

AGENDA

November 07, 2022

**MEETING WILL BE HELD AT
THE New City Hall
Located at 100 Lincolnway WEST**

**Council Photographs
6:00pm**

Meetings of Standing Committees
Council Conference Room
6:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00PM

WebEx Telephone Number: 1-408-418-9388
Meeting Number (access code): 2343 104 8026
Meeting password: m8pD8kEAgv2

Livestream #1: <https://www.facebook.com/cityofmishawaka/>
Livestream #2: @MichianaAccessTV on Facebook
Livestream #3: Michiana Access TV
(Comcast and AT&T U-Verse Channel 99)

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial: 23431048026@mishawaka.webex.com

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of October 17, 2022

5. Petitions, Communications, Remonstrance and Memorial

Appeal No. 2022-44	Use Variance for Outpatient Counseling Services - 1328 W. Dragoon Trail - Diocese of Fort Wayne/South Bend(owner) & Catholic Charities(tenant)
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6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2022-39	Authorizing the Issuance of Taxable Economic Development Lease Rental Revenue Bonds
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8. Resolutions

R2022-32	Commemorating Women's Entrepreneurship Day
R2022-33	Approving a form of Development Agreement among the City of Mishawaka and Redevelopment Commission and Card Associates Athletic Facility, LLC
R2022-34	Approving A Lease between The City of Mishawaka's Building Corporation and Redevelopment Commission related to the Athletic Facility Project

9. Ordinances on Second Reading

P.O. NO. 2022-37	Rezone from C-1 to S-2 Planned Unit Development to all mixed use Commercial and Residential Development- NE Corner of N. Main St. & E. University Dr. (Assigned to Land Use Planning Committee)
P.O No. 2022-38	PUD Amendment for a restaurant with Drive-Thru Reduced Parking and Fiber Cement Board- 5540 N. Main St. (Assigned to Land Use Planning Committee)

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook page, <https://www.facebook.com/cityofmishawaka/> and on the Michiana Access TV Facebook page, <https://www.facebook.com/MichianaAccessTV>

Council Packet Link:

At this time, I know of no other business to come before the Council.

Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

October 17, 2022

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday, October 17, 2022 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

Clerk Block called the roll.

Roll Call.

Present: Mrs. DeMaegd (P), Mr. Banicki (P), Mr. Hazen (P), Mr. Mammolenti (P), Mr. Emmons (P), Mr. Bellovich (P), Mr. Compton (P), Mrs. Voelker (P), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Others Present: Clerk Block, Mike Trippel

Members attending virtually do so by WebEx. Public that attend can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.

Minutes for the Regular Meeting of October 3, 2022 were approved as received from the Clerk's Office.

Clerk Block read a letter from the City Plan Commission regarding their recommendation from their October 11, 2022 meeting.

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinances were considered:

Petition No. 2022-17	A petition submitted by Memorial Health Systems Inc. requesting to rezone the northeast corner of North Main Street and East University Drive from C-1 General Commercial District to S-2 Planned Unit Development to allow a mixed-use commercial and residential development.
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The Commission, with a vote of 7-0, recommended approval subject to the attached conditions.

Petition No. 2022-18	A petition submitted by Jinder Food Services Inc. requesting to amend the North Main Street Planned Unit Development to allow for a restaurant with drive-thru, reduction in number of parking
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spaces, and the use of fiber cement board at 5540 North Main Street.

The Commission, with a vote of 7-0, recommended approval.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinances regarding the above matters.

Respectfully,
Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

Clerk Block read the following proposed ordinances by title and assigned committee.

PROPOSED ORDINANCE NO. 2022-37

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE ZONING ORDINANCE OF 1966” OF THE CITY OF MISHAWAKA, INDIANA.

**Rezone from C-1 to S-2 Planned Unit Development to all mixed use Commercial and Residential Development – NE Corner of N. Main St. & E. University Dr.
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE NO. 2022-38

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE ZONING ORDINANCE OF 1966” OF THE CITY OF MISHAWAKA, INDIANA.

**PUD Amendment for a restaurant with Drive-Thru Reduced Parking and Fiber Cement Board – 5540 N. Main St.
(Assigned to Land Use Planning Committee)**

Clerk Block read the following resolutions by title and opened the public hearing.

RESOLUTION R2022-29

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, MAKING A FINAL DETERMINATION AND CONFIRMING THE DESIGNATION OF AREAS WITHIN THE CITY OF MISHAWAKA, INDIANA, COMMONLY KNOWN AS VACANT LAND BOUND BY W. FRONT STREET, N. HILL STREET, W. FIRST STREET, AND N. SPRING STREET AS AN ECONOMIC REVITALIZATION AREA AND ECONOMIC DEVELOPMENT TARGET AREA FOR PURPOSES OF REAL PROPERTY TAX ABATEMENT FOR FRONT STREET, L.L.C. AND/OR ITS ASSIGNS

Confirming Resolution for Real Property Tax Abatement for vacant land bound by W. Front, North Hill, W. First, and N. Spring Streets

Ken Prince, Director of Planning and Community Development for the city of Mishawaka, spoke in favor of **RESOLUTION R2022-29**. Mr. Prince stated he was filling in for Mr. Spier that evening and as presented during the declaratory resolution, the proposal was a four-story, 79,000 square foot mixed-use building with ground level commercial restaurant space and residential units. Mr. Prince stated the upper floors would be exclusively residential and the building would include 4600 square feet of commercial restaurant space for three tenants and between 106 and 109 apartment units, a rooftop deck and a 110 space surface parking lot. Mr. Prince stated the total investment was estimated at \$25 million with the construction beginning hopefully in mid-November with the completion being in the spring of 2024. Mr. Prince stated as they discussed, the proposed request was for a five-year abatement on the improvements with a higher than normal annual percentage abatement schedule starting at 100% the first year and decreasing 5% annually over the next five years. Mr. Prince stated the abatement was identical to the tax abatements submitted for the River Rock apartments on Mishawaka Avenue and approved for the planned River Walk apartments west of Central Park. Mr. Prince stated one of the things he had to note was that accurately predicting the values and tax impacts for the abatement request was always a challenge for them, because they had to estimate what the assessed value was and that was something they just did not do. Mr. Prince stated historically, they had used 80% of construction value as the number, so that was the number reflected in the letter forwarded to the council. Mr. Prince stated he wanted to say in advance that they knew the numbers would likely be high, but they would rather be high in terms of estimating it than low. Mr. Prince stated here, they had used 80% rather than 60% or another number just to be conservative in terms of what the maximum benefit would potentially be. Mr. Prince stated using the calculator based on the 2021 tax rate and \$20 million of assessed valuation, it would have an annual tax bill of \$471,580 which meant the total tax over the five-year period would be \$2.357 million. Mr. Prince stated the total taxes that would be paid would be roughly a tenth of that at \$235,790 and taxes abated would be \$2,122,000. Mr. Prince thought realistically that they would be looking at a million to a million in a half dollars in benefit for this but for the purpose of this, they wanted to be conservative. Mr. Prince stated he was happy to answer any questions.

Mr. Compton thanked Mr. Prince for the information and asked how much the Matthews group paid for that piece of property for Mishawaka. Mr. Prince stated it was in the development agreement and it was likely \$10,000 or \$20,000 for the property and it was in that range, but he did not have the exact number in front of them. Mr. Compton stated at the last meeting, there was discussion about ongoing environmental issues on the site and asked if he was aware of that. Mr. Prince stated with all of the former Uniroyal properties down there, they expect there to be ongoing environmental concerns and in the last 20 years of marketing that property, they found very early on that unless they provided essentially a comparable greenfield standard for the property that no developer would be interested in the property and what that meant was that every property that had been developed down there had taken on the environmental risk associated with the property. Mr. Prince stated then, if he was understanding it correctly, that they were financially responsible for any other mitigation that might be found. Mr. Prince stated

in the agreement, with the first \$5,000 of mitigation, if there were an encounter of old remnant in the basement type of thing, they would have to take care of it. Mr. Prince stated the first \$5,000 was their responsibility and anything above that up to the \$200,000 limit was our responsibility and then when you went beyond that, for example if they had some catastrophic thing in the ground they weren't aware of, then they would deal with either divvying up that cost or would kill the project. Mr. Compton asked if the city was really taking the risk on this as opposed to the developer. Mr. Prince stated yes. Mr. Compton stated he thought a lot about this and talked to him about these things and he agreed that this was a phase in of taxes. Mr. Compton stated his thought was these taxes, in theory, calculated to cover the cost of city services and that was what taxes were about. Mr. Compton stated putting it another way, they got \$2.1 million of city services at no cost. Mr. Prince stated when you looked at the tax abatement and what they were trying to do with it was get the project to the finish line. Mr. Prince stated when they originally conceived this, they looked at the Mill as a major draw to the area when it was constructed and they had a much higher amount of city dollars that went into that project to encourage additional development to happen. Mr. Prince stated this project was originally envisioned in 2018 and they did not have any discussions on a tax abatement until most recently in the last few months, because the change of economics that had happened globally that had dramatically increased and made this project on the verge of not happening and that was why the tax abatement had been proposed at that time. Mr. Prince stated very specifically, tax abatement was one of the few incentives that the city had other than direct input of cash from the tax increment funding district that they had to change in property and they marketed the property in question as part of the Uniroyal for close to 20 years. Mr. Prince stated it had generated no taxes during that time and they had consistently held out thank you to the council and the three mayors he had worked for that they all had the vision of holding out for what he considered to be the highest and best use. Mr. Prince stated no one was in a rush to say this had to happen now and they had other projects where people were going to build single-family homes in this property and discovered this was not the right area for it and they wanted to be part of downtown and they thought it should be high density and they thought it should be mixed use, architecturally significant and pedestrian friendly as well. Mr. Prince stated they held out for that and they worked for the last four years with this developer to try to get this across the finish line to be constructed. Mr. Prince stated if the tax abatement did that, he thought it would have significant advantage because in five years, if you broke this into single-family homes what would the taxes be that you would be generating from that. Mr. Prince stated you would have the same amount of sewer in the road and the same amount of roads you would have to take care of in terms of city services, but you were going to have a much higher assessed valuation associated with the property based on this development versus a much lower density use and that was the reason to have the tax abatement incentive. Mr. Prince stated they had worked for four years on this and thought it was appropriate to get it over the edge or they wouldn't be there and he would feel differently if it was not city property and a developer driven property but in this case they felt it was appropriate. Mr. Compton stated he also thought about Joe Citizen in Mishawaka and while this was a phase in, in theory, the city services for this project would now be funded by the rest of the taxpayers for that period or partially. Mr. Compton asked Mr. Prince to help him on what he would tell Joe Citizen on the west end or in his district how this helped them and how this was good for them. Mr. Prince

stated he would very specifically tell them that you were taking a long term view on what was best for the city and he would wholeheartedly present to them that all they had to do was look at the tax revenue from this property over 10 years compared to zero now or at a lower density development and this project would outdo whatever other proposal you would put in there. Mr. Prince stated he had represented these projects before and he did not have a bunch of developers sitting in the wings waiting to take this property. Mr. Prince stated they tried to work with the developers that came and wanted to work with them regarding what their vision was for the property and they had worked to that end over the last for years.

Mr. Mammolenti stated he had heard him reference that with this property, they were trying to market it for over 20 years with zero tax dollars collected. Mr. Mammolenti asked if he could tell them how many offers that they had or development that came with as strong of a plan that Mr. Matthews had. Mr. Prince stated there had been none with as strong of a plan as Mr. Matthews' group and they had multiple plans presented to them. Mr. Prince stated they had Bob Stevens who originally did the master plan for this and it was a concept plan and never brought to a level of where it was going to be funded. Mr. Prince stated the first phases of that was the townhouses and then the 112 building and then the great recession hit and that changed hands. Mr. Prince stated they had multiple developments done on other properties but typically it had been the draw of the river and the river frontage and what was unique about this property was it didn't have any of the river frontage. Mr. Prince stated they had other developers look at it, but no one took other properties in the area to the level they had taken it in this instance. Mr. Mammolenti asked, for some of the folks present that evening and/or listening online, to explain theoretically what the taxes collected within this would be. Mr. Prince stated with the taxes collected, they had a base level of assessed valuation in this case, because the city had owned it for that period of time and it was essentially zero. Mr. Prince stated the increment of what was captured before development and after development went into essentially a capital improvement fund that was the tax increment financing district that was used to fund sewers, roads and other infrastructure improvements all across the city. Mr. Prince stated they had one consolidated TIF district currently so it funded basically everything downtown that the city was invested in. Mr. Prince stated it built the Edison Lakes roads, widened Main Street, built the underpass and all that came from the tax increment funding district and they used those funds for specific reasons. Mr. Mammolenti asked, just to be a bit more specific, if it was not like with the funds that they would be collecting they could hire more officers or first responders outside of the TIF district and if that was correct. Mr. Prince stated that was right and they placed much of the downtown in the TIF district after Uniroyal was demolished which meant that increment went to that tax financing and did not get distributed to all the taxing units or to the general fund.

