the Facilities will create additional employment opportunities in the City; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing.

In order to encourage economic development and promote significant opportunities for gainful employment, the City intends to fund a loan to the Borrower in an aggregate amount not to exceed \$2,700,000 ("Loan"), to be evidenced by a Borrower's Taxable Economic Development Revenue Note, Series 2022A and B pursuant to the provisions of this Loan Agreement, to finance a portion of the cost of the Project to support the Facilities in or physically connected to the Area.

This Loan Agreement provides for the payment of the Series 2022 Note by the Borrower and further provides for the Borrower's repayment obligation to be evidenced by a Series 2022 Note by each Borrower entity receiving funding to the extent of such funding received, substantially in the form attached hereto as Exhibit A-1 and Exhibit A-2.

Subject to the further provisions of this Loan Agreement including Section 3.1, the Loan will be payable solely out of the payments to be made by the Borrower on the Series 2022 Note.

In consideration of the premises, the Loan, the acceptance of the Series 2022 Note by the City, and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Borrower has executed and delivered this Loan Agreement.

This Loan Agreement is executed upon the express condition that if the Borrower shall pay or cause to be paid all indebtedness hereunder (unless the Series 2022 Note is forgiven pursuant to Section 3.1 hereof) and shall keep, perform and observe all and singular the covenants and promises expressed in the Series 2022 Note, any other Notes (as hereinafter defined) and this Loan Agreement to be kept, performed and observed by the Borrower, then this Loan Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

The Borrower and the City hereby covenant and agree as follows:

## ARTICLE I.

### DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Loan Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

"Act" means, collectively, Indiana Code 36-7-11.9, 12 and 14, as in effect on the date the first series of the Series 2022 Note is funded.

"Allocation Area" means River West Development Area No. 1.

"Area" means the River West Development Area.

"Authorized Representative" means, with respect to the Borrower, Mark Turner or any other person certified by the President of the Borrower to be the Borrower's Authorized Representative and, with respect to the City, the Executive Director of the Department of Community Investment or any other person certified by the Mayor of the City to be the City's Authorized Representative.

"Authorizing Resolution" means Resolution No. \_\_-\_\_ adopted by the South Bend Redevelopment Commission on October 13, 2022, authorizing the use of TIF Revenues on hand, or to be on hand, to fund the Series 2022 Note.

"Borrower" means SBCC and IDM or any affiliates, successors and/or assigns thereto permitted under Section 3.3 hereof.

"Business Day" means any day other than a Saturday, Sunday or holiday, on which commercial banks in the City are open for conducting substantially all of their banking activities.

"City" means South Bend, Indiana, or any successor thereto or assign thereof.

"Commission" means the South Bend Economic Development Commission.

"Counsel" means an attorney duly admitted to practice law before the highest court of any state, and, without limitation, may include legal counsel for either the City or the Borrower.

"Facilities" shall have the meaning set forth in the Project definition below.

"Loan" means the loan by the City to the Borrower.

"Note" or "Notes" means the Series 2022 Note, and any other note executed by the Borrower in connection with the Series 2022 Note, and any notes issued in exchange therefor pursuant (and subject) to Section 3.7 hereof.

"Note Counsel" means Ice Miller LLP or another a nationally recognized firm of municipal bond attorneys acceptable to the City and the Borrower.



"Outstanding Bonds" means the Redevelopment Commission's outstanding Indiana Bond Bank Special Program Bonds, Series 2011A (TIF A), Indiana Bond Bank Special Program Bonds, Series 2011A (TIF B), 2006 Main/Colfax Garage Lease, South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2015 (Refunding 2008), South Bend Redevelopment Authority Lease Rental Revenue Refunding Bonds, Series 2013 (Refunding 2008), South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2015, Redevelopment District Bonds, Series 2018, Taxable Economic Development Revenue Bonds, Series 2017 (Eddy Street Phase II), South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2019 (Double Tracking Project), Taxable Economic Development Tax Increment Revenue Bonds, Series 2020 (Community Education Center Project), Building Corporation First Mortgage Revenue Refunding Bonds, Series 2012 (Police and Fire Station Projects) and any bonds issued in the future on a parity therewith.

"Project" means the development, construction, renovation, and equipping of three (3) buildings totaling approximately 90,434 square feet of attraction, retail, restaurant, visitor center and tour-able chocolate factory space ("Improvements") on real estate commonly known as 24762 and 24820 U.S. Highway 20, South Bend, Indiana 46628 ("Land" and together with the Improvements, the "Facilities"), along with its surrounding acreage to create a year-around attraction and destination for City residents and visitors and to support the development of Continental Divide Trail, all on the City's westside in or physically connected to the Area.

"Project Costs" with respect to the Project shall mean any and all costs permitted by the Act including, but not limited to:

- (i) the "Note Issuance Costs," namely the reasonable third-party costs, fees and expenses incurred or to be incurred by the City in connection with the Loan, the reasonable fees of disbursements of the City's municipal advisor, application fees and expenses, publication costs, the filing and recording fees in connection with any necessary filings or recordings or to perfect the lien thereof, the out-of-pocket costs of the City, the reasonable fees and disbursements of Counsel to the City, the reasonable fees and expenses of Note Counsel, the costs of preparing or printing the Series 2022 Note and the documentation supporting the Loan, the costs of reproducing documents and any other costs of a similar nature reasonably incurred;
- (ii) design costs and other expenses directly related to the construction and equipping of the Project;
- (iii) the cost of insurance of all kinds that may be required or necessary in connection with the construction or equipping of the Project;
- (iv) all costs and expenses which Borrower shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto), for the construction of the Project; and
- (v) any sums required to reimburse the Borrower for advances made subsequent to the date the first series of the Series 2022 Note is funded for any of the above items or

for any other costs previously incurred and for work done by Borrower which are properly chargeable to the Project.

"Redevelopment Commission" means the South Bend Redevelopment Commission.

"Series 2022 Note" means the Series 2022A Note and Series 2022B Note of each Borrower in the aggregate maturity amounts of \$2,700,000 in substantially the forms attached hereto as Exhibit A-1 and Exhibit A-2 which will be issued and delivered by the Borrower to the City to evidence the Loan in the respective amounts due by IDM and SBCC and any Note issued in exchange for the Series 2022 Note pursuant to Section 3.7 hereof. As set forth in Section 2.2(i) hereof, the Series 2022 Note will be drawn in an aggregate amount not to exceed \$2,700,000 as set forth in Section 2.2(i).

