

ESTOPPEL AND AGREEMENT

THIS **ESTOPPEL AND AGREEMENT** (this “**Agreement**”) is made as of February 23, 2023, by **MARMAIN (JV), LLC**, a Delaware limited liability company, having an address at 125 West Marion Street, South Bend, Indiana 46601 (“**Owner**” or “**Borrower**”), **CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT**, acting by and through its governing body, the South Bend Redevelopment Commission, having an address at 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 44061 (“**Commission**”), in favor of **RMWC WA CREDIT LLC**, having an address at 130 East 59th Street, 13th Floor, Suite A, New York, New York 10022 (together with its successors and/or assigns, “**Lender**”).

A. Reference is hereby made to that certain Development Agreement dated effective as of October 13, 2022, executed by and between Commission and Owner (the “**Development Agreement**”). A true and correct copy of which Development Agreement is attached hereto as Exhibit A.

B. The parties hereto have been informed that Lender anticipates making a loan (the “**Loan**”) to Borrower pursuant to a certain Construction Loan Agreement (the “**Loan Agreement**”) between Borrower and Lender and secured by a certain Mortgage, Security Agreement and Financing Statement from Borrower in favor of Lender (as amended, modified and in effect from time to time, the “**Security Instrument**”) encumbering certain property (the “**Property**”) owned by Borrower, which Property is the subject of the Development Agreement.

NOW THEREFORE, in order to induce Lender to make the Loan to Borrower and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby represent, warrant, covenant and agree as follows:

1. The Commission certifies that:

(a) Other than as set forth in the Development Agreement, there are no other understandings with respect to the subject matter set forth therein among the parties hereto.

(b) The Development Agreement is in full force and effect, has not been supplemented, amended, modified or superseded since its original execution, and no other agreements or understandings exist between the Commission and the Owner with respect to the Property.

(c) As of the date hereof, the Owner is not in default or in violation of any of its obligations under the Development Agreement and the Commission has no actual knowledge of the existence of any event which, with the giving of notice, the passage of time or both would constitute a default by the Owner under the Development Agreement.

(d) The Commission does not have any right of first refusal or option to purchase the Property.

(e) The Commission has not filed any mechanics', materialman's or other similar liens or claims for work, labor or materials affecting the Property which are or may become liens prior to, or equal or coordinate with, the Lender's lien.

(f) The Commission acknowledges that Owner has satisfied the requirements of Section 5.2(b) of the Development Agreement.

(g) As of the date hereof, the Commission has expended \$32,700 of the Funding Amount (as that term is defined in the Development Agreement) and the City of South Bend, Indiana Board of Public Works, acting as the agent of the Commission, has awarded a bid for the Local Public Improvements (as defined in the Development Agreement) amounting to \$443,987, which amounts total less than Funding Amount (as defined in the Development Agreement).

2. The parties hereto hereby consents and agrees to each of the following covenants and agreements for the benefit of Lender:

(a) The parties hereto shall not amend, supplement, terminate or modify the Development Agreement without the prior written consent of Lender.

(b) The Commission hereby covenants and agrees to deliver to Lender at the address set forth above (or such other address as may be designated by Lender) written notice of any default by Borrower under the Development Agreement simultaneously with sending such notice to Borrower and that no notice of default given to Borrower, and no exercise of any remedy by any of the parties hereto as a result of any such default, shall be effective unless such notice shall have been delivered to Lender. Notwithstanding the foregoing, to the extent that no notice is required under the Development Agreement, written notice shall not be required to be provided to either the Lender or the Borrower.

(c) The parties hereto hereby covenant and agree that Lender shall have the right, but not the obligation, to cure any default by Borrower under the Development Agreement and Lender shall be afforded (i) sixty (60) days to cure any such default beyond the expiration of any applicable notice and cure periods set forth in the Development Agreement, or (ii) in the event that any such default cannot, with reasonable diligence, be cured within such sixty (60) day period, such longer time as may be reasonably required to complete such cure, provided Lender notifies the applicable parties hereto of its intention to cure such default and Lender promptly commences and diligently pursues such cure to completion. The parties hereto acknowledge and agree that (i) any liens imposed by the Development Agreement shall be subordinate to the lien of the Security Instrument and (ii) any indemnity obligations and/or reimbursement obligations of Borrower under the Development Agreement shall be subject and subordinate to its obligations to Lender under the terms of the Loan.

(d) Upon the acquisition of the Property (through foreclosure, power of sale, deed in lieu of foreclosure or otherwise) by Lender, Lender's nominee or designee or by any third party (including, without limitation, any third party transferee obtaining title from Lender or Lender's nominee or designee) (each of the foregoing, a "**Successor Owner**"), the parties hereto shall recognize such Successor Owner as successor in interest to Borrower's rights and interests under the Development Agreement. The powers conferred on Lender hereunder are solely to protect

Lender's interests in the Development Agreement and shall not impose any duty upon Lender to exercise any such powers. To the extent that any approval rights, consent rights or other rights or privileges are granted to Borrower under the Development Agreement, then the parties hereto acknowledge and agree that in such approval rights, consent rights or other rights, protections or privileges shall inure for the benefit of Lender. Commission agrees and acknowledges that upon receipt of notice of the occurrence of an Event of Default (as defined in the Loan Agreement), to follow all written instructions of Lender as assignee of Borrower hereunder.

3. 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.

Borrower: MarMain (JV), LLC
125 West Marion Street
South Bend, Indiana 46601
Attention: Michael Serpos

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

Lender: RMWC WA Credit LLC
c/o RMWC
130 East 59th Street, 13th Floor, Suite A
New York, New York 10022
Attention: Steven Fischler

with a copy to: Nelson Mullins Riley & Scarborough, LLP
201 17th Street, Suite 1700
Atlanta, Georgia 30363
Attention: Rusty A. Fleming, Esq.

4. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the laws of the State of Indiana.

5. This Agreement shall be binding upon the parties hereto and each of their respective successors and assigns.

6. Each of the parties hereto represent and warrant that the execution and delivery of this Agreement have been duly authorized by all requisite entity action on their part and the signatory executing this Agreement on their behalf is duly authorized to so execute this Agreement.

7. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

8. This Agreement and the representations, warranties and covenants contained herein are given with the understanding that this Agreement constitutes a material inducement for Lender in making the Loan to Borrower and that Lender shall rely hereon in making the Loan to Borrower. This Agreement and the representations, warranties and covenants contained herein may be relied upon by Lender, its successors and assigns and any nationally recognized statistical rating agency rating any securities issued in connection with the Loan or any portion thereof. To the extent that there are any conflicts between the terms of this Agreement and the Development Agreement, the terms of this Agreement shall control.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

BORROWER:

MARMAIN (JV), LLC, a Delaware limited liability company

By: MarMain Holdings LLC, a Delaware limited liability company

Its: Sole Member

By: MarMain (GP), LLC, a Delaware limited liability company

Its: Manager

By: Oldtown Capital Partners LLC, a Delaware limited liability company

Its: Manager

By: _____

Name: Michael Serposs

Title: Manager

[SIGNATURES CONTINUE ON NEXT PAGE]

COMMISSION:

**CITY OF SOUTH BEND,
DEPARTMENT OF
REDEVELOPMENT,** acting by and
through its governing body, the South Bend
Redevelopment Commission

By: _____
Marcia I. Jones, President

Attest: _____
Vivian Sallie, Secretary

EXHIBIT A

Development Agreement

(attached hereto)