Mr. Hixenbaugh wanted to follow up on a couple of points his colleagues made and first of all, with regard to Mr. Compton and their discussion, he used the term greenfield and he wanted to look at it from the opposite perspective. Mr. Hixenbaugh asked if it was fair to say that in the world of development that this site and surrounding area was still viewed as a brownfield site that carried with it some particular challenges with regard to development. Mr. Prince stated very much so and this was because they saw the potential of it because of what had happened there but when you looked at any other properties around it, there were some levels of long-term decay

they were tackling one piece at a time by doing developments like this and encouraging more investment over time. Mr. Prince stated that was one of the reasons why they were wanting to do it and it was a continued fight. Mr. Prince stated as they knew, many of the homes down there were broken up into multi-family worker type of housing and some of them had been converted back to single-family and some of them were well-maintained apartments and they wanted to continue to address that over time. Mr. Hixenbaugh asked if it was fair for them to assume then that there was a connection between was the history of less attractive development proposals for this site and the fact that it was in a brownfield area and asked if those were separate and distinct factors or if it was interrelated. Mr. Prince stated potentially they were related but he never looked at it that way and every property had certain limitations and positives and negatives. Mr. Hixenbaugh asked, as a general statement, if it was more difficult to develop in a brownfield area or non-brownfield area. Mr. Prince stated it was 100 times more difficult to develop in a brownfield area. Mr. Hixenbaugh appreciated his answer to Mr. Mammolenti's question regarding TIF and he thought it was important for them to emphasize that point. Mr. Hixenbaugh asked if it was fair for them to say that if there was no tax abatement with regard to the property, that had been requested or that would be approved, that the revenue that would be generated in terms of this new development would still be spent in the TIF district and would not go to the general fund and other revenue streams outside of the TIF for the city. Mr. Prince stated that was correct and the main TIF expired in 2039, so essentially this would go into the tax increment financing district until 2039 when it was completely gone. Mr. Hixenbaugh stated one of the other things they heard at the prior council meeting and it also was reflected in the information that they received from staff was that this project was originally scheduled to commence earlier in time but that was delayed based upon some requests on the part of the city with regard to some adjustments in the development plan and asked if that was correct. Mr. Prince stated that was correct and COVID also happened in there so that was another delaying factor. Mr. Hixenbaugh stated COVID was kind of an equivalent factor that had delayed everybody across the board. Mr. Hixenbaugh asked if he could talk a little about what it was that the city asked the developer to do that had some impact on the timeframe. Mr. Prince stated when they originally conceived this project in 2018, they had a shared parking area on the south side of where the building was located, with half of it going to be private. Mr. Prince stated they asked them to do what was similar to what they did on Mill Street and now also on Hill Street was they asked for additional right of way along Hill Street so they could widen the public parking in the street, which would allow them to make the entire area behind the building to the south private parking. Mr. Hixenbaugh appreciated his help.

Pat Matthews, representing Front Street LLC and the developers of the project, spoke in favor of **RESOLUTION R2022-29**. Mr. Matthews stated he was going to repeat some of the notes he made in the prior council meeting and emphasize some others. Mr. Matthews stated as they talked about originally, the development process was started in 2018 and back in 2019, it was their original intent to provide a market rate development without any financial assistance. Mr. Matthews stated they did not request anything from the city TIF funds and were ready to go. Mr. Matthews stated their initial pre-COVID construction estimate, not including land, soft cost and financing, was about \$10 million back in 2019. Mr. Matthews stated they had already invested significant design expense at this time and then the city asked them to move the building by

about 35 feet for the additional right of way Mr. Prince mentioned and at that time, they had already had significant design expense. Mr. Matthews stated they already had their renderings done and Mayor Wood had already presented a rendering at that time and at one of his State of the City addresses. Mr. Matthews stated the city then asked them to move it and flip it so that they could accommodate the planned North Hill Street pedestrian expansion, which they were excited about and they wanted to be a good business partner and a good neighbor and they went to work to accommodate that request, then unfortunately COVID hit and the dynamics changed dramatically. Mr. Matthews stated since 2019, they had experienced significant cost escalation, not only in terms of labor and materials but also large increases in the cost of financing. Mr. Matthews stated their most recent construction estimate, not including land, soft cost and financing had greatly increased since the 2019 budget. Mr. Matthews stated they believed in the city of Mishawaka and wanted the new market rate units to be built in the downtown area. Mr. Matthews stated he wanted to address a couple of points that came up at the first meeting, with one of the things being cash flow was the most important factor in the stability of a project, especially in the early years. Mr. Matthews stated granting a tax abatement was one of the easiest and best ways for governing agency to support growth and stability in a revitalized and growing urban area. Mr. Matthews stated tax abatements were an excellent win-win tool and one of the few tools in your toolbox that worked. Mr. Matthews stated a tax abatement was not a gift to a developer, it was an indirect incentive to a renter to live in Mishawaka. Mr. Matthews stated it was a simple formula; cost divided by number of units. Mr. Matthews stated if you were helpful in driving down costs, you would be helpful in allowing more residents to populate the downtown area. Mr. Matthews stated if you wanted businesses in the downtown area, first you needed housing. Mr. Matthews respectfully asked that the Mishawaka Redevelopment Commission and the Mishawaka Common Council grant their request for a five-year property tax abatement and stated he would be happy to answer their questions.

Mr. Compton thanked Mr. Matthews and appreciated the information he sent. Mr. Compton stated he was looking at the form he filled out and it appeared the estimated value of the property was \$37,500. Mr. Matthews stated that would be from, he believed the property tax records currently. Mr. Compton asked if he got that property for \$20,000. Mr. Matthews stated he would have to revisit that. Mr. Compton stated the point he was trying to make was that the city had invested in it already. Mr. Compton asked was if profit was calculated in the proforma and thought they would want to know so that would be part of the calculation of cash flows, so that the investors understood what they would receive. Mr. Matthews stated he had not completed the entire proforma yet and as he mentioned in his email that day, the primary driver on that proforma was cash flow and they were looking to make sure the bank was satisfied and that they could fulfill their debt ratios correctly. Mr. Compton stated a standard rate of around 8% was what he was looking at and that seemed reasonable if he was an investor risking his money in the investment. Mr. Compton asked what that was 8% of exactly. Mr. Matthews stated that would be 8% return on invested capital. Mr. Compton asked if he saw the concerns such as inflation, rising interest rates and other financial issues causing a problem renting space there if they entered into a recession and if they should wait for a better economic environment to develop that property. Mr. Matthews stated he did not believe they should wait at all and he was optimistic the project would be a success and the economy would turn around. Mr. Matthews stated he would like to

hit the ground running and be prepared when the gates broke loose and the economy recovered. Mr. Compton stated he wanted his project to be successful and wanted him to do what he was doing, he just struggled with the community supporting it through a tax abatement and that at some point, these projects should stand on their own and that was his feeling. Mr. Compton stated he understood what he was asking and understood why he just struggled with it being the right thing to do for his constituents and the people who lived in his district. Mr. Compton asked if they passed something less in percentages that weren't what he was asking for if that would be a problem and obviously it depended on what those percentages were. Mr. Matthews stated, if he may respectfully, he believed the council was charged with running the business of the city of Mishawaka and certainly there were social requirements and the presentation he was making. Mr. Matthews stated he appreciated the questions but he was very business oriented and it was 110% the right thing to do in his mind. Mr. Matthews stated the property had been sitting vacant for 20 years, as Mr. Prince said earlier, and at some point he may have to ask his constituents or his constituents would be asking him why the land was still vacant, why they did not have a nice place to stay. Mr. Matthews stated there was no time like the present and it was never going to be cheaper than it was at that time. Mr. Matthews stated even though they had significant costs escalation, it would still be more expensive tomorrow. Mr. Matthews stated a delay would kill this project. Mr. Matthews stated it was a very simple formula and if you helped drive down the costs, it helped bring more parties into downtown Mishawaka and those parties would want good services and businesses would fill the mixed-use space and they would have a very vibrant community. Mr. Matthews stated there was no time like today to make that decision.

Mrs. DeMaegd stated she read in her exhibit A that was part of the paperwork that they had a market study completed in January of 2019 and then updated in June of 2022. Mrs. DeMaegd asked who conducted the study. Mr. Matthews stated a company out of Chicago, Tracy Cross that was recommended and recognized by several lending institutions in the area. Mrs. DeMaegd asked if they could see that market study. Mr. Matthews stated he would be happy to send it.

Mr. Compton stated he was looking at the form he sent in and the name and location of his five largest vendors and two of the construction contractors were on there and neither of them were local, which was another concern he had. Mr. Compton stated he would personally like to see local contractors on local projects. Mr. Matthews stated they would also like to see local contractors and local vendors and they certainly would have given local contractors and local vendors the opportunity to bid on the project. Mr. Matthews stated the vendors in the application were not necessarily the vendors on the project and they were several of the largest vendors that they had used in the past.

Stephen Studer, Kreig Devault Law Firm, spoke in favor of **RESOLUTION R2022-29**. Mr. Studer stated he was there in support of the tax abatement and one of the things he passed out was a photograph that he took in 1999 when he was honored by the city to represent it in connection with working with the EPA in the state with respect to the contamination issues that were present at the former Uniroyal facility. Mr. Studer stated the EPA said at the time it was the worst site in the entire region. Mr. Studer stated he showed them these photos to show what was there 20 years ago and when you looked at the site now, they knew how incredible it really was

and the city had made a huge investment. Mr. Studer stated the demolition of 57 buildings was quite an event when it occurred and he walked through every building himself and it was an absolute mess. Mr. Studer stated Mr. Prince was absolutely correct when he said that developing a brownfield site was really difficult and whether or not you had actual environmental issues or not was sometimes secondary to the fact that lenders perceive environmental issues. Mr. Studer stated Mr. Prince also mentioned the Mill project and the Mill project also was the beneficiary of over \$10 million in other public money. Mr. Studer stated they would not be here if it wasn't for that import of the state money and the city money and as Mr. Prince stated, just like this property, they thought they got all the hot spots back in 1999, 2000, 2001 but they found a hot spot when developing the Mill that cost \$200,000. Mr. Studer stated he saw two issues in the development agreement in this particular property, with one being the ground development and that was a cap at \$50,000. Mr. Studer stated that was a risk the developer would have to take if it were to go over \$50,000 and it would not be the city's risk at that point. Mr. Studer stated anyone who developed on the former Uniroyal site would be taking a risk and this property was still subject to an agreement in covenant not to sue with the EPA in the state but there was still a lot of issues at the site. Mr. Studer stated another thing he wanted to point out was the city spent over \$12 million in developing the site. Mr. Studer stated they had the opportunity to improve the downtown neighborhood and would love to see the new development come in. Mr. Studer stated in five years, it would generate a lot of taxes and would help other businesses downtown as well. Mr. Studer stated he very much supported the tax abatement in the five-year request.

Mr. Compton thanked Mr. Studer for his comments and stated he was a little confused and thought Mr. Prince said the city of Mishawaka would do all of the environmental cleanup but it sounded anything over \$5,000 would make them responsible. Mr. Studer stated in this particular development, the first \$5,000 was by the developer and the next \$50,000 was by the city and anything over that was by the developer and that related to ground preparation. Mr. Studer stated things such as construction debris and anything else they happened to find on the site would be on the developer's cost. Mr. Studer stated the city was only liable for the \$50,000 between the \$5,000 and \$55,000 range. Mr. Compton asked if they found any contaminated soil, how that would work. Mr. Studer stated the city would pay the first \$100,000 and the developer would pay anything over that according to the development agreement by the EPA. Mr. Studer stated

Mayor Dave Wood spoke in favor of **RESOLUTION R2022-29**. Mayor Wood stated urged the council to support this and it was rare the city supported tax abatements in general. Mayor Wood stated these were only brought in front of them with their support if they determined that there was a credible need for them and were not of the opinion that they just gave tax abatements to any projects in the area. Mayor Wood did not think that was a great practice and they were very judicious in supporting tax abatements, and even more judicious when it came to supporting residential tax abatements. Mayor Wood stated while the developer had asked for a bigger tax abatement, they went with precedent with a tax abatement model that already existed and that they had already seen in fact approved on other projects. Mayor Wood stated this project did not receive any other kind of stimulus and as they also heard, the site had sat empty and was not productive, generating zero for 20 years plus and was actually generating costs to the city. Mayor Wood stated this project likely would not go forward if this was not approved due to the extra

costs incurred partially because of the city asking for a delay in the project so they could make some improvements that benefited their citizens and the development. Mayor Wood stated they were at a critical point downtown and they were trying to build a critical mass that would benefit all of their businesses downtown. Mayor Wood stated they thought this would be vital to a growing community and if this project did not move forward, they would lose the income taxes and a potential of 100 units full of people looking for employment. Mayor Wood stated when you thought about school referendum, those were above any abatements or caps and as the school proceeded now to pursue a new referendum, this would pay into that. Mayor Wood stated projects such as this one required a bigger investment to get to the standards the city expected, but they wanted housing for all in downtown Mishawaka and this filled a very unique niche. Mayor Wood stated this was right catty-corner to affordable housing and senior housing and it also was right across the street from luxury housing, which was a unique situation to be in. Mayor Wood stated this provided a more affordable situation and they wanted to be in that business of having a community that supported and provided those kinds of housing options. Mayor Wood stated they knew that over time, those TIF dollars would help them to provide more community benefit. Mayor Wood stated they would be good stewards of the TIF dollars but putting them into public infrastructure projects, public capital projects, etc. that benefited the entire community. Mayor Wood stated investing in these kinds of things would support their schools, made it a community that people may want to live in and raise their families in. Mayor Wood stated they used the TIF dollars wisely to the benefit of all. Mayor Wood stated this project would only add to the community and no support of this project would result in them mowing the grass for another 20 years until something else came along.