"Series 2022 Note A" means the Series 2022 Note delivered by IDM in the form attached hereto as Exhibit A-1 in the maximum amount of [\$1,700,000].

"Series 2022 Note B" means the Series 2022 Note delivered by SBCC in the form attached hereto as Exhibit A-2 in the maximum amount of [\$1,000,000].

"State" means the State of Indiana.

"Tax Increment" has the meaning set forth in the Recitals.

"Written Request" means a request in writing from an authorized representative of the party making the request.

Section 1.2. Rules of Interpretation. For all purposes of this Loan Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) "This Loan Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) The terms defined elsewhere in this Loan Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Loan Agreement.

Exhibit A-1. Form of Series 2022A Note of IDM

Exhibit A-2. Form of Series 2022B Note of SBCC

(End of Article I)

## ARTICLE II.

### REPRESENTATIONS; LOAN OF TIF REVENUES

#### Section 2.1. Representations by City. The City represents and warrants that:

(a) The City is a political subdivision duly organized and validly existing under the laws of the State. Under the provisions of the Act, the City has been authorized by action of its governing body to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder.

(b) The City agrees to make the Loan for the purpose of financing a portion of the construction or reconstruction of the Project for the benefit of the Borrower, to benefit the health, safety, morals and general welfare of the citizens of the City, increase economic well-being of the State, promote job opportunities and attract major new businesses.

#### Section 2.2. Representations by Borrower. Borrower represents and warrants that:

(a) IDM is a nonprofit corporation duly incorporated under the laws of the State of Indiana, validly exists and authorized to do business under the laws of the State, is not in violation of any provision of its Articles of Incorporation and Bylaws, has not received notice and has no reasonable grounds to believe that it is in violation of any laws in any manner material to its ability to perform its obligations under this Loan Agreement and the Series 2022A Note, has the power to enter into and to perform its obligations under this Loan Agreement and the Series 2022A Note, and has duly authorized the execution and delivery of this Loan Agreement and the Series 2022A Note by appropriate corporate action.

(b) SBCC is a corporation duly incorporated under the laws of the State of Indiana, validly exists and authorized to do business under the laws of the State, is not in violation of any provision of its Articles of Incorporation and Bylaws, has not received notice and has no reasonable grounds to believe that it is in violation of any laws in any manner material to its ability to perform its obligations under this Loan Agreement and the Series 2022B Note, has the power to enter into and to perform its obligations under this Loan Agreement and the Series 2022B Note, and has duly authorized the execution and delivery of this Loan Agreement and the Series 2022B Note by appropriate corporate action.

(c) The Borrower anticipates creating up to approximately 144 new full time job opportunities. The Borrower and its affiliates anticipate causing a total investment of up to approximately \$13,500,000 in real property (exclusive of land costs) and \$1,900,000 in depreciable personal property.

(d) All of the proceeds from the Series 2022 Note (including any income earned on the investment of such proceeds) provided to the Borrower will be used solely for Project Costs.

(e) The Borrower intends to develop, construct and operate or cause the Facilities to be developed, constructed and operated as an economic development facility under the Act until the expiration or earlier termination of this Loan Agreement as provided herein, unless the Borrower has sold or otherwise transferred the Facilities to a Surviving Corporation (as hereinafter

defined) in accordance with Section 3.3 or assigned this Loan Agreement in accordance with Section 3.11 of this Loan Agreement.

(f) Neither the execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby including execution and delivery of the Series 2022 Note nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, will contravene the Borrower's Articles of Incorporation or any law or any governmental rule, regulation or order presently binding on the Borrower or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which Borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of Borrower under the terms of any instrument or agreement.

(g) The execution, delivery and performance by the Borrower of this Loan Agreement and the Series 2022 Note do not require the consent or approval of the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(h) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Loan Agreement and the Series 2022 Note have been duly executed and delivered by the Borrower and constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(i) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Loan Agreement or the Series 2022 Note.

(j) Upon receipt by the City of evidence from the lender of Borrower that Borrower has secured and closed additional funding that when combined with the Loan is sufficient to complete the construction of the Facilities, (1) IDM may draw, under the Series 2022A Note, up to [\$1,700,000], for the purpose of paying (or reimbursing IDM) for improvements, equipment, exhibit or other site or infrastructure costs necessary or advisable for IDM to commence operations and open at the Project site ("IDM Opening") and (2) SBCC may draw, under the Series 2022B Note, up to [\$1,000,000], for the purpose of paying (or reimbursing SBCC) for tenant improvements, equipment, and other site or infrastructure other costs necessary or advisable for SBCC to commence operations at the Project site, including but not limited to the opening the anticipated retail, restaurant, visitors and exhibit areas ("SBCC Opening"). Upon the written request of an Authorized Representative of Borrower, funds under a Series 2022 Note shall be disbursed from the City to the Borrower pursuant to payment applications that list the vendor, the dollar amount and the description of the Project Costs (a "Pay Application"), which funds shall be disbursed to Borrower within thirty (30) days of the City's receipt of a complete Pay Application in a form reasonably acceptable to the City and the availability of any supporting documentation reasonably requested by the City to properly review the Pay Application and confirm the Project Costs. In no event shall the aggregate draws exceed the actual cost of the Project. Upon (i) the completion of the Facilities and (ii) the IDM Opening, as evidenced by an Affidavit of Completion executed by IDM and accepted by the City, the Series 2022A Note shall be considered forgiven.

Upon (i) the completion of the Facilities and (ii) the SBCC Opening, as evidenced by an Affidavit of Completion executed by SBCC and accepted by the City, the Series 2022B Note shall be considered forgiven.

Section 2.3. Series 2022 Note. Concurrently with the execution and delivery hereof, the City is authorizing the Loan to the Borrower and will fund each series of the Loan at such time or times as the representation in Section 2.2(j) has been met. The Loan is being evidenced by the execution and delivery by the Borrower of the Series 2022 Note substantially in the form attached hereto as Exhibit A-1 and Exhibit A-2.

(End of Article II)



RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE SOUTH BEND REDEVELOPMENT  
COMMISSION AUTHORIZING USE OF TIF REVENUES AND  
APPROVING FORM OF LOAN AGREEMENT

WHEREAS, the South Bend Redevelopment Commission (the "Redevelopment Commission"), the governing body of the City of South Bend, Indiana ("City"), Department of Redevelopment (the "Department") exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953 which has been codified in Indiana Code 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, the Redevelopment Commission adopted a declaratory resolution on February 23, 1990 establishing the Airport Economic Development Area and the Airport Economic Development Area Allocation Area No. 1 ("1990 Declaratory Resolution"), which was effective as of that date and was confirmed by a confirmatory resolution adopted on June 27, 1990 ("1990 Confirmatory Resolution");

WHEREAS, the Redevelopment Commission adopted a declaratory resolution on April 16, 1993 establishing the Sample-Ewing Development Area and the Sample-Ewing Allocation Area (South Bend Allocation Area No. 8) ("1993 Declaratory Resolution"), which was effective as of that date and was confirmed by a confirmatory resolution adopted on May 21, 1993 ("1993 Confirmatory Resolution");

WHEREAS, the 1990 Declaratory Resolution, the 1990 Confirmatory Resolution, the 1993 Declaratory Resolution and the 1993 Confirmatory Resolution are hereinafter collectively referred to as the "Original Declaratory Resolution";

WHEREAS, the Redevelopment Commission on June 19, 2007, adopted an amending declaratory resolution, as further amended on August 28, 2014 and April 11, 2019 (collectively, as amended, "Amending Declaratory Resolution"), as confirmed by an amending confirmatory resolution adopted on July 20, 2007, as further amended on November 10, 2014 and June 13, 2019 (collectively, "Amending Confirmatory Resolution"), removing, transferring, consolidating, expanding and renaming the consolidated and expanded area the River West Development Area ("Area"), as an economic development area under IC 36-7-14 and IC 36-7-25;

WHEREAS, the Original Declaratory Resolution, the Amending Declaratory Resolution and the Amending Confirmatory Resolution are hereinafter collectively referred to as the "Area Resolution";

WHEREAS, the Area Resolution approved the economic development plan, as amended ("Plan") for the Area which Plan contained specific recommendations for economic development in the Area, and the Area Resolution removed, transferred, consolidated, expanded and renamed consolidated and expanded allocation area the River West Development Area Allocation Area No. 1 in accordance with IC 36-7-14-39 ("Allocation Area") for the purpose of capturing

property taxes generated from the incremental assessed value of real and depreciable personal property of designated taxpayers located in the Allocation Area ("Tax Increment");

WHEREAS, The South Bend Chocolate Company, Inc., an Indiana corporation ("SBCC"), the Indiana Dinosaur Museum Inc., an Indiana nonprofit corporation ("IDM") or an affiliate thereof (IDM, SBCC and any applicable affiliate of either are together referred to collectively as "Borrower") has proposed the development, construction, renovation, and equipping of three (3) buildings totally approximately 90,434 square feet of attraction, retail, restaurant, visitor center and tour-able chocolate factory space ("Improvements") on real estate commonly known as 24762 and 24820 U.S. Highway 20, South Bend, Indiana 46628 ("Land" and together with the Improvements, the "Facilities"), along with its surrounding acreage to create a year-around attraction and destination for City residents and visitors and to support the development of Continental Divide Trail, all on the City's westside in or physically connected to the Allocation Area (collectively, the "Project");

WHEREAS, the Commission has determined that the Project will: (i) assist in the creation of significant business enterprises in the Area; (ii) bring additional capital investment to the Area; (iii) be of public utility and benefit to the City and its citizens; (iv) strengthen the economic well-being of the Area; and (v) encourage additional growth in the Area;

WHEREAS, the Commission has determined that the hereinafter defined Project is included in the current Plan and the use of Tax Increment to finance the Project is appropriate under the Plan;

WHEREAS, the Commission is authorized to enter into an agreement with the Borrower to provide the incentives that will induce the Borrower to complete the Project and create approximately 144 net new full-time jobs, thus strengthening the economic well-being of the Area and encouraging additional growth;

WHEREAS, the City has the general corporate power to promote economic development and to make direct loans to providers of economic development facilities, with the loans to be secured by the pledge of secured or unsecured debt obligations of the users or developers;

WHEREAS, the Commission is a department of the City charged with the duties and purposes of promoting the use of land in a manner that best serves the interests of the City, promoting significant opportunities for gainful employment and creating significant businesses enterprises in the City;

WHEREAS, funding a loan to the Borrower in the amount not to exceed \$2,700,000 ("Loan"), to be evidenced by the Borrower's Taxable Economic Development Revenue Note, Series 2022 (South Bend Chocolate Destination Project) ("Series 2022 Note"), entering into the hereinafter defined Loan Agreement and funding the Loan to induce the Borrower to construct the Facilities in the Area fosters and encourages economic development, promotes the use of the Project property in a manner that best serves the interest of the City and its citizens, promotes significant opportunities for gainful employment and helps create significant business enterprises in the City;

WHEREAS, the City is funding the Loan to the Borrower pursuant to a Loan Agreement, dated as of the first day of the month in which the Series 2022 Note is issued ("Loan

Agreement") between the Borrower and the City for the financing of the Project in or physically connected to the Area;

WHEREAS, the Commission will use the Tax Increment on hand and to be on hand in the allocation fund for the Allocation Area to fund the Loan, which obligation is junior and subordinate to the payment of debt service on the Commission's outstanding Indiana Bond Bank Special Program Bonds, Series 2011A (TIF A), Indiana Bond Bank Special Program Bonds, Series 2011A (TIF B), 2006 Main/Colfax Garage Lease, South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2015 (Refunding 2008), South Bend Redevelopment Authority Lease Rental Revenue Refunding Bonds, Series 2013 (Refunding 2008), South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2015, Redevelopment District Bonds, Series 2018, Taxable Economic Development Revenue Bonds, Series 2017 (Eddy Street Phase II), South Bend Redevelopment Authority Lease Rental Revenue Bonds of 2019 (Double Tracking Project), Taxable Economic Development Tax Increment Revenue Bonds, Series 2020 (Community Education Center Project), Building Corporation First Mortgage Revenue Refunding Bonds, Series 2012 (Police and Fire Station Projects) and any bonds issued in the future on a parity therewith (collectively, "Outstanding Bonds"); and

WHEREAS, in order to finance the Project, the Commission has determined that it is in the best interest of the City and its residents to fund the Loan to the Borrower to enable the Borrower to pay a portion of the costs of the Project;

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

Section 1. The Commission hereby finds that authorizing the use of Tax Increment in an amount not to exceed \$2,700,000 to fund the Loan to finance a portion of the costs of the Project will help accomplish the Plan for the Area and will promote economic development of the City.