Mr. Compton stated as they knew, he did not support the last tax abatement and knew how important they were. Mr. Compton stated he mentioned setting precedent and Mayor Wood also referred to it and he knew they did not give it to other projects other than in downtown and the one in Twin Branch and at the current rates he could not support it. Mr. Compton wanted to make a motion that they amend the resolution to have it set at 100% the first year, 75% the second year, 50% the third year and 25% the fourth year for a four-year tax abatement. Mr. Compton stated he made the motion to set a new precedent going forward on projects similar to this that he thought was more acceptable.

The motion was made and seconded by Mrs. DeMaegd to amend **PROPOSED RESOLUTION 2022-29** to amend the length of time and yearly tax abatement amounts as mentioned by Mr. Compton.

Mr. Banicki was curious, before voting one way or another, about what the dollar amounts were versus what they had in the resolution currently. Mr. Banicki stated he would like to see the math on that.

Mr. Mammolenti stated he would also like some information prior to his vote regarding the motion and wanted to ask the developer what his thoughts were on the motion and he knew he mentioned that time and money was a strong concern that may potentially kill a project, so before he voted he wished to hear from him, with permission from the council president.

Mr. Mammolenti asked Mr. Matthews based on Mr. Compton's motion that he had on the table, about his initial thoughts on the motion. Mr. Matthews stated the project was very thin as it stood and every day, they were up against additional fed funds going up and interest rates rising. Mr. Matthews stated he could not speak to exact numbers, but he could tell them when looking at the amount of cash flow they had and meeting their ratios to satisfy the lenders, it was very, very thin. Mr. Matthews stated he could not say for sure one way or another, but it would be extremely disappointing that they got to this stage and the goal post would be moved.

Mr. Mammolenti verbalized some of his thoughts regarding the motion and would also be contingent on Mr. Prince's math of the numbers with the new percentages, but he did really want this project to move forward and would hate to jeopardize this project based on a couple of thousand dollars here and there and that was his only concern with the motion.

Mr. Compton stated he did the quick math and it looked like to him, that the taxes being abated over four years would be \$1.179 million as opposed to \$2.122 million so there would be almost \$1.2 million taxes abated and also meant taxes paid would be the difference. Mr. Compton stated it would be about \$1 million they would pay in taxes as opposed to \$235,000 if his math was correct.

Mr. Hazen stated his understanding was it did not matter what they did that evening and the tax money that was gathered in the TIF area was going to stay in the TIF area and it was not going to benefit the rest of the community except for what they could do in the TIF area as far as infrastructure and those type of things and asked for clarification on that. Mr. Prince stated that was correct and although his numbers were a little different than Mr. Compton's, it was roughly a \$1 million difference between the two. Mr. Compton stated what Mr. Compton proposed was 55% of what was recommended by staff in the assessed valuation. Mr. Prince stated the developer requested significantly more than that and they asked them to reduce it to come to their standards so this would be a reduction in addition to that. Mr. Hazen asked if he was comfortable with the money they had in TIF that they could do what they needed to do downtown and he was sure they wanted this million but they did not need it and it was not going to hinder projects. Mr. Prince stated they had not included the revenue from the property in their TIF cash flow projections but with that being said, they never had enough money. Mr. Prince stated if you looked at the TIF district, they had \$600 million in desires and \$300 million in funding until it expired. Mr. Prince stated they were not counting on this property to fund what they had allocated for improvements over the next 6 years. Mr. Hazen stated he looked at it as what they would gain to lose then, because they were not getting anything now on that property.

Mrs. Voelker appreciated Mr. Compton's thoughts on maybe coming up with a new standard for abatements, but also had to appreciate their developers thoughts in that they had been planning on an abatement that also had precedent with other residential abatements they had done on the past and of course the steelhead project on Capital. Mrs. Voelker stated her argument was that she thought they should stay with the abatement that was put forward that evening and then, if as a council they wanted to change that and put a precedent together for residential and industrial abatements they could do that but not at this time.

Mr. Hixenbaugh echoed Mr. Mammolenti's comments and as much respect as he had with the math and numbers crunched that evening, personally he was a little uncomfortable with making a decision of this gravity without having the numbers validated and worked through. Mr. Hixenbaugh appreciated Mr. Compton's concern and his motivation for the motion, but at that point in time he was not comfortable with amending the resolution in such a significant fashion on the fly without having the numbers further vetted.

Clerk Block polled the council on Mr. Compton's motion to amend the proposed resolution.

Motion failed by unanimous roll call vote (summary: Yes = 2 No = 7).

Yes: Mrs. DeMaegd, Mr. Compton

No: Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mrs. Voelker, Mr. Hixenbaugh. The amendment failed 7-2.

Mr. Mammolenti thanked his colleagues and the administration for the caution and the pause they put forth in every abatement that came across their desk and the council's desk as well and thought they were being good stewards with the taxpayers' money. Mr. Mammolenti stated he knew at the last meeting, he should caution and some pause with the project and abatement and he did some reflection based on some presentations that evening and kept going back on the fact that the property had collected zero tax dollars over the last 20 years and the fact that it was very difficult to sell, develop and get the developers to come forward on a property like this that had some past contamination. Mr. Mammolenti stated as mentioned before, the taxes being collected would stay in the TIF district and it was not like they could pay their employees additional money or bring on additional officers or firefighters on payroll with this money and it would not get released into the general fund. Mr. Mammolenti stated he was not trying to be hung up on the amount of taxes that would be abated, but rather focusing on the fact that in year 6, the city would collect approximately \$470,000 of new taxes into the city per year and that was a lot of money and a lot of projects that the city could potentially start or complete without dipping into the pockets of the taxpayers' dollars. Mr. Mammolenti stated with all that being said, he would be voting in favor of this that evening.

Mrs. Voelker appreciated developers like Mr. Matthews coming before the council and willing to take a risk and make an investment in Mishawaka in piece of property that was challenging which also was a project that was in her district and was close to her heart. Mrs. Voelker stated this was something she had been hoping for since her and her husband moved to Mishawaka in 1991, so they had been waiting like many people in the area for their downtown to be resurrected so to speak. Mrs. Voelker stated when you brought in people that lived in town and could support the local businesses in the downtown, as Mayor Wood said, that was what made a vibrant community and she believed it will happen. Mrs. Voelker stated there would be a critical mass of people supporting the downtown and thought that was phenomenal and would bring tax dollars to the city that would allow them to do a number of things. Mrs. Voelker thought in the long term this would be very substantial for the city of Mishawaka.

Mr. Compton apologized to his fellow council people for not doing a little more homework before the meeting, but these were presented to them as they were and this was the time to set the precedent. Mr. Compton stated what they were now doing was extending this precedent by one more project and would make it that much harder to say no to the next one. Mr. Compton asked

their administration for abatements that he would like the opportunity to critique this a little bit more and give opinion and maybe even other options and what would transpire in the presentations, so they would not be scrambling. Mr. Compton again apologized, because he could have asked for that information and he failed and did not think about it until right then. Mr. Compton stated he would not support this and thought there would be a lot of people putting off projects because of the current economy and he was concerned they wanted to build it because where it was at and what it meant to all of them and he just was not sure those were the right reasons to move forward with it.

Mr. Hixenbaugh appreciated all of the information provided to them in writing that evening and it was all beneficial. Mr. Hixenbaugh stated of the information received, there were two components he found to be very unpersuasive with the first being the general narrative with regard to the market forces that were at play with regard to the development. Mr. Hixenbaugh stated that was a reality and they were all experiencing inflation, the city was experiencing inflation as was every other developer in the community and if that was the rationale for granting a tax abatement, then everyone who was getting ready to break ground in the city of Mishawaka ought to be entitled to a tax abatement, because their construction costs had risen at the same level as is applicable to this development. Mr. Hixenbaugh also thought the emphasis in the dialogue with regard to precedent was somewhat misplaced and went on record saying he did not feel bound by anything that had been done in the past. Mr. Hixenbaugh stated they did not, as other communities, have in place an ordinance that assigned each and every tax abatement to a matrix or rubric and applied a score to it. Mr. Hixenbaugh stated he believed one of the strengths that had rounded out their ability to be judicious with granting tax abatements, as Mayor Wood mentioned, was that they looked at them on a case-by-case basis and they had considered the merits and the fundamental first step always had to be to look at the site itself and he did think there was a danger at times that they did get excited that it was a beautiful development like Mr. Matthews' and he thought they lost sight of those fundamentals. Mr. Hixenbaugh stated what it was about that particular piece of property that made it difficult to develop and if the totality of the benefit out justify the deduction were what was important. Mr. Hixenbaugh stated the precedent here was a case-by-case precedent and his opinion, nothing they did that evening tied their hands with the next request that would come across their desks and nothing that had been done in the past tied their hands and quite frankly if they were going to really look at precedent, the numbers that were imbedded in this particular resolution did not reflect what he understood to be the most recent precedent which was the River Walk precedent that had numbers amended on the floor of the council that were different than what was in front of them. Mr. Hixenbaugh thought they needed to be careful with the concept of precedent and it was always appropriate to be able to establish and announce that whatever they did in the past, they had a new vision and would guide it by the law but they were not going to be constrained by what happened in the past. Mr. Hixenbaugh stated what caused him to slightly lean in favor of this was a series of other factors such as, as had been noted, this was within a TIF district and it did not mean they could ever be cavalier with regard to the impact of a tax abatement within the TIF district but the reality was that even if this abatement was not granted, the new tax revenue, if this was even built, would not flow into the general fund of the city of Mishawaka and it would not and impact and lower the tax rate paid by any resident. Mr. Hixenbaugh stated if any money generated, it was always going to be captured within that district until 2039. Mr. Hixenbaugh stated he was talking about their ability to be able to bond and to fund projects and at times what they did

within the TIF district was going to delay the priority of certain projects, but this was revenue neutral to a certain extent with regard to how it impacted the residents throughout Mishawaka. Mr. Hixenbaugh stated what it did do was allow for a \$25 million investment to be made in a brownfield site and bring in that potential income tax revenue that Mayor Wood referenced, which was ever more a source of important revenue for them as they built out their budget and as they looked at what they could do as a community to build amenities to hire staff, to pay them well and to do the things they all wanted to do. Mr. Hixenbaugh stated on balance, all of the other factors aside, he believed that what was still a difficult brownfield area that not every developer would want to tackle, the benefit outweighed the potential downside of the tax abatement. Mr. Hixenbaugh stated he would be voting in favor of this that evening but he did think Mr. Compton's comments were well taken and he thought they needed to engage in a broader dialogue with the administration so that they could speak with one voice as much as possible when these requests came to them. Mr. Hixenbaugh stated this was no criticism of anything that happened that evening and quite frankly, his individual preference would have been for them to start out at five years and a 50% abatement but that was just the starting point and undoubtedly, Mr. Prince would have good points to raise that would convince him he was off base, but that was the type of interactive dialogue he thought they needed to have. Mr. Hixenbaugh stated let's put precedence aside and take a look at things with a fresh set of eyes and look at realities now and what best served the future of Mishawaka but that was an issue for another day.

Question was called for at 8:15PM for **RESOLUTION R2022-29 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mrs. Voelker, Mr. Hixenbaugh.

No: Mr. Compton The resolution passed 8-1.

RESOLUTION R2022-30

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, MAKING A FINAL DETERMINATION AND CONFIRMING THE DESIGNATION OF AREAS WITHIN THE CITY OF MISHAWAKA, INDIANA, KNOWN AS 1811 N. HOME STREET AS AN ECONOMIC REVITALIZATION AREA FOR PURPOSES OF REAL PROPERTY TAX ABATEMENT

Confirming Resolution for Real Property Tax Abatement for 1811 N. Home St. – Helios Hydraulics Americas LLC

Ken Prince, Director of Planning and Community Development, spoke in favor of **RESOLUTION R2022-30**. Mr. Prince stated this proposal was the confirming resolution for Helios Hydraulics who recently acquired Daman Products at 1811 North Home Street. Mr. Prince stated their plan investment was a total of \$16.3 million with \$4.8 million of that adding on to the building approximately 53,000 square feet and \$11.5 million for new manufacturing equipment and a little bit into the IT area as well. Mr. Prince stated those were to two different abatements in front of them; the five-year on real property and the five-year on personal property with higher percentages on the personal property based on the higher level of investment. Mr.