Section 2. The Commission hereby irrevocably authorizes the use of Tax Increment to fund the Loan evidenced by the Series 2022 Note in an amount not to exceed \$2,700,000 for the financing of a portion of the costs of the Project pursuant to the Loan Agreement and the terms and conditions set forth therein with full funding and the construction of the Facilities, expected to be completed no later than June 30, 2024.

Section 3. The Commission hereby approves the form of Loan Agreement and authorizes the President or her designee to negotiate, finalize and execute, and the Secretary to attest, the Loan Agreement and any and all financing documents that counsel determines is required to effectuate the Loan as contemplated herein.

Section 4. This resolution shall be effective upon passage.

*Signature Page Follows*

Resolution No. \_\_\_\_\_ adopted October 13, 2022.

SOUTH BEND REDEVELOPMENT COMMISSION

---

Marcia Jones, President

Attest:

---

Troy Warner, Secretary

## ARTICLE III.

### PARTICULAR COVENANTS OF THE BORROWER

Section 3.1. Forgiveness of Payment of Loan. To the extent the applicable representations and conditions in Section 2.2(j) are met, payment on the respective Series 2022 Note shall be forgiven immediately and the respective Series 2022 Note shall be considered paid and of no further force or effect. If the representation in Section 2.2(j) is not met, the Loan shall remain in effect and be payable upon the maturity date set forth in each Section 2022 Note.

Section 3.2. RESERVED.

Section 3.3. Continuing Existence and Qualification. The Borrower covenants that so long as any Note is outstanding, it (a) will maintain in good standing its corporate existence and qualification to do business in the State, and (b) will not (1) dissolve or otherwise dispose of all or substantially all of its assets and (2) consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Borrower may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Borrower) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the Surviving Corporation had originally executed this Loan Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Assignment, Sale or Other Disposition of Project. Until the Loan is repaid (or deemed forgiven) in full, any sale, lease or other disposition of the Facilities or any portion thereof is subject to the conditions of Section 3.11 hereof.

Section 3.5. Indemnity. The Borrower will pay, protect, defend, indemnify and save the City, the Commission and the Redevelopment Commission harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the City), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to the Project, provided, that the liability of Borrower under this Section 3.5 shall be limited to the amount of the Loan actually received by Borrower as of the date of the alleged breach of the terms of this Loan Agreement. If any proceeding is instituted for which indemnity may be sought under this Section 3.5, the party that may seek such indemnity shall notify the Borrower and the City in writing in a timely manner to allow the Borrower to defend any action or claim in such proceeding.

Section 3.6. Issuance of Substitute Notes. Upon the surrender of any Note, the Borrower will execute and deliver to the holder thereof a new Note dated the date of the Note being surrendered but with appropriate notations thereon to reflect payments of principal already paid

on such Note; provided, however, that there shall never be outstanding at any one time more than one Note of any one series.

Section 3.7. Payment of Expenses of Loan. The Note Issuance Costs (as defined under "Project Costs" in Article I hereof) will be paid by the Borrower on the date the first series of the Loan is funded.

Section 3.8. Reserved.

Section 3.9. Other Amounts Payable by the Redevelopment Commission. The Redevelopment Commission covenants and agrees to pay the following:

(a) All reasonable out-of-pocket costs incurred by the City incident to the payment of the Series 2022 Note as the same become due and payable.

(b) An amount sufficient to reimburse the City and Commission for all expenses reasonably incurred by the City under this Loan Agreement and in connection with the performance of its obligations under this Loan Agreement.

(c) All reasonable expenses incurred in connection with the enforcement of any rights under this Loan Agreement by the City.

Section 3.10. Completion of Project. The Borrower agrees that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for constructing and completing the Project, to the extent permitted by law, on or about June 30, 2024.

If the moneys comprising the Loan should not be sufficient to pay in full the costs of the construction of the Project, the Borrower agrees, for the benefit of the City and to fulfill the purposes of the Act, to use commercially reasonable efforts to cause the completion of the construction of the Project and to pay or cause to be paid that portion of the costs therefor as may be in excess of the moneys available therefor. The City does not make any warranty, either express or implied, that the moneys will be available for payment of the costs of the construction of the Project, will be sufficient to pay all the costs which will be incurred in that connection. The Borrower shall not be entitled to any reimbursement therefor from the City, nor shall it be entitled to any diminution in or abatement or postponement of the amounts payable hereunder or under the Series 2022 Note.

Section 3.11. Sale, Substitution, or Lease of the Facilities; Assignment of Loan Agreement. The Borrower, subject to the written consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed), may sell, lease or transfer or otherwise dispose of the Facilities or any portion thereof only if the sale, lease or transfer or other disposition shall not relieve the Borrower from liability from the performance of all of the obligations of this Loan Agreement, except as permitted by Section 3.4 hereof, unless the transferee accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the transferee had originally executed this Loan Agreement. Notwithstanding the foregoing,



Borrower may assign this Loan Agreement to an Affiliate (as defined below) or in connection with any merger, reorganization, sale of all or substantially all of our assets or any similar transaction. This Loan Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. 'Affiliate' as used herein means (i) any entity that directly or indirectly controls, is controlled by, or is under common control with Borrower or (ii) in which SBCC Development Corp. is the owner of 51% or more of the direct or indirect beneficial interests and/or is directly or indirectly controlled, controlling or under common control with Mark Tarnier. By way of clarification, notwithstanding any provision in this Agreement to the contrary the making of the Loan (and the forgiveness of the Note) under the provisions of this Agreement shall not be contingent upon the Borrower having commenced or completed any particular portions of Facilities by the date of the Loan (or the date of forgiveness of the Note) provided Borrower has otherwise performed its applicable obligations with respect to the Project.

(End of Article III)

## ARTICLE IV.

### EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(i) Failure of the Borrower to observe and perform any covenant, condition or provision of this Loan Agreement for a period of one-hundred twenty (120) days after written notice, specifying such failure and requesting that it be remedied, given to the Borrower by the City, unless (i) the nature of the default is such that it cannot be remedied within the one-hundred twenty (120) day period, (ii) the Borrower institutes corrective action within the one-hundred twenty (120) day period and (iii) the Borrower diligently pursues such action until the default is remedied.