Prince stated overall Helios was looking to retain 139 employees while adding an estimated 73 jobs as a result of the investment. Mr. Prince stated the hourly rate wage for 71 skilled new positions excluding benefits was estimated at \$19.17 an hour and the two salary positions were estimated at \$42.34 per hour. Mr. Prince stated the total annual salaries for the new jobs was estimated at approximately \$3 million. Mr. Prince stated as they recommended in line with their tax abatement history, the five-year abatement for both the real and personal property tax abatements, the real property was recommended at their standard 100, 80, 60, 40 and 20 percent in the five-year span and the personal property was recommended at 100, 90, 80, 70 and 60 percent over the five-year span. Mr. Prince stated using the tax calculator based on the 2021 tax rate, the real property improvements proposed would have a corresponding estimated tax bill of \$115,200 using 80% of the project construction cost to determine the assessed valuation. Mr. Prince stated the real property taxes associated with the project over the five year amount equated to \$576,000 and over that period of time, the owner would have \$345,600 abated and would pay \$230,400. Mr. Prince stated the personal property tax abatement over the five years amounted to \$1.38 million of property taxes and over that period of time, the owner would have \$1.104 million abated and would pay \$276,000. Mr. Prince stated they were very excited on this proposal and as he said multiple times, because of their as far as their growth in industry because of their geographic position and available land, it had been difficult to grow their tax base on the industrial side, so this represented real diversity in their economy. Mr. Prince stated it represented manufacturing jobs as well which were shipping products that exceeded or went out of the region and for those reasons they were very much in support of the request and he was happy to answer any questions.

Mr. Compton thanked Mr. Prince and asked if the number he quoted, \$1.4 million, was the combined total. Mr. Prince stated on the personal property, which was the equipment, they had \$1.38 million over the five-year period as a total tax bill and for the real property, the building expansion, they had it at \$576,000.

Dave Mischler, President of Daman Products, spoke in favor of **RESOLUTION R2022-30**. Mr. Mischler stated the reason they chose to partner with Helios was because of their commitment to growth and what that growth would do to their employees, both existing and the area for new employees. Mr. Mischler stated they had a different model as far as manufacturing and they desired to hire unskilled labor and they hired for character and work ethic and liked to train them internally. Mr. Mischler stated these tax savings would really help them invest in training and becoming the employer of choice for people who did not necessarily go the college route and wanted to get into a nice company. Mr. Mischler stated they had dozens of employees who had been there 20 to 30 years or even longer and this was about growth and the new company meant business on that. Mr. Mischler stated they felt strongly that this was a good thing for the community.

Mr. Compton stated he would be supporting this tax abatement and this was what he thought tax abatements were about and there were going to be somewhere around a projection of 70 jobs added. Mr. Compton stated he knew people who had worked there and it was a desirable place to

work, they made money, learned a skill and he thought this was what tax abatements should be about. Mr. Compton stated what they just did, he thought this was \$2 million well spent.

Question was called for at 8:23PM for **RESOLUTION R2022-30 Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 9-0.

RESOLUTION R2022-31

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, MAKING A FINAL DETERMINATION AND CONFIRMING THE DESIGNATION OF AREAS WITHIN THE CITY OF MISHAWAKA, INDIANA, KNOWN AS 1811 N. HOME STREET AS AN ECONOMIC REVITALIZATION AREA FOR PURPOSES OF PERSONAL PROPERTY TAX ABATEMENT

Confirming Resolution for Personal Property Tax Abatement for 1811 N. Home St. – Helios Hydraulics Americas LLC

Mr. Hixenbaugh allowed the speakers to incorporate by reference their comments with regard to the earlier resolution in the portion of this public hearing.

Mrs. Voelker expressed her appreciation to the current owner of Daman and the new owners who were willing to make an investment in Mishawaka and as she said before, she also knew people who worked there that really enjoyed the company and again thanked them for their investment.

Mr. Hixenbaugh stated he would be in support of this and it was not only for those job retention and increased figures that Mr. Compton cited but it was also because of the unique area in which this facility was located and his guess was that it would be difficult, if not impossible, to develop that site at that location in this day and age if it had not already been built and the ability to be able to maintain that presence in Mishawaka and the jobs that were of benefit not just to the employees, but to the community was worth the investment in his mind and qualifies under statute. Mr. Hixenbaugh thanked them for the investment they were making and their commitment to Mishawaka.

Question was called for at 8:27PM for **RESOLUTION R2022-31 Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 9-0.

PROPOSED ORDINANCE NO. 2022-32AA

**CIVIL CITY BUDGET AND TAX LEVY FOR 2023
VOTE ONLY**

Mr. Emmons reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried.

Mr. Hixenbaugh thanked Mayor Wood and the Controller for their work to put the budget together and it was always a daunting task but it was impressive to him that in this economy that they had in front of them a balanced budget that allowed them to continue to provide high quality services on behalf of the citizens of Mishawaka. Mr. Hixenbaugh stated clearly there was a need for them to dig into their surplus to do what they wanted to do within the budget as Mayor Wood mentioned the last time around, but this allowed them to get through the next year in good shape and not just tread water but thrive as a community. Mr. Hixenbaugh stated he also appreciated the fact that within the budget, there was an increase in spending in public safety. Mr. Hixenbaugh stated they could not overemphasize the fact that they were on the cusp of putting in place a fourth ambulance that would provide better service to the community. Mr. Hixenbaugh stated it was safe to say that one of the issues that really was of critical importance to the council that was embedded in the ordinance was the continued investment that they were making in the camera system along the River walk and in their parks. Mr. Hixenbaugh stated he thought it was safe to say that they as a council viewed that to be an important component of public safety in Mishawaka and they appreciated the investment and the ongoing care that was going to be given to that proposal as well. Mr. Hixenbaugh stated he did agree with one of the suggestions that was made by Mrs. Voelker during their budget meetings that although they made an investment in beefing up their Code Enforcement department by adding a staff member in last year's budget and it appeared to be paying dividends, he did think that it made sense for them to consider as their finances and staffing allow, the consideration of a rental inspection program to allow them to try to more comprehensively review those type of issues throughout the city and as a companion piece, they also had discussion during the budget meetings of a review of their code enforcement ordinances to see if they had empowered the administration and Code Enforcement with all of the tools they needed to address those type of issues throughout the city and certainly they as a council would be willing to part with the administration on any such changes that needed to be made. Mr. Hixenbaugh thanked everyone who had a role in bringing this to that point and thanked the council members who devoted their time to the budget meetings and the good news for the citizens of Mishawaka was they had a balanced budget that would allow them to move into 2023 in good shape and continue the positive momentum they've experienced in Mishawaka in recent memory.

Question was called for at 8:32PM for **PROPOSED ORDINANCE NO. 2022-32AA Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **Ordinance No. 5809.**

PROPOSED ORDINANCE NO. 2022-34

AN ORDINANCE FIXING THE SALARIES OF CERTAIN ELECTED OFFICIALS OF THE CITY OF MISHAWAKA FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2023

Elected Officials Salary Ordinance for 2023

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mrs. Voelker, the motion carried.

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2022-34**. Mayor Wood stated they were requesting a 3% increase for all elected officials.

Question was called for at 8:34PM for **PROPOSED ORDINANCE NO. 2022-34 Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **Ordinance No. 5811**.

PROPOSED ORDINANCE NO. 2022-35

AN ORDINANCE FIXING SALARIES OF ALL SWORN EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT FOR PUBLIC SAFETY, MISHAWAKA PARKS DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2023

Civil City Employee Salary Ordinance for 2023

Mrs. Voelker reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried.

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2022-35**. Mayor Wood stated they were also requesting a 3% increase for the vast majority of all of their city staff. Mayor Wood stated there were some exceptions to that and they did do a salary study. Mayor Wood stated they wanted to make sure they were paying fairly for similar duties than maybe some of their peers around the state of Indiana and they commissioned a study to see where they were in comparison to most and they found out they were in good shape as far as what their peers were paying. Mayor Wood stated they had chosen to address some outliers and there were about 8 employees that would receive beyond the 3% because they were essentially below the external rate of what some of their peers made, with them being in some cases 10% below or even 11% and 12% less and they had chosen to bring them up to the standard over the course of 2 years. Mayor Wood stated some examples were Senior Planner, being below the standard by 10.3% and the Project Coordinator in the Redevelopment department which was 8% below the low median, HR Assistant Director 11.4% below the low median, the Detective Secretary in the Police Department being 11.4% below, the Office Manager being 7.4% lower, Office Administrator in Motor Vehicle Highway being 12.1% below the low median, Chief Deputy Clerk being 5.5% below the low median and the Deputy Controller being 5.8% below the low median. Mayor Wood stated they also had two positions where they were changing the job title, with the Office Manager position in the Building department where they were proposing a Permit Tech more in

line with the duties of the person and that would move into a new salary as well with the title and in the Controller's Office, they had a proposed title for a Senior Purchasing Agent that would essentially give a new salary for a new title for a person already working in the department. Mayor Wood stated a lot of their salaries were in range and had nothing to hide with their Salary Ordinance. Mayor Wood stated he was particularly happy to see most of their collective bargaining units were within the norms of what others around the state were making. Mayor Wood stated he knew they excelled at benefits and their benefit package was second to none, along with their Healthcare insurance. Mayor Wood stated they also had access to clinics, free prescriptions, free visits to doctors and they paid into retirement whereas other communities rarely did that. Mayor Wood stated they also put in deferred compensation and match some deferred compensation as well and when you looked at his perspective on compensation and salary, it went just beyond that evening and he looked at a package that was good for their staff, their families and their longevity as long as they wanted to work for the City of Mishawaka. Mayor Wood stated he did wish it was more. Mayor Wood stated they understood inflation was going up and the staff wanted cost of living and their cost of living had gotten a lot worse over the course of the past couple of years and all of their expenses were going up while their ability to pay for it was not. Mayor Wood stated they did not get a cost of living raise from their taxpayers and they were spending in deficit and would continue to spend in deficit which was a scary place to be heading into a recession. Mayor Wood stated based on what they were seeing in the news and what they were hearing from local employers, who they knew some were going into shutdown status for extended periods of time, meaning people will go through the holidays without pay but they would not be in that position and they were there to provide good, decent jobs for their outstanding public servants. Mayor Wood stated in this case, slow and steady won the race, they were able to provide good employment opportunities for their staff and he thought this proposal did exactly that and was sustainable.

Mr. Hixenbaugh thanked Mayor Wood for the information and the work that went into this as well and stated this ordinance was really geared toward the salary and hourly wage components of compensation but there was also an additional benefit with the insurance. Mr. Hixenbaugh asked what type of insurance premium increases were employees anticipated to have to take on in the coming year. Mayor Wood stated they did not and would not raise premium levels for their staff and that was a pretty impressive feat to try to manage their program to contain costs and keep them in line so that they did not have to pass along insurance increases to their staff and the city did not have to absorb big increases. Mayor Wood stated they would not pass those along and they had the best insurance they would find anywhere in the community and if they were to take it down to the 80% level, you would be talking a substantial pay decrease for their staff. Mayor Wood stated they thought it was the right thing to do and wanted a comprehensive compensation package for their staff because they wanted to look beyond just the paycheck and give them good benefits, good health insurance and a good retirement. Mayor Wood stated you also did not find a pension anymore out in the workplace unless you were working for the city or at another local government and those were promises made and they went beyond the promises made by contributing to that retirement and it was appreciated. Mr. Hixenbaugh stated he was pleased to hear that and if memory served, this was not the first year that they absorbed any increases and wanted to say they were two or three years into that cycle. Mayor Wood stated he could remember the last time they increased but it had been several years and again another rarity you would not find anywhere out in the workplace. Mr. Hixenbaugh stated they had some

discussion at the State of the City and other opportunities with regard to ARPA and they recently approved some funding with regard to some non-city employee expenditures of those ARPA funds and his hope would be they could take a look at whatever flexibility they had within their remaining ARPA funds to revisit those concepts of employee bonuses and he knew he would always be in favor of that as well. Mr. Hixenbaugh stated from a council standpoint, they would be open to having that discussion as well. Mayor Wood stated they were open to looking into that and had done it on two separate occasions and felt like it was the right thing to do for their staff who never phoned it in during the pandemic and reported to work ready to do the service they were elected and obligated to do in incredible fashion. Mayor Wood stated they felt like that needed some rewarding during a pandemic and so they had done it on two separate occasions and were looking to do it a third time.

Question was called for at 8:50PM for **PROPOSED ORDINANCE NO. 2022-35 Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **Ordinance No. 5810.**

PROPOSED ORDINANCE NO. 2022-36

AN ORDINANCE FIXING THE SALARIES OF ALL SWORN PUBLIC SAFETY OFFICERS FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2023.

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mrs. Voelker, the motion carried.

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2022-36.** Mayor Wood stated right now it was held at zero and would not stay that way, but it was a zero just because they were in the middle of contract negotiations with the police department and fire department. Mayor Wood stated as they were involved in those, they knew how intricate and time consuming they could be, but they would have it wrapped up and to them with the necessary changes before the end of the year.

Mr. Hixenbaugh noted for the record that at their most recent negotiations with both the police and firefighters, they did advise them that this matter was on the agenda and that this zero percent was imbedded in the ordinance to allow the collective bargaining process to continue, so they were well aware of that and this would not take them by surprise.

Question was called for at 8:53PM for **PROPOSED ORDINANCE NO. 2022-36 Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **Ordinance No. 5812.**

PRIVILEGE OF THE FLOOR

Connie Johnson, 1719 Panama Street, spoke under **Privilege of the Floor**. Mrs. Johnson stated she lived by the old Southwest Little League and she knew that they had contracts with the little league, but she was told they broke the contract because they let for-profit teams play there. Mrs. Johnson stated one thing they may have missed was there was no running water down there and for this little league to make any money off of concession stands to help fund and keep their diamonds up, they did not have the opportunity to do so. Mrs. Johnson stated the city signed a contract with East End Little League to have use of this field and the diamonds without the use of water to maintain their fields, to fail to fail to open a concession stand so they could make money and have a for-profit team play. Mrs. Johnson stated she did not care who the teams were, she just loved seeing them there playing as she played there from age 9 to 18 and also coached, umpired and was involved in the little league for a good 5 to 7 years. Mrs. Johnson stated she would hate to see it go to Habitat for Humanity even though she loved the work they did and she just did not want to see any houses built by her house and that was a lot of houses for a small area. Mrs. Johnson stated they needed to open the diamonds up to all of the schools and allow them to play and practice there as opposed to going further away. Mrs. Johnson stated she talked to a parent who had a child on a travel team that played at Southwest and they came all the way from New Carlisle just to practice at Southwest. Mrs. Johnson stated Habitat for Humanity had a meeting a couple of weeks ago that she attended and the former president of Southwest Little League was also there and he said he signed a 99 year contract with Mayor Beutter and no one had that contract. Mrs. Johnson stated she would like to know if the city was aware of that and where it could be found. Mrs. Johnson stated from what she was told, she guessed the city could not find that contract anywhere and was asking for their help to look for it to help keep that area a little league. Mrs. Johnson stated they also could not get police out there now and if there was something bad to happen, there would be another 80 plus houses being built back there and they did not have enough police officers in the area to cover them. Mrs. Johnson stated she knew the police were shorthanded and a lot of things happened with the pandemic and she loved their police officers and they did their best to protect the citizens, but she was concerned about it. Mrs. Johnson stated her biggest concern though was losing her house if they went back there because she would not be able to afford the property taxes. Mrs. Johnson stated the property had been in her family since 1955 and she did not want to lose it.

Mr. Hixenbaugh thanked her for her comments and wanted to tell her that other than what they heard from her at a couple of council meeting and some email traffic they received as early as that day, there was not anything introduced to the council for them to take any action that had any relevance at all and had not been asked to do anything with regard to Southwest Little League. Mrs. Johnson stated she knew that Habitat for Humanity was having meeting and it was just in the works but she was doing everything to inform the council of it. Mr. Hixenbaugh stated he appreciated it and to keep in contact with them, but he just wanted her to know for the record that nothing had been asked of them that had anything to do with Southwest Little League and they were happy to help her in any way they could with regard to any type of contract. Mr. Hixenbaugh stated the only way they would have a record of it was if it would be through the records of the City Clerk and he doubted that, given what they were talking about. Mrs. Johnson stated she kind of knew that and did not know who else to turn to and was going to talk to Mr. Emmons and ask for his help on the Thursday meeting. Mrs. Johnson stated a gentleman from Habitat talked to her and some of her neighbors about this and it was just a lot to do in a small area. Mr. Hixenbaugh encouraged her to stay in touch with Mr. Emmons and it would be good to

stay in contact with Mr. Prince and Mayor Wood as well. Mr. Hixenbaugh stated they would be happy to help as they could but nothing had been asked of them at that point in time. Mrs. Johnson stated she understood and she just wanted to keep them updated.

Mr. Emmons stated he had been out to talk to some of the neighbors and he invited them to the next neighborhood meeting Thursday. Mr. Emmons stated she referenced 80 homes and he had not been told of any amount of homes and nothing had been addressed to him about the number of homes. Mr. Emmons stated he had one meeting with them when they came to him and asked if they could come to his meeting and make a proposal that Notre Dame architecture students had developed, but nothing had been said or came before the council, raised to the Mayor of what they would propose and nothing had been brought to him as the representative of the area. Mr. Emmons stated the meeting on Thursday would simply be for the proposal and nothing was set in stone and he would be there to listen to the proposal just like her and her neighbors would be. Mr. Emmons asked her to not get upset and to not form an opinion yet, because nothing had been developed or proposed and he had not even been addressed on it as the representative of the area. Mr. Emmons stated he grew up in that area, played in that area and his son played at Southwest Little League, so he had a fond memory of the park and the neighborhood as a whole and would represent her along with the constituents in the area for what they wanted. Mr. Emmons stated all he asked was if she heard something to keep him informed and he would do the same. Mr. Emmons stated he would like her to come to the Thursday meeting to hear what he had to say to them, how he addressed him and what he thought should be done. Mrs. Johnson stated she just wanted to come before them to let the council know how she felt. Mr. Emmons thanked her for coming that evening.

NEW BUSINESS

Mr. Mammolenti announced that the Twin Branch Neighborhood Watch Meeting for October 19th, due to a scheduling conflict with both the potential speaker and some of the hosts of the meeting, would have to be rescheduled for November 16th. Mr. Mammolenti stated there would be no meeting that month and the next one would be on November 16th.

Mr. Emmons reiterated his West End Meeting would be Thursday October 20th at 7PM at St. Bavos talking about the proposal Habit for Humanity set up and wanted to talk about. Mr. Emmons stated there would also be West End donuts for everyone and looked forward to seeing everyone.

ADJOURNMENT 9:09PM

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

Gregg A. Hixenbaugh /s/
Gregg A. Hixenbaugh, President

AP 22-44
Received
OCT 19 2022
Planning and
Community Development

Deborah S. Block, IAMC, MMC

NOV 01 2022

City Clerk
Mishawaka, IN

October 19, 2022

BOARD OF ZONING APPEALS
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board of Zoning Appeals (the "Board"):

1. DIOCESE OF FORT WAYNE - SOUTH BEND, INC. is the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Legal Description:

A tract of land in the Northeast Quarter of Section 20 beginning at the northeast corner of Section 20, Township 37 North, Range 3 East; thence south along the east line of said Section 20, said Township and Range, one thousand two hundred fifty-four and sixty-nine hundredths (1,254.69') feet to the center line of the pavement that forms the north point of a "Y" at the intersection of Logan Street (Hickory Road) and Dragoon Trail all in the northeast ¼ of Section 20, Township 37 North, Range 3 East north of Dragoon Trail; thence southwesterly following the center line of the pavement forming the "Y" at the intersection of Logan Street (Hickory Road) and Dragoon Trail Two hundred sixty and nine tenths (260.9') feet to the centerline of Dragoon Trail; thence meandering along the centerline of said Dragoon Trail in a westerly direction one thousand one hundred seventy-three and sixty-five hundredths (1,173.65') feet to a point where the west line of the east ½ of the east ½ of the northeast ¼ of said Section 20 intersects the centerline of said Dragoon Trail; thence north along the west line of the east ½ of the east ½ of the northeast ¼ of said Section 20, nine hundred ninety-seven and fifteen hundredths (997.15') feet to the north line of said Section 20, said Township and Range; thence east along the north line of said Section 20, one thousand three hundred twenty-seven and four tenths (1,327.4') feet to the place of beginning, containing 35.83 acres, more or less.

Registered legal address for the entire property:
1311 South Logan Street, Mishawaka, Indiana 46544

Address for the building requesting a use variance:
1328 West Dragoon Trail, Mishawaka, Indiana 46544 ("Building")
Annotated in Attachment A.

2. The above-described real estate presently has a zoning classification of Residential R-1 District under the Zoning Ordinance of the City of Mishawaka (the "Ordinance").
3. Appellant presently has an agreement to occupy the above-described property in the following manner:

Under its agreement, a portion of the Building and above described property will be used as a counseling center to provide (i) licensed counselors to diocesan school students, (ii) licensed therapists to those needing mental health counseling, (iii) referral services to those whose cases cannot be staffed, and (iv) ancillary and related services (the "Counseling Services"). The proposed hours of operation are 8:00 a.m. – 5:00 p.m., Monday – Friday.

4. Appellant desires to:

Provide Counseling Services, which may not be permitted under the Ordinance in the current zoning classification. The Building is appropriately constructed with ample parking and has the appropriate life safety devices to support the proposed services.

5. The Ordinance requires: (Explain ordinance requirements and note Section Number of the Ordinance.)

According to the definitions as set forth in the Ordinance and based on the proposed Counseling Services to be provided in the Building, the Building is required to be zoned as a commercial medical clinic. (*See* MISHAWAKA, IND., MUN. CODE Ch. 137, Art. I, § 137-4; MISHAWAKA, IND., MUN. CODE ch. 137, Art. IV, Div. 3, § 137-301(a)). The variance is requested to use the Building for Counseling Services, instead of the residential purpose and other uses permitting in a Residential R-1 District.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.

As it stands, the current zoning for the Building will not allow for the proposed Counseling Services. Failure to obtain the requested variance to allow for the provision of Counseling Services from the Building will negatively impact the potential to provide highly demanded and much needed educational and life counseling and therapy programs in the local community, particularly among the youth and students at Marian High School and in the nearby area.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? YES OR NO and explain your reason why.

No. Approval of the use variance will allow the Building to be used to provide beneficial educational counseling, mental health therapy, and referral services to members of the community, their families, and society at large. Some of the children and adolescents attending programs at this facility will likely be members of the student population attending Marian High School, which is located on the

same parcel as the Building. The program is intended to, among other things, assist individuals in preventing stress, anxiety, and other mental health issues, and will be conducted under the supervision of highly trained and licensed professionals.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? YES OR NO and explain your reason why.

No. Approving the requested use variance will not significantly alter the population of children and adolescents currently attending school at Marian High School. There are no residential structures or commercial businesses directly adjacent to the building, as it is located on southwest corner of the Marian High School campus but set off from the high school to be a standalone structure. The addition of these Counseling Services will not negatively impact properties adjacent to the Marian High School campus. The Building's use will be not require any exterior changes or improvements, nor will it significantly affect the capacity of the parking lots nearby.

- (3) Does the need for the variance arise from some condition peculiar to the property involved? YES OR NO and explain your reason why.

Yes. The property, of which the Building is a part, is currently zoned Residential R-1. However, the Building is constructed to support an entity that provides counseling and therapy services like the Counseling Services to be provided. Therefore, the use variance is being requested to allow the provision of such services in the Building, not due to some condition peculiar to the property.

- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? YES OR NO and explain your reason why.

Yes. Although the building is properly constructed for the proposed Counseling Services, the current zoning arguably does not allow for the provision of such services. Thus, Counseling Services would not be permitted without an authorized use variance, which services will be a benefit to Marian High School and the surrounding community.

- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? YES OR NO and explain your reason why.

No. The Mishawaka 2000 Comprehensive Plan does not specifically address the plan for the Building, but instead states that the campus on which the building is located is designated as an education space. The proposed Counseling Services align and are generally consistent with the current education designation. The proposed services will likely help students, faculty, and staff of Marian High School, as well as members of the community, in clearing educational or mental obstacles they may encounter. Further, the function of the proposed services will not impact current traffic patterns or create additional hardship for members of the

Mishawaka community, given its alignment with the educational designation already given to the space.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Signature of Property Owners Representative

Daniel P Florin

Print Name Here

Contact Person:

Name: Dan Florin

Address: Catholic Charities 1817 Miami St. South Bend, IN 46613

Day Phone Number: 574.234.3111

Fax Number:

Email: dflorin@ccfwsb.org



DIOCESE OF FORT WAYNE - SOUTH BEND

915 South Clinton Street • Post Office Box 390
Fort Wayne, Indiana 46801

October 12, 2022

TO: Board of Zoning Appeals, City of Mishawaka, Indiana

FROM: Diocese of Fort Wayne – South Bend, Inc.

SUBJECT: Authorization Letter – Building Zoning Use Variance Request

I hereby give authorization for Dan Florin, the Chief Executive Officer of Catholic Charities of the Diocese of Fort Wayne-South Bend, Inc. to submit a Use Variance Request for the below listed building which is owned by the Diocese of Fort Wayne – South Bend, Inc.