(ii) Failure of the City to fund all or any series of the Loan in accordance with this Loan Agreement for a period of thirty (30) days after the dates set forth herein and receipt of written notice, specifying such failure and requesting that it be remedied, given to the City by the Borrower, unless (i) the City institutes corrective action within the thirty (30) day period and (ii) the City diligently pursues such action until the default is remedied provided such remedy shall occur no less than sixty (60) days after notice is received.

(b) Subject to the further provisions of this Article IV, during the occurrence and continuance of any event of default hereunder, the City or Borrower, as the case may be, shall have the rights and remedies hereinafter set forth in addition to any other remedies herein or by law provided:

(i) Right to Bring Suit, Etc. The City or Borrower, with or without entry, personally or by attorney, may proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the Series 2022 Note or this Loan Agreement, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the City or Borrower shall deem most effectual to protect and enforce any of its rights or duties hereunder; provided, however that all reasonable costs incurred by the City or Borrower under this Article shall be paid to the City or Borrower by the Borrower or City, respectively, on demand.

(ii) Waiver of Events of Default. If after any event of default occurs and prior to the City or Borrower exercising any of the remedies provided in this Loan Agreement, the Borrower or City, as the case may be, will have completely cured such default or the City or Borrower has waived such default, then in every case such default will be waived, rescinded and annulled by the City or Borrower by written notice given to the Borrower or City. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

Section 4.2. Remedies Cumulative. No remedy herein conferred upon or reserved to the City or Borrower is intended to be exclusive of any other remedy or remedies provided herein. The

remedies set forth in this Section are the sole and exclusive remedies of the City against Borrower under this Loan Agreement.

Section 4.3. Delay or Omission Not a Waiver. No delay or omission of the City or Borrower to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein.

Section 4.4. Waiver of Extension, Appraisal or Stay Laws. To the extent permitted by law, neither the Borrower nor the City will during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; and the Borrower and City hereby expressly waive all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted to the City or Borrower, respectively, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 4.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 4.6. Rights of the City. If there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the United States Bankruptcy Code or any other applicable law, or in case a receiver, trustee, or custodian shall have been appointed for the property of the Borrower, or in the case of any other similar judicial proceedings relative to the Borrower, or to the creditors or property of the Borrower, the City shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the City allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the City, and to pay to the City any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it to the date of such distribution.

Section 4.7. Waiver of Events of Default. If after any event of default shall have occurred under this Loan Agreement and prior to the City or Borrower exercising any of the remedies provided in this Article, the Borrower or City, as the case may be, shall have completely cured such default, such default may be waived at the discretion of the City or Borrower and, if so waived, shall be rescinded and annulled by the City or Borrower by written notice given to the Borrower or City, respectively.

Section 4.8. Limitation of Liability. The City agrees and acknowledges that Borrower's representations, warranties, covenants, agreements and performance obligations under this Loan Agreement are limited to and apply exclusively to the operations of Borrower at the Project site and any determination as to whether Borrower is in default of this Loan Agreement will be limited to Borrower's operations at the Project site.

Section 4.9. Force Majeure. A party will not be deemed to be in default or otherwise in violation of any term of this Loan Agreement to the extent such party's action, inaction or omission is the result of Force Majeure Event (as defined below). The City and Borrower agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Loan Agreement. A force majeure event pauses a party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Loan Agreement, including without limitation, any act of God; pandemic; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Project or over a party's operations.

(End of Article IV)

ARTICLE V.

IMMUNITY

Section 5.1. Immunity. No covenant or agreement contained in this Loan Agreement shall be deemed to be a covenant or agreement of any member of the City, the Commission or the Redevelopment Commission or of any officer or employee of the City, the Commission, the Redevelopment Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the City, the Commission, the Redevelopment Commission nor any officer or employee of the City executing the Loan Agreement shall be liable personally on the Loan or be subject to any personal liability or accountability by reason of the Loan.

(End of Article V)

ARTICLE VI.

SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT

Section 6.1. Supplements and Amendments to this Loan Agreement. The Borrower and the City may from time to time enter into such supplements and amendments to this Loan Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VI)

ARTICLE VII.

DEFEASANCE

Section 7.1. Defeasance. If the Loan is funded and repayment of the Series 2022 Note is forgiven pursuant to the terms of this Loan Agreement, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Borrower, and the estate, right, title and interest of the City therein shall thereupon cease, terminate and become void; and this Loan Agreement, and the covenants of the Borrower contained herein, shall be discharged and the City in such case on demand of the Borrower and at its cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of this Loan Agreement, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower, all property, including money, then held by the City together with the Series 2022 Note marked paid or cancelled.

(End of Article VII)



## ARTICLE VIII.

### MISCELLANEOUS PROVISIONS

Section 8.1. Termination by Borrower. Borrower has the right to terminate this Loan Agreement for any reason or no reason by delivering notice to the City at least 5 business days prior to the desired termination date.

Section 8.2. Dispute Resolution. The Borrower and the City ("Parties") shall use their best efforts to resolve quickly and informally any disputes that could impede performance of the Parties' obligations under this Loan Agreement. If the Parties are not able to resolve a dispute through such informal efforts, the dispute shall be resolved by mediation in accordance with the Indiana Rules of Dispute Resolution. Such mediation shall be a condition precedent to a Party commencing litigation against the other Party. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana, without giving effect to its conflict of law rules. Any litigation commenced by a Party related to or arising out of this Agreement must be filed in the state courts of St. Joseph County, Indiana. The Parties further consent to the personal jurisdiction by said courts over it and hereby expressly waive, in the case of any such action, any defenses thereto based on jurisdictions, venue or forum non conveniens.

Section 8.3. Confidentiality. Borrower acknowledges that portions of this Loan Agreement and the materials, communications, data and information related to this Loan Agreement may constitute public records subject to disclosure under the State's public records laws and agrees that the City may disclose such portions of this Loan Agreement and the materials, communications, data and information related to this Loan Agreement as required by law, provided that the City gives Borrower prior written notice sufficient (in no event less than 7 calendar days) to allow Borrower to review any request for public record and make a recommendation to the City concerning its response to any request for public records related to this Loan Agreement.

Section 8.4. Information Security. The City agrees to use reasonable physical and technical measures to maintain the security of all electronic and tangible records relating to this Loan Agreement.

Section 8.5. Loan Agreement for Benefit of Parties Hereto. Nothing in this Loan Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns and the holder of the Series 2022 Note, any right, remedy or claim under or by reason of this Loan Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Loan Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns and the holder of the Series 2022 Note.

Section 8.6. Severability. If any one or more of the provisions contained in this Loan Agreement or in the Series 2022 Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein, shall not in any way be affected or impaired thereby.

Section 8.7. Limitation on Interest. No provisions of this Loan Agreement or of the Series 2022 Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Series 2022 Note provided for, or shall be adjudicated to be so provided for herein or in the Series 2022 Note, neither the Borrower nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Loan Agreement and the Note inconsistent with this provision.

Section 8.8. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The City and the Borrower may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, demands certificates and communications to each of them shall be addressed as follows:

To the City: City of South Bend, Indiana  
227 W. Jefferson Blvd, Suite 1400  
South Bend, IN 46601  
Attention: Executive Director of Community Investment

With a copy to: City of South Bend, Indiana  
227 W. Jefferson Blvd, Suite 1400  
South Bend, IN 46601  
Attention: Corporation Counsel

To the Redevelopment Commission: South Bend Redevelopment Commission  
227 W. Jefferson Blvd, Suite 1400  
South Bend, IN 46601  
Attention: President

To the Borrower: The South Bend Chocolate Company, Inc.  
3300 W. Sample Street  
South Bend, IN 46619  
Attention: President

Indiana Dinosaur Museum Inc.  
24820 U.S. Highway 20  
South Bend, IN 46628  
Attention: Executive Director

With a copy to: Ice Miller LLP  
One American Square, Suite 2900  
Indianapolis, IN 46282  
Attention: Lisa Lee

Section 8.9. Successors and Assigns. Whenever in this Loan Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Loan Agreement contained by or on behalf of the Borrower, or by or on behalf of the City, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

Section 8.10. Counterparts. This Loan Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Loan Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 8.11. Governing Law. It is the intention of the parties hereto that this Loan Agreement and the rights and obligations of the parties hereunder and the Series 2022 Note and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State.

Section 8.12. Third-Party Beneficiary. The parties hereto acknowledge and agree that the terms of this Loan Agreement may be enforced by the Redevelopment Commission. The Redevelopment Commission shall be deemed to be a third-party beneficiary of this Loan Agreement. Except as provided in the foregoing sentence and as specifically set forth herein, nothing in this Loan Agreement is intended to confer any rights or remedies under or by reason of this Loan Agreement on any person or entity other than the parties hereto and their successors and permitted assigns.

(End of Article VIII)

IN WITNESS WHEREOF, the City has caused this Loan Agreement to be executed in its name by its authorized officers and has caused its corporate seal to be hereunto affixed, and the Borrower has caused this Loan Agreement to be executed in their names, all as of the date first above written.

THE SOUTH BEND CHOCOLATE COMPANY,  
INC., an Indiana corporation

\_\_\_\_\_  
Mark Turner, President

INDIANA DINOSAUR MUSEUM INC.,  
an Indiana nonprofit

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

CITY OF SOUTH BEND, INDIANA

By: \_\_\_\_\_  
James Mueller, Mayor

ATTEST:

By: \_\_\_\_\_  
Dawn Jones, Clerk

ACKNOWLEDGED BY THE SOUTH BEND  
REDEVELOPMENT COMMISSION, as Third-  
Party Beneficiary

By: \_\_\_\_\_  
Marcia Jones, President

Attest:

By: \_\_\_\_\_  
Troy Warner, Secretary

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900,  
Indianapolis, Indiana 46282.

EXHIBIT A-1

FORM OF INDIANA DINOSAUR MUSEUM INC.  
TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTE  
SERIES 2022A NOTE

Issue Date: November \_\_, 2022  
Original Principal: Up to [\$1,700,000]  
Maturity Date: [November \_\_, 2030  
Interest Rate: [3.28]%

FOR VALUE RECEIVED, the undersigned, Indiana Dinosaur Museum Inc. ("Borrower"), a nonprofit corporation incorporated and existing under the laws of the State of Indiana and authorized to do business under the laws of the State of Indiana, hereby promises to pay to the order of City of South Bend, Indiana ("City"), in immediately available funds, the interest and principal due under the Loan Agreement, dated as of November 1, 2022, between the City and Borrower ("Loan Agreement"), upon maturity, to extent all or a portion of the principal and interest payable under this Series 2022A Note is not forgiven pursuant to the Loan Agreement, at such place as the City may direct, in immediately available funds based upon the outstanding principal amount drawn on this Note, which shall not to exceed [\$1,700,000].

In certain events and in the manner set forth in the Loan Agreement, payments due under this Series 2022 Note are entitled to forgiveness.

This Series 2022A Note is issued pursuant to the Loan Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The Borrower's obligations under this Series 2022A Note are subject in all respects to the further provisions of the Loan Agreement.

This Note is the Note referred to in the Loan Agreement and is subject to, and is executed in accordance with, all of the terms, conditions and provisions thereof, including those respecting prepayments.

In any case where the date of payment hereunder shall not be on a Business Day (as defined in the Loan Agreement), then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and attested by its duly authorized officers or representatives.

Dated the Issue Date set forth above.

INDIANA DINOSAUR MUSEUM INC., an  
Indiana nonprofit corporation

By: \_\_\_\_\_

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

Title: \_\_\_\_\_



EXHIBIT A-2

FORM OF THE SOUTH BEND CHOCOLATE COMPANY, INC.  
TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTE  
SERIES 2022B NOTE

Issue Date: November \_\_, 2022  
Original Principal: [\$1,000,000]  
Maturity Date: November \_\_, 2030  
Interest Rate: [3.28]%

FOR VALUE RECEIVED, the undersigned, The South Bend Chocolate Company, Inc. ("Borrower"), an Indiana corporation incorporated and existing under the laws of the State of Indiana and authorized to do business under the laws of the State of Indiana, hereby promises to pay to the order of City of South Bend, Indiana ("City"), in immediately available funds the interest and principal due under the Loan Agreement, dated as of November 1, 2022, between the City and Borrower ("Loan Agreement"), upon maturity, to extent all or a portion of the principal and interest payable under this Series 2022B Note is not forgiven pursuant to the Loan Agreement, at such place as the City may direct, in immediately available funds based upon the outstanding principal amount drawn on this Note, which shall not to exceed [\$1,000,000].

In certain events and in the manner set forth in the Loan Agreement, payments due under this Series 2022B Note are entitled to forgiveness.