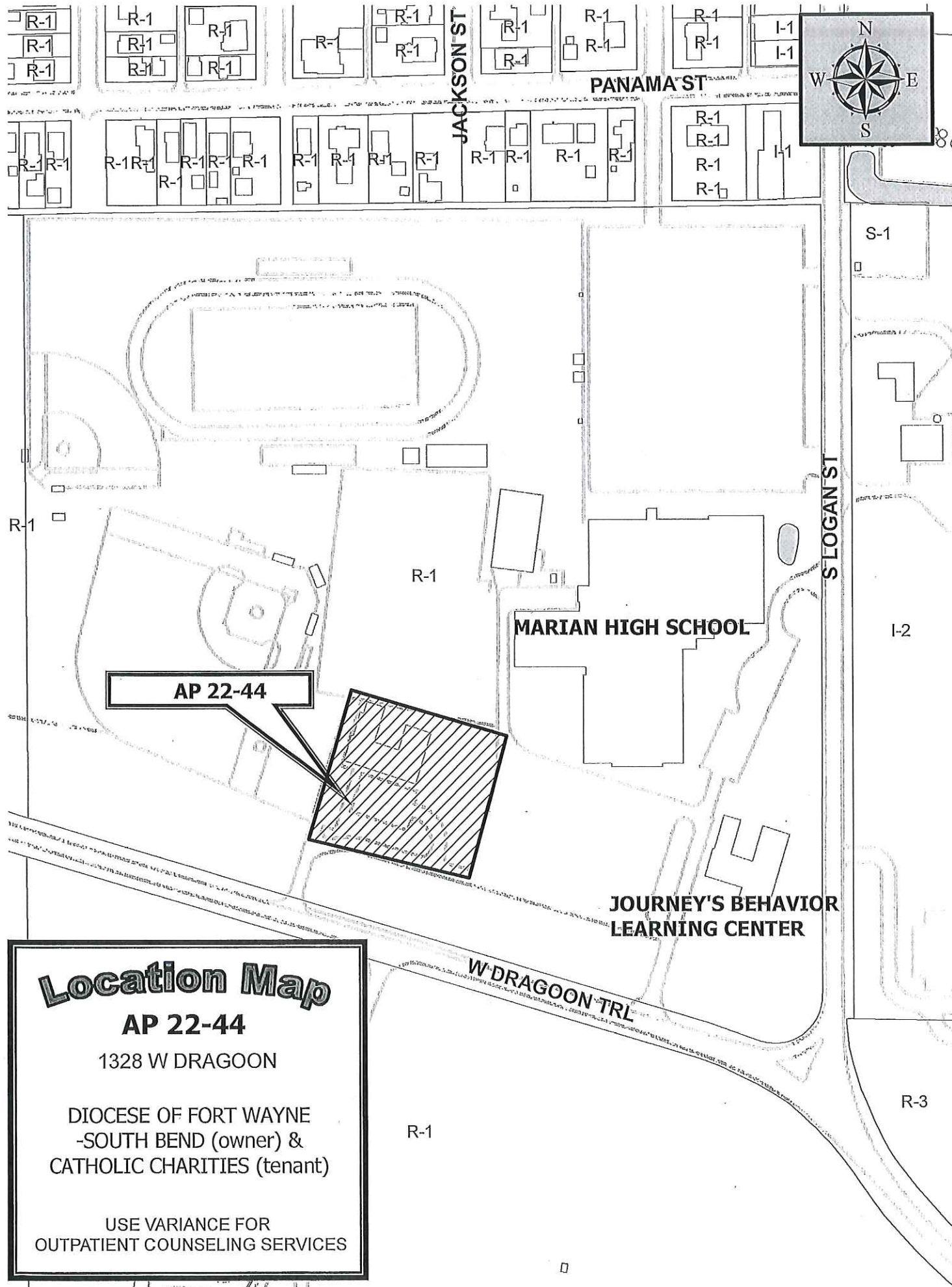
1328 Dragoon Trail
Mishawaka, IN 46544

This authorization is limited to submitting and completing the required processes outlined by the City of Mishawaka, Indiana for a Use Variance for the listed address.

Sincerely,

Kevin C. Rhoades
Signature

Kevin C. Rhoades
Member/President



NOV 02 2022

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2022-39
ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, AUTHORIZING THE CITY OF MISHAWAKA, INDIANA, TO ISSUE
ONE OR MORE SERIES OF ITS TAXABLE ECONOMIC DEVELOPMENT LEASE
RENTAL REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER
ACTIONS IN RESPECT THERETO**

WHEREAS, Indiana Code 36-7-11.9 and 12, as amended from time to time (collectively, the "Act"), declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Mishawaka, Indiana (the "City") is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, the City of Mishawaka Redevelopment Commission (the "Redevelopment Commission"), the governing body of the City of Mishawaka Department of Redevelopment and the Redevelopment District of the City (the "District"), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the "Redevelopment Act"); and

WHEREAS, the City of Mishawaka Building Corporation (the "Building Corporation") has been incorporated as an Indiana nonprofit corporation operating pursuant to Indiana Code 23-17 in order to finance buildings and other capital improvements in the City; and

WHEREAS, the City, the Redevelopment Commission, the Building Corporation; and Card Associates Athletic Facilities, LLC (the "Developer"), have negotiated an Economic Development Agreement (the "Development Agreement") to provide for the construction and equipping of an indoor sports facility complex in the City that will serve as a regional destination for sports tournaments and other events (the "Project") as more fully described in the Development Agreement; and

WHEREAS, the Redevelopment Commission has previously declared an area within the City as an economic development area and known as the "Consolidated Area Improvement Project" (the "Area") and designated the Area as an allocation area in accordance with Section 39 of the Redevelopment Act for the purposes of capturing incremental *ad valorem* property taxes levied and collected on all taxable real property in such Area; and

WHEREAS, the Redevelopment Commission on November 1, 2022, approved and adopted a resolution for the purpose of making certain amendments to the Area and its plan including to designate an area, presently part of the Area as a separate allocation area pursuant to Section 39 of the Redevelopment Act to be known as the "Sports Facility Allocation Area" ("Sports Facility Allocation Area") for purposes of capturing incremental *ad valorem* property

taxes levied and collected on all taxable real property in the Sports Facility Allocation Area (the "Sports Facility Allocation Area TIF"); and

WHEREAS, to induce the Developer to complete the Project, the City desires to authorize and issue its taxable economic development lease rental revenue bonds in one or more series under the Act, to be designated as the "City of Mishawaka, Indiana, Taxable Economic Development Lease Rental Revenue Bonds, Series 2022 (Sports Facility Project)" (with such further series or different series designation as determined to be necessary or appropriate) in an aggregate principal amount not to exceed Forty-five Million Dollars (\$45,000,000) (the "Bonds"), the net proceeds of such Bonds to be used for the purpose of paying all or a portion of the costs of the Project, capitalized interest on the Bonds; a debt service reserve fund from proceeds of the Bonds or the cost of a reserve surety, if necessary, and costs of issuance of the Bonds; and

WHEREAS, the Economic Development Commission, following a public hearing, pursuant to Section 24 of the Act, adopted a resolution which has been transmitted to the Common Council (i) finding that the financing of all or a portion of the costs of the Project will not have an adverse competitive effect on any similar facilities already constructed or operating in or about the City; (ii) further finding that the proposed financing of all or a portion of the costs of the Project complies with the purposes and provisions of the Act; (iii) further finding that such financing will be of benefit to the health and public welfare of the City; (iv) approving the financing of all or a portion of the costs of the Project, capitalized interest on the Bonds, a debt service reserve fund from proceeds of the Bonds or the cost of a reserve surety, if necessary, and costs of issuance of the Bonds, including the forms and terms of a Loan Agreement (the "Loan Agreement") by and between the City and the Building Corporation (including a form of Note (the "Note")), a Trust Indenture (the "Trust Indenture") between the City and a bank to be selected to serve as trustee for the Bonds (the "Trustee"), the Bonds from the City to the bondholders more fully described below, and this Ordinance (the Loan Agreement, the Note, the Trust Indenture, the Bonds, and this Ordinance, collectively, the "Financing Documents"), presented to the Economic Development Commission; and (v) recommending that this Common Council find that the proposed financing of the cost of the Project will be of benefit to the health and general welfare of the City and its citizens, and complies with the purposes and provisions of the Act, and that this Common Council adopt an ordinance approving such financings; and

WHEREAS, the Bonds will be payable from payments made by the Building Corporation to the City under the Loan Agreement as evidenced by the Note which payments will be made by the Building Corporation from lease payments made by the Redevelopment Commission to the Building Corporation under a Lease Agreement (the "Lease") between the Building Corporation, as lessor, and the Redevelopment Commission, as lessee, providing for lease of certain real property in the City pursuant to Section 25.2 of the Redevelopment Act as more fully described in the Lease; and

WHEREAS, no member of this Common Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Common Council, and no such member has voted on any such matter, all in accordance with the provisions of Section 16 of the Act; and

NOW, THEREFORE, BE IT ORDAINED By the Common Council of the City of Mishawaka, Indiana, that:

Section 1. It is hereby found that the Project constitutes a “economic development project” and “economic development facilities” within the meaning of the Act and the financing of all or a portion of the costs of the economic development facilities constituting the Project referred to in the Financing Documents previously approved by the Economic Development Commission and presented to this Common Council; the issuance and sale of the Bonds; the use of the proceeds of the Bonds to pay all or a portion of the costs of the Project, pay capitalized interest on the Bonds, fund a reserve fund from proceeds of the Bonds or by the purchase of a surety policy and pay the costs of issuance of the Bonds, the payment of the Bonds from the sources described in the Financing Documents, and the securing of the Bonds under the Indenture comply with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

Section 2. At the public hearing held before the Economic Development Commission, the Economic Development Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City. This Common Council hereby confirms the findings set forth in the Economic Development Commission’s resolution, and concludes that the Project will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk of the City (the “Clerk”). In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 4. The City shall issue the Bonds in one (1) or more series in the maximum aggregate principal amount not to exceed Forty-Five Million Dollars (\$45,000,000), which Bonds shall mature no later than August 15, 2046, and shall bear interest at a per annum rate not exceeding eight and one-half percent (8.5%) per annum (determined through negotiation or private placement as set forth herein). The Bonds are to be issued for the purpose of procuring funds to (a) pay all or a portion of the costs of constructing and equipping the Project, (b) pay capitalized interest on the Bonds, (iii) fund a debt service reserve fund or pay the cost of a reserve surety (if necessary), and (d) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto. The Bonds shall be issued in one (1) or more series as fully registered bonds in denominations of \$5,000, or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in any one (1) year (or in denominations of \$100,000 and \$1,000 in excess thereof) (each an “Authorized Denomination”) as may be determined by the Mayor of the City (the “Mayor”) and the Controller of the City (the “Controller”), shall be dated the date of their delivery as set forth in the Trust Indenture, shall be fully registered without coupons and numbered consecutively from R-1 upward, and shall be payable in the medium and at the place or places as set forth in the Trust Indenture. Principal of and interest on the Bonds shall be payable semiannually on February 15 and August 15, commencing not earlier than August 15, 2023, and shall have a final principal payment due on not

later than August 15, 2046. Interest on the Bonds shall be calculated according to a three hundred sixty (360)-day calendar year containing twelve (12) thirty (30)-day months.

The Mayor and the Controller, upon consultation with the City's municipal advisor, may designate maturities of the Bonds (or a portion thereof in Authorized Denominations) that shall be subject to optional redemption and/or mandatory sinking fund redemption and the corresponding redemption dates, amounts and prices (including premium, if any) and such terms shall be as set forth in the Financing Documents.

The Bonds shall be executed on behalf of the City by, and bear the manual or facsimile signature of, the Mayor and the Clerk of the City (the "Clerk"), and the seal of the City shall be thereunto affixed (or imprinted or engraved if in facsimile).

The Bonds shall be in the form set forth in the final form of the Trust Indenture.

The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from the revenues and other amounts derived from the Financing Documents. The forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 5. The Mayor and Controller are authorized and directed, in the name of the City, to sell the Bonds to a purchaser or purchasers selected by such officers (the "Purchaser") at such prices and on such terms as may be determined at the time of sale and approved by the Mayor and the Controller. The Mayor and Controller are hereby authorized to approve and execute a bond purchase agreement or a bond placement agreement for the Bonds with the Purchaser in a form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with such acceptance of form and substance thereof to be conclusively evidenced by their execution thereof. The Bonds may be sold through a public offering or a private placement.

Section 6. The Mayor and Controller are hereby authorized to approve the preparation and distribution of a Preliminary Official Statement for the Bonds. The Mayor and Controller are hereby authorized to deem and determine the Preliminary Official Statement as the near final Official Statement with respect to the Bonds for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), subject to completion in accordance with such SEC Rule and in a manner acceptable to the Mayor and Controller of the City, and to place the Preliminary Official Statement into final form as the Final Official Statement. The Mayor and Controller of the City are hereby authorized to sign the Final Official Statement and by such signature approve of its distribution.