This Series 2022B Note is issued pursuant to the Loan Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The Borrower's obligations under this Series 2022 Note are subject in all respects to the further provisions of the Loan Agreement.

This Note is the Note referred to in the Loan Agreement and is subject to, and is executed in accordance with, all of the terms, conditions and provisions thereof, including those respecting prepayments.

In any case where the date of payment hereunder shall not be on a Business Day (as defined in the Loan Agreement), then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and attested by its duly authorized officers or representatives.

Dated the Issue Date set forth above.

THE SOUTH BEND CHOCOLATE COMPANY,  
INC., an Indiana nonprofit corporation

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made on October 13, 2022, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and SBCC Development Corp. (the “Developer”) (each a “Party,” and collectively the “Parties”).

**RECITALS**

A. The Commission and the Developer entered into a Development Agreement dated effective December 19, 2019 (the “Development Agreement”), pertaining to certain local public improvements ("LPI") for the improvement of the Developer Property, which is located in the River West Development Area (the "Project").

B. As set forth in the Development Agreement, the Mandatory Project Completion Date is December 21, 2023.

C. Developer has requested additional time to complete the Project.

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 4.5, entitled “Timeframe for Completion,” shall be modified to delete the phrase “December 31, 2023” and replace it with “June 30, 2024.”

2. 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.

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

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

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

6. 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

SBCC DEVELOPMENT CORP.

By: \_\_\_\_\_  
Mark A. Turner, President



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 10/7/2022  
FROM: Joseph Molnar  
SUBJECT: Update Tree Nursery Agreement

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

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

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

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Update of the Tree Nursery Agreement with BPW and Park Board

Specifics: The parties originally established a dispersed urban native tree nursery program in April of 2017 as a way to temporarily re-purpose City owned vacant lots. This updated agreement adds additional lots, incorporates additional City partners, and affirms ownership of the trees. Included in the updated agreement is a schedule of the program properties.

Staff recommends approval of the updated agreement.

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

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

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

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

\_\_\_\_\_ . Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

**COMMUNITY TREE NURSERY COLLABORATION  
AMENDED AND RESTATED AGREEMENT**

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**THIS COMMUNITY TREE NURSERY COLLABORATION AMENDED AND RESTATED AGREEMENT** ("Agreement") is made effective this 13 day of October, 2022 (the "Effective Date") by and between the City of South Bend, Indiana Venues, Parks, and Arts Department ("VPA"), acting through its Board of Park Commissioners ("Parks Board"); South Bend Redevelopment Commission ("Redevelopment Commission"); and the City of South Bend, Indiana, acting by and through its Board of Public Works ("Public Works").

**RECITALS**

**WHEREAS**, The parties originally established a dispersed urban native tree nursery program in April of 2017 as positive repurposing of specifically listed vacant lots owned by the City. The parties now desire to amend and restate the Agreement to the add additional lots to the program, incorporate additional City partners, and affirm ownership of the trees. For ease of administration, a schedule of the program properties (the "Properties") is hereby incorporated by reference and attachment to the Agreement (Exhibit A); and

**WHEREAS**, Public Works and Redevelopment Commission, on behalf of the City of South Bend ("City"), each own some of the Properties; and

**WHEREAS**, Public Works and Redevelopment Commission each desire to let VPA utilize their respective Properties as prototypes of positive adaptive repurposing of vacant lots as urban neighborhood innovation as distributed urban native tree nurseries; and

**WHEREAS**, VPA will provide ongoing volunteer services to the Properties to help create and maintain the planned pilot distributed urban native tree nurseries on the Properties; and

**WHEREAS**, the parties desire to memorialize the terms of their agreement herein.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, the parties hereby agree as follows:

**Section 1. Public Works Duties.** Public Works agrees to grant VPA access to its Properties for the planting of distributed urban native tree nurseries.

**Section 2. Redevelopment Commission Duties.** Redevelopment Commission agrees to grant VPA access to its Properties for the planting of distributed urban native tree nurseries.

**Section 3. VPA Duties.** VPA agrees to plant and provide ongoing maintenance and care to the distributed urban native tree nurseries described herein. VPA shall assume all expenses related to such ongoing maintenance, including any fees as set forth in the Municipal Code of the City of South Bend, Indiana Section 17-79 et al. related to water fees. VPA owns all the trees

planted in the native tree nurseries and has the right to transplant any mature trees to other City locations, in its sole discretion.

**Section 5. Term.** The Properties shall be subject to the terms of this Agreement until the expiry dates set forth in their respective schedules as set forth on Exhibit A. The parties may agree to extend the applicability of this Agreement to the Properties contained in any schedule by a signed written amendment to this Agreement for up to three (3) additional five (5)-year periods from the date of termination for that schedule. This Agreement shall terminate on a date that is five (5) years from the Effective Date or upon the expiration date of the last renewal, whichever is later.

- a. Access to Properties listed under Schedule I of Exhibit A will terminate on December 31, 2027.
- b. Access to Properties listed under Schedule II of Exhibit A will terminate on December 31, 2028.
- c. Access to Properties listed under Schedule III of Exhibit A will terminate on December 31, 2024.
- d. Access to Properties listed under Schedule IV of Exhibit A will terminate on December 31, 2027.

**Section 6. Assignment; Subcontractors.** The parties shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the other parties.

**Section 7. Changes in Scope of Services.** The parties understand and agree that the scope of services delineated in this Agreement are limited to the Properties and the establishment of a tree nursery. Any changes thereto must be authorized in writing by all parties hereto.

**Section 8. Governing Law; Compliance with Laws.** This Agreement shall be construed and interpreted according to the laws of the State of Indiana. The parties hereto agree to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby are hereby incorporated herein by reference.

**Section 9. Relationship/Independent Contractor.** All parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one party shall not be deemed or construed to be the employee(s) or agent(s) of any other party for any purpose whatsoever.

**Section 10. Waiver.** One or more waivers of any condition herein shall not be construed as a waiver of a subsequent breach of the same condition.

**Section 11. Authority.** Each undersigned person signing on behalf of his/her respective party certifies that he/she is duly authorized to bind his/her respective party to the terms of this Agreement.