If necessary in order to assist the Purchaser of the Bonds in complying with paragraph (b)(5) of the SEC Rule by undertaking to make available appropriate disclosure about the City and the Bonds to participants in the municipal securities market, the City hereby covenants, agrees and undertakes, in accordance with the SEC Rule, unless excluded from the applicability of the SEC

Rule or otherwise exempted from the provisions of paragraph (b)(5) of the SEC Rule, that it will comply with and carry out all of the provisions of the continuing disclosure contract. "Continuing disclosure contract" shall mean that certain continuing disclosure contract executed by the City and dated the date of issuance of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. The execution and delivery by the City of the continuing disclosure contract, and the performance by the City of its obligations thereunder by or through any employee or agent of the City, are hereby approved, and the City shall comply with and carry out the terms thereof.

Section 7. Each of the Mayor, the Clerk, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, Clerk, the Controller and any other officer of the City on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Clerk and any other officer of the City on the Bonds may be facsimile signatures or electronic signatures. The Mayor, the Controller and any other officer of the City are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Clerk, the Controller and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Clerk, the Controller or any other officer of the City without further approval of this Common Council or the Economic Development Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

Section 8. The provisions of this Ordinance and the Financing Documents securing the Bonds of a series shall constitute a contract binding between the City and the holders of the Bonds of such series, and after the issuance of the Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 9. No stipulation, obligation or agreement herein contained or contained in the Financing Documents, the Bonds or in any other agreement or document executed on behalf of the City shall be deemed to be a stipulation, obligation or agreement of any member of the Common Council, or any officer, agent or employee of the City in his or her individual capacity, and no such member of the Common Council, officer, agent or employee shall be personally liable on the Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 10. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 11. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Common Council, that all deliberations of the Common Council and of its committees, if any, which resulted

in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

Section 12. The Mayor, the Clerk, the Controller and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute, attest and deliver such further instruments and documents, and to take such further actions, in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

Section 13. All acts of the officers of the City which are in conformity with the purpose and intent of this Ordinance and in the furtherance of the issuance of the Bonds and the execution, delivery and performance of the documents and agreements authorized hereby are in all respects ratified, approved and confirmed.

Section 14. Any ordinances, resolutions or orders or parts thereof in conflict with this Ordinance are to the extent of such conflict hereby repealed.

Section 15. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

PASSED AND ADOPTED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this ____ day of _____, 2022.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED to the Mayor of the City of Mishawaka, Indiana, this _____ day of _____, 2022, at _____ o'clock, _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED, this _____ day of _____, 2022, _____, o'clock, _____.M.

David A. Wood, Mayor

DMS 24062364v1

NOV 02 2022

City Clerk
Mishawaka, IN

RESOLUTION NO. 2022 - 32

**A Resolution of the Common Council, City Clerk, and Mayor of the City of Mishawaka
Commemorating Women's Entrepreneurship Day – November 19, 2022**

WHEREAS, women contribute to the diversity and inclusiveness of business nationwide and are vital to the growth of the economy; and

WHEREAS, according to the 2017 study conducted by the National Association of Women Business Owners, more than 11.6 million firms were owned by women, employing nearly 9 million people, and generating 1.7 trillion in sales, and according to that same 2017 study, women-owned businesses comprised 39 percent of all private firms, contributing an estimated 8 percent of employment across the United States and 4.2 percent of revenue; and

WHEREAS, in Indiana, according to the U.S. Small Business Administration 2021 report, women made up 47.3 percent of the workers and owned 42.4% (187,915 total) of businesses across our state; and

WHEREAS, the U. S. Chamber of Commerce's latest survey indicated women-owned small businesses were the hardest hit and are less likely to experience future success as a result of the pandemic; since the onset of COVID-19 many women-owned businesses have closed, and Mishawaka is no exception; and

WHEREAS, according to the most recent United States Census, 11.8% of the businesses in St. Joseph County (690 total) and 15% of the businesses in Mishawaka (192 total) were women-owned; and

WHEREAS, since the onset of COVID-19, the gender wage gap continues to widen across Indiana, with women in Indiana earning a median income of \$53,314, which on average is \$27,907 less than their male counterparts; and

WHEREAS, eradicating extreme poverty across our state and nation depends on ensuring inclusive economic growth that reaches excluded populations like women and communities of color; and

WHEREAS, Women Entrepreneurship Day is a movement to support women in business by encouraging women leaders, innovators, and entrepreneurs to initiate startups, drive economic expansion and advance communities worldwide; and

WHEREAS, the City of Mishawaka recognizes and promotes the advancement of women's entrepreneurship throughout our community and statewide.

NOW THEREFORE, BE IT RESOLVED, by the Common Council, the City Clerk, and the Mayor of the City of Mishawaka that November 19, 2022, is hereby proclaimed to be "Women's Entrepreneurship Day" in the City of Mishawaka and we commend its observance to all residents.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2022, at _____ o'clock ____m.

Dale "Woody" Emmons,
1st District

Ron Banicki, 6th District
Vice President

Mike Bellovich, 2nd District

Gregg Hixenbaugh,
President, At Large

Anthony "Tony" Hazen,
3rd District

Matt Mammolenti,
At Large

Kate Voelker, 4th District

Maggie DeMaegd, At Large

S. Michael Compton,
5th District

Deborah S. Block, IAMC, MMC
City Clerk

David A. Wood, Mayor

NOV 02 2022

City Clerk
Mishawaka, IN

RESOLUTION NO. 2022-33

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, APPROVING A FORM OF DEVELOPMENT AGREEMENT
AMONG THE CITY OF MISHAWAKA, INDIANA, THE CITY OF MISHAWAKA
REDEVELOPMENT COMMISSION, AND CARD ASSOCIATES ATHLETIC
FACILITIES, LLC**

WHEREAS, there has been presented to the Common Council (the “Common Council”) of the City of Mishawaka, Indiana (the “City”), for its consideration a Development Agreement among the City, the City of Mishawaka Redevelopment Commission (the “Redevelopment Commission”), and Card Associates Athletic Facilities, LLC (the “Company”), in the form of Exhibit A attached hereto (the “Development Agreement”); and

WHEREAS, pursuant to the Development Agreement, the Company or an affiliate thereof would agree to construct and operate an indoor sports facility complex that will serve as a regional destination for sports tournaments and other events as further described in the Development Agreement; and

WHEREAS, the Common Council believes that the approval of the Development Agreement is in the best interests of the citizens of the City and necessary for the continued redevelopment and economic development of the City; and

WHEREAS, the Common Council desires to approve the Development Agreement substantially in the form of Exhibit A hereto;

**NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA, AS FOLLOWS:**

Section 1. The Common Council hereby approves the Development Agreement substantially in the form attached hereto and the Mayor and the Clerk of the City (respectively, the “Mayor” and “Clerk”) are hereby authorized to execute and attest, respectively, the Development Agreement, with such changes as the Mayor and Clerk shall approve, such approval to be evidenced by their execution and attestation, respectively, thereof.

Section 2. Two copies of the attached Development Agreement shall be kept on file in the office of the Clerk of the City for public inspection.

Section 3. This resolution shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on
this ____ day of November, 2022, at ____ o'clock, P.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor for his approval and signature this ____ day of November,
2022.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED and SIGNED by me this ____ day of November, 2022.

David A. Wood, Mayor

EXHIBIT A
FORM OF DEVELOPMENT AGREEMENT
(See attached)

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "AGREEMENT"), dated as of November ____, 2022, by and among the CITY OF MISHAWAKA, INDIANA (the "City"), a municipal corporation duly organized and existing under the laws of the State of Indiana, the CITY OF MISHAWAKA REDEVELOPMENT COMMISSION (the "Redevelopment Commission"), a redevelopment commission organized and existing under the provisions of Indiana Code 36-7-14, as amended (the "Act") and governing body of the City of Mishawaka, Indiana, Department of Redevelopment and the Redevelopment District of the City (the "Redevelopment District"), the CITY OF MISHAWAKA BUILDING CORPORATION, an Indiana not for profit corporation (the "Building Corporation" and together with the City and the Redevelopment Commission, the "City Parties") and CARD ASSOCIATES ATHLETIC FACILITIES, LLC, an Indiana limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the City Parties desire to foster economic development and redevelopment in the City; and

WHEREAS, Developer has approached the City and the Redevelopment Commission regarding its desire to (i) construct an approximately 230,000 square foot indoor sports complex featuring indoor hardwood courts, indoor turf fields and batting /pitching tunnels, along with related amenities including concessions and viewing areas which will serve as a regional destination for sports tournaments and other events (the "Project"), to be constructed on approximately forty-nine (49) acres of property as described at the Exhibit A attached hereto (the "Project Site"); and

WHEREAS, the Developer has requested certain economic development assistance from the City and the Redevelopment Commission with respect to the funding of the Project, without which Developer would not proceed with the Project; and

WHEREAS, Developer represents that the total real property net assessed value of the Project is estimated to be \$10,770,335 upon full completion by January 1, 2025; and

WHEREAS, the Projects are "economic development facilities" as such term is defined in Indiana Code 36-7-11.9-3; and

WHEREAS, the Project will (i) benefit the public health, safety, morals, and welfare for the City; (ii) increase the economic well-being of the City and the State of Indiana (the "State") by creating jobs and employment opportunities; (iii) serve to protect and increase property values in the City and the State; and (iv) attract a major new business enterprise to the City; and

WHEREAS, the City Parties have determined that the completion of the Project is in the best interests of the citizens of the City, and, therefore, the City Parties desire to take certain steps in order to induce the Developer to complete the Project; and

WHEREAS, the Redevelopment Commission has previously declared an area of the City (which includes the Project Site) known as the Consolidated Area Improvement Project (the

“Area”) as an economic development area pursuant to the Act and designated the Area as an economic development area and designated the Area as an allocation area (the “Consolidated Allocation Area”) for purposes of capturing and allocating property taxes on real property located in the Area and in accord with this Agreement, the Redevelopment Commission will undertake action to designate the Project Site as a separate allocation to be known as the Sports Facility Allocation Area (the “Allocation Area”) under the provisions of the Act to capture incremental real property taxes attributable to the Project; and

WHEREAS, as an inducement to the Developer to construct the Project, the City Parties agree that the economic development incentives set forth herein should be provided in order to provide for the development, redevelopment, and rehabilitation of the Consolidated Economic Development Area and the Sports Facility Allocation Area to be designated as set forth herein by the Redevelopment Commission; and

WHEREAS, pursuant to this Agreement, the parties do now desire to memorialize their respective intentions, agreements and expectations with respect to the prospective financing of the Project, and to address other matters relating to the Project, all subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and City Parties agree as follows:

ARTICLE I

RECITALS

Section 1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II

MUTUAL ASSISTANCE

Section 2.01 Mutual Assistance and Cooperation. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III

PROJECT DEVELOPMENT

Section 3.01 Project and Project Site.

(a) The Project shall consist of the improvements described at Exhibit B attached hereto.

(b) The Project shall be constructed substantially in accordance with the site plan at Exhibit C attached hereto (the “Site Plan”) and the architectural renderings at Exhibit D attached hereto (the “Drawings”), which Site Plan and Drawings are considered preliminary and shall be subject to modification as described in this Article III.

(c) The Developer shall establish the scope, timing and construction budget of the Project in consultation with the City, and subject to the approval of the City, which approval shall not be unreasonably withheld. A preliminary construction budget for the Project is set forth at Exhibit E attached hereto (the “Project Budget”). The Developer shall refine the Project Budget as the Final Design Documents (as defined below) are prepared and approved as set forth herein and provide a final Project Budget prior to Closing as required by Section 5.02(i) hereof. As part of the Project Budget, the Developer shall identify any development fees which are included in the Project Budget which shall be subject to approval by the City Bodies.

(d) The Project shall be constructed in accordance with the Final Design Documents (as defined below), subject to the modifications permitted in this Article III. The Final Design Documents shall be consistent with the Site Plan and all applicable federal, state or local statutes, ordinance, governmental or judicial rules, regulations, orders, and decrees, including without limitation the City’s site plan review process as required by the City’s zoning ordinance (the “Zoning Ordinance”) (all of the foregoing collectively referred to herein as the “Laws”).

(e) The Developer shall acquire the Project Site from the Redevelopment Commission in accord with this Agreement and shall, subject to the performance of the respective obligations of the City Parties under this Agreement, construct the Project on the Project Site.

(f) The City Parties and Developer agree to mutually cooperate in acquiring all necessary easements or rights-of-way for the construction and installation of the Projects.