**Section 12. Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.

\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

**IN WITNESS WHEREOF**, the parties hereto, through their duly authorized representatives, have caused this Community Tree Nursery Collaboration Amended and Restated Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

**BOARD OF PARK COMMISSIONERS:**

\_\_\_\_\_  
*Mark Neal, President*

\_\_\_\_\_  
*Consuela Hopkins, Vice President*

\_\_\_\_\_, *Member*

\_\_\_\_\_  
*Member*

ATTEST:

\_\_\_\_\_  
*Jessica Williams, Clerk*

\_\_\_\_\_  
*Date Approved*

**CITY OF SOUTH BEND, INDIANA BOARD OF PUBLIC WORKS:**

\_\_\_\_\_  
*Elizabeth A Maradik, President*

\_\_\_\_\_  
*Gary A. Gilot, Member*

\_\_\_\_\_  
*Jordan V. Gathers, Member*

\_\_\_\_\_  
*Joseph R. Molnar, Member*

\_\_\_\_\_  
*Murray L. Miller, Member*

ATTEST:

\_\_\_\_\_  
*Clerk*

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

**REDEVELOPMENT COMMISSION OF SOUTH BEND:**

\_\_\_\_\_  
*Marcia Jones, President*

\_\_\_\_\_  
*Troy Warner, Secretary*

\_\_\_\_\_  
*Date Approved*

**EXHIBIT A.  
SCHEDULE OF PARCELS**

**Schedule I**

(Coverage under this Agreement Terminates on December 31, 2027)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
625 East Dayton St.	018-7029-1141	LOT 93 HENRY STUDEBAKERS 2ND
1414 High St.	018-7010-0415	LOT 101 WENGER & KRIEGHBAUM 2ND ADD
Vacant lot east of 1414 High St.	018-7012-0473	LOT 100 WENGER & KRIEGHBAUM 2ND ADD

**Schedule II**

(Coverage under this Agreement Terminates on December 31, 2023)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
529 N. Allen St.	018-1035-1524	LOT 25 J N LEDERERS ADD
525 N. Allen St.	018-1035-1523	LOT 24 J N LEDERERS ADD
521 N. Allen St.	018-1035-1522	LOT 23 LEDERERS SUB OF OUTLOT A

**Schedule III**

(Coverage under this Agreement Terminates on December 31, 2024)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
435 N. Allen St.	018-1032-1400	LOTS 29 & 30 34.8 FT N END BIRNER PLACE ADD
431 N. Allen St.	018-1032-1401	LOTS 29 & 30 34.8 FT MID PT BIRNER PLACE ADD
429 N. Allen St.	018-1032-1402	LOTS 29 & 30 34.8 FT SLY END BIRNER PLACE ADD
442 S. Brookfield St.	018-4013-0449	LOT 123 SUMMIT PL 2ND ADD
516 N. Allen St.	018-1035-1534	LOT 16 J N LEDERERS ADD
520 N. Allen St.	018-1035-1533	LOT 15 J N LEDERERS ADD

606 N. Blaine Ave.	018-1035-1513	LOT 29 W 1/2 J N LEDERERS ADDITION
608 N. Blaine Ave.	018-1035-1514	LOT 29 E 1/2 J N LEDERER
1110 W. Harvey St.	018-1032-1399	LOT 28 BIRNER PL ADD
1117 W. Harvey St.	018-1032-1387	LOT 15 BIRNER PLACE
1121 W. Harvey St.	018-1032-1386	LOT 16 BIRNER PL ADD

**Schedule IV**

(Coverage under this Agreement Terminates on December 31, 2027)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
404 Allen St.	018-1033-1441	Lot 51 Birner Place Add
610 Euclid Ave.	018-1037-1621	Lot 12 Orchard Hts 1st
614 Euclid Ave.	018-1037-1620	Lot 11 Orchard Heights 1st
618 Euclid Ave.	018-1037-1619	Lot 10 Orchard Hts 1st Add
622 Euclid Ave.	018-1037-1618	Lot 9 Orchard Hts 1st
1102 Birner St.	018-1033-1440	Lot 50 Birner Place Add.
1231 W. Colfax Ave.	018-1044-1882	Lot 82 Comm Sub Of Bol 79
1235 W. Colfax Ave.	018-1044-1881	Lot 83 Commissioner's Sub Of Bol 79
1237 W. Colfax Ave.	018-1044-1880	Lot 84 Comm Sub Of Bol 79

**Section IV Continued**

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
318 Walnut St.	018-1050-2173	Lot 75 Swygarts 1st Add
322 Walnut St.	018-1050-2172	Lot 74 Swygarts 1st
326 Walnut St.	018-1050-2171	Lot 73 Swygarts 1st
418 Walnut St.	018-1050-2164	Lot 66 Swygarts 1st Add
420 Walnut St.	018-1050-2163	Lot 65 Swygarts 1st
502 Walnut St.	018-1051-2223	Lot 96 Swygarts 2nd Add
506 Walnut St.	018-1051-2222	Lot 97 Swygarts 2nd
510 Walnut St.	018-1051-2221	Lot 98 Swygarts 2nd



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 10/13/2022  
FROM: Leslie Biek, PE, Assistant City Engineer  
SUBJECT: Angela Blvd Roadway Modification PSA

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

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

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

APPROVED  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Which TIF? (circle one) River West; **River East**; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Design of Angela Blvd Road Modification from SR 933 to SR 23

Specifics: Roadway modification on Angela Blvd to accommodate bicycle lanes, improved pedestrian accessibility and lane reduction between SR 933 and SR 23.

INTERNAL USE ONLY: Project Code: 122-059 ;  
Total Amount **new**/change ( inc/dec) in budget: \$159,900 ; Break down:  
Costs: Engineering Amt: 159,900 ; Other Prof Serv Amt \_\_\_\_\_ ;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_ ; Street Const Amt \_\_\_\_\_ ;  
Building Imp Amt \_\_\_\_\_ ; Sewers Amt \_\_\_\_\_ ; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 10/11/2022  
FROM: Jitin Kain, Deputy Director, PW  
SUBJECT: Budget Request – Trail from downtown to ND

\_\_\_\_\_ 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 budget request is for \$78,325 to develop a conceptual plan for a bicycle and pedestrian trail connecting downtown South Bend to the University of Notre Dame campus. A comfortable path for people walking or biking does not exist between the two destinations and much of the current sidewalk infrastructure is deteriorated and feels unsafe to residents and visitors alike. The plan will explore options to enhance the connectivity between the two and make the route appealing to its users through branding, lighting and other landscaping amenities.

INTERNAL USE ONLY: Project ID:

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