(g) Within three (3) years of the Completion Date (as defined herein) of the Project and subject to Section 7.04 and Section 7.05, the Developer shall provide a minimum of twenty (20) traveling youth sporting tournaments or other events per year that brings tourism and room night stays from outside of the region. This shall requirement shall continue to January 1, 2050, or the completion of the repayment of any public financing that has been provided to the Project, whichever is later. The Developer shall provide reports to the City Parties and the St. Joseph County Hotel-Motel Tax Board (the “Hotel-Motel Tax Board”) as requested, not more frequently than quarterly, to identify the number and type of planned, future events and expected correlating room night stays and reporting the actual events and room night stays from the prior reporting period. Such reports shall begin upon the Completion Date and continue thereafter until the Bonds have been fully paid.

Section 3.02 Completion Date. Subject to Section 4.02(e), Section 7.04 and Section 7.05, the Developer shall complete the Project by not later than January 1, 2025, as shown in the estimated construction schedule at Exhibit F attached hereto (the “Completion Date”); provided, however, that the Developer may reasonably request extensions to such Completion Date and the City shall not unreasonably withhold such consent. The City Parties shall use their best efforts to assist the Developer in meeting schedule requirements, and in furtherance thereof, agree to assist the Developer in working with the various departments and agencies of the City in completing all

review of all applications expeditiously so long as the plans and specifications or other documents or performance meet the usual and established requirements of the City and its various departments and agencies.

Section 3.03 Final Design Documents and Construction Documents. (a) The Developer shall submit to the City for review detailed design development documents for the exterior of the Project and other exterior elements of the Project (the “Design Documents”), consistent with the respective Site Plan and the Laws. The City shall approve the Design Documents in accordance with the City’s site plan review process contained in the Zoning Ordinance. Upon such approval, the Design Documents shall be deemed to be final and, accordingly: (i) shall be considered by the City and Developer to be final (the “Final Design Documents”) for the Project; and (ii) shall be subject to modification only by change orders reviewed and approved by the City modifying the Final Design Documents (the “Change Orders”).

(b) Following approval of the Final Design Documents, the Developer shall submit to the City for its review the construction drawings for the exterior and other structures of the Project for each trade or other discrete aspect of construction of the Project (the “Construction Documents”), which Construction Documents shall be consistent with the Final Design Documents and the Laws. Within thirty (30) days after the City receives the Construction Documents, the City shall deliver to the Developer written notice either: (i) confirming that such Construction Documents are acceptable; or (ii) objecting to such Construction Documents, specifying the part or parts to which the City objects and including the specific basis for such objection. Upon confirmation that the Construction Drawings conform to the corresponding approved Final Design Documents, or if the City fails to respond within the time period provided above, such Construction Documents shall be deemed to be final and, accordingly: (i) shall become part of the Final Design Documents for the Projects; and (ii) shall be subject to modification only by Change Orders.

(c) If, at any stage of the review and approval process described in this Section 3.03 relating to the Design Documents or Construction Documents, the City objects to or rejects, as applicable, all or any portion of the Design Documents or the Construction Documents, then, the Developer shall endeavor in good faith to address such objection to the City’s reasonable satisfaction within twenty (20) days after the Developer receives notice of such objection by resubmitting the Design Documents or Construction Documents, as the case may be, to the City. Within twenty (20) business days after the City receives such resubmissions, the City shall deliver to the Developer written notice of its confirmation, objection, approval, or rejection, as applicable, in accordance with this section. This process shall continue until such time as the Design Documents and the Construction Documents are confirmed or approved, as applicable, by the City, at which time each of the foregoing shall be final and, accordingly: (i) shall become part of the Final Design Documents for the Project; and (ii) shall be subject to modification only by Change Orders.

Section 3.04 Change Orders. If Developer desires to make any changes to the Final Design Documents (the “Change Order”), then Developer shall submit a written request for the proposed Change Order (the “Change Order Request”) to the City for review and approval, which shall not be unreasonably withheld. The Developer agrees that it shall not perform any such work until the Change Order Request has been approved and executed by the City and the Developer.

Within ten (10) days after City receives the Change Order Request, City shall deliver to Developer written notice that it approves or rejects approval shall not be unreasonably withheld, and if the City rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that City is rejecting; and (B) include the specific basis for such rejection. If City approves a Change Order Request, then City and Developer shall execute a Change Order.

Notwithstanding anything to the contrary set forth herein, Developer shall not be required to submit a Change Order Request for a change that: (i) does not substantially affect the appearance of the Project; (ii) is not substantially inconsistent with the Final Design Documents or Construction Documents; or (iv) substantially conforms to the Site Plan for the Project, all permits, licenses, inspections, examinations, studies, investigations, and environmental assessments, and the Laws (collectively, the "Permitted Change"). A Permitted Change shall be effective only if executed by the Developer.

Changes to the Final Design Documents which are not identified in a Change Order approved by City, other than Permitted Changes in a Change Order submitted to the City for review in accordance with the foregoing, shall not be deemed a Permitted Change and shall constitute an a default hereunder.

Section 3.05 Inspection.

(a) Authorized Inspection. A duly authorized representative(s) of the City shall have access to and the right to walk-through and inspect the Project, upon written reasonable notice delivered to the Developer, which notice shall specify which components of the Project and portion of the construction of the Project the City intends to inspect (the "Inspection"). Developer shall cooperate with the City's request to an Inspection. Within seven (7) business days after an inspection, City may deliver to Developer a non-compliance notice ("Non-Compliance Notice") that identifies an item or component of the Project which (i) contains a material defect in workmanship or materials, (ii) deviates materially from the Final Design Documents, other than any Permitted Change, or (iii) has not been performed materially under the terms and conditions of this Agreement (clauses (i) through (iii), each a "Material Defect"). If the City timely delivers a Non-Compliance Notice, then Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by City. Notwithstanding anything to the contrary set forth herein, all items or components of the Projects with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City.

(b) Final Inspection. After substantial completion of the Projects, the Developer shall deliver to City a written request for a final inspection (the "Final Inspection"). On or before the later of the date that is five (5) business days after: (i) receipt of the Final Inspection request; or (ii) the date specified in such request as the substantial completion date; City shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to the Developer; provided that: (A) upon receipt of a Non-Compliance Notice, the Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice within thirty (30) days of receipt of such notice; and (B) all then-completed items or components of the Project with respect to which no Material Defects are identified in a timely

Non-Compliance Notice shall be deemed to be accepted by City. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this subsection; City shall have no further inspection rights with respect to the Project pursuant to this Section 3.05(b). The failure of City to conduct the Final Inspection within the required timeframe shall be deemed a waiver of its right to conduct such inspection and its determination that no Material Defects exist.

(c) Failure to Cure Material Defect. If a Material Defect identified in the Non-Compliance Notice is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for Developer to remedy such Material Defect so long as Developer commences to remedy such Material Defect within the thirty (30) day period and thereafter continuously and diligently pursues such remedy to completion. Failure by Developer to cure or to take substantial steps to cure a Material Defect shall be an Event of Default under Article VII.

(d) Certification. An acceptance, or deemed acceptance, by the City pursuant to Section 3.05(b) shall mean that City has fully and finally accepted the Project as being: (i) in compliance with the Laws; (ii) constructed with the proper application of construction means or methods, and the City shall be deemed to have waived any further right to assert Material Defects.

Section 3.06 General; Testing. In the case of any Inspection, the parties shall: (i) comply with all health and safety rules of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the Inspections so that the Inspections do not interfere with the performance of construction. City and Developer each shall have the right to accompany, and/or have its construction manager accompany, the Inspector during any Inspection or Final Inspection. Notwithstanding anything to the contrary set forth herein, to the extent City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., soil bearing capacity testing, concrete testing, vibration monitoring) as part of an Inspection and/or Final Inspection: (i) the deadline for City's issuance of a Non-Compliance Notice shall be deemed extended to five (5) business days following City's receipt of a complete and final set of such test or sample results; and (ii) if necessary, the Completion Date shall likewise be extended.

Section 3.07 Insurance. During construction of the Project or its Affiliate, the Developer shall maintain the policies of insurance described at Exhibit G attached hereto. Each such policy shall: (a) be written by a company reasonably acceptable to City; and (b) provide that it shall not be modified or canceled without written notice to City at least thirty (30) days in advance. The policy of general liability insurance shall name the City Bodies as additional insureds. The Developer shall deliver to City certificates of the insurance policies required by this Section 3.07, executed by the insurance company or the general agency writing such policies.

Section 3.08 Maintenance of the Project and Project Site. Prior to Closing, the Developer and the City Parties shall enter into an agreement providing for the minimum maintenance requirements for the exterior landscaping, parking and fields with such agreement including provisions for stormwater management, fertilizer usage and other protections to adequately protect the City's adjacent wellfield.

Section 3.09 Project Standards, Etc.; Project Guaranty. In addition to generally applicable requirements relating to local review and approval of the Project, the City Parties shall have the right to review and approve detailed plans for the Project, including aspects of the Project relating to construction material and quality and esthetic standards. The City shall provide the Developer with requirements required to be met with respect to construction quality and esthetics. Other generally applicable review requirements of the City for projects of this type will remain fully applicable.

ARTICLE IV

ECONOMIC DEVELOPMENT INCENTIVES

Section 4.01 Bonds.

(a) The City agrees to use its best efforts to cause the issuance of taxable economic development lease rental bonds of the City (the “Bonds”) in one (1) or more series, in accordance with Indiana Code 36-7-11.9 and 12 (the “EDC Act”), in a maximum aggregate principal amount sufficient to yield the Project Funding Amount (as defined below in Section 4.02) to be applied to the costs of the Project, including costs of issuance, capitalized interest, and a debt service reserve fund, if necessary.

(b) The Building Corporation shall propose a lease agreement between the Building Corporation, as Lessor, and the Redevelopment Commission, as Lessee, leasing certain assets of the City for a term not to exceed twenty-five (25) years (the “Lease”) from the date of issuance of the Bonds, enabling the City to issue the Bonds. The final maturity date of the Bonds issued to fund the Project shall be not later than twenty-five (25) years after the date of issuance of the Bonds. Lease rentals shall be structured to prevent the lease obligation from constituting debt of the City or the Redevelopment District for purposes of the Indiana Code or Constitution of the State.

(c) The Bonds, issued to provide funds to develop and construct the Project, shall be payable from the lease rental payments received by the Building Corporation from the Redevelopment Commission under the Lease, with the lease rental payments to be paid by the Redevelopment Commission from a special benefits tax levied by the Redevelopment Commission under Indiana Code 36-7-14-27 (the “SBT”); provided, however, the Redevelopment Commission reasonably expects not to have to levy such special benefits tax to pay such lease rental payments because the Commission reasonably expects to pay such lease rentals from (i) the St. Joseph County hotel-motel tax revenues deposited into the Sports Complex Fund established pursuant to Indiana Code 6-9-1-6.3, (ii) any other legally available revenues of the Redevelopment Commission, including (A) the tax increment finance revenues (“TIF Revenues”) generated and collected in the Allocation Area pursuant to Section 39 of the Act (the “Project Tax Increment”), (B) operating revenues from the Project pursuant to the Operating Revenues Agreement as set forth in Section 4.04(a), and (C), if necessary, TIF Revenues generated and collected in the Consolidated Allocation Area net of the TIF Revenues pledged annually to the City’s sewer utility pursuant to resolutions previously adopted by the Redevelopment Commission (the “Consolidated TIF Revenues”) and revenues generally available to the City.

(d) Subject to the terms and conditions of this Agreement, the date the Bonds are delivered to the purchasers thereof (the "Closing") shall occur within three (3) months following the date of approval of the Bonds and Lease by the Common Council of the City (the "Common Council") and shall be on a date established by the City Parties and Developer, except if either the Bond or Lease are objected to by remonstrators under applicable provision of the Indiana Code the Closing shall be adjusted accordingly.

Section 4.02 Project Funding Amount.

(a) The City shall cause to be provided to the Developer certain proceeds of the Bonds for the acquisition, construction, installation and equipping of the Project, pursuant to one or more financing or loan agreements, as the case may be, (each a "Financing Agreement" or "Loan Agreement" and, collectively referred to in this Agreement as a "Funding Agreement"), among the City Parties and the Developer, to be executed at Closing.

(b) The par amount of the Bonds shall be determined at the time of the sale of the Bonds by the City upon the advice of the City's municipal advisor, Baker Tilly Municipal Advisors, LLC (the "Municipal Advisor"). The City will sell the Bonds via negotiated sale to a purchaser (the "Bond Sale"). The structure of the Bonds and the sources expected to be available to pay the principal of and interest on the Bonds and the assumptions underlying such information are as set forth in a report of the Municipal Advisor set forth at Exhibit H attached hereto (the "Financing Analysis").

(c) Upon Closing, the City shall enter into a Trust Indenture ("Trust Indenture") which details the deposit, management and disbursement of the proceeds of the Bonds to pay the costs and expenses of the Project set forth at Exhibit E attached hereto, which Developer shall be required to pay, or advance under the terms of any contract or contracts (including the architectural and engineering, development services with respect thereto), plus any sums required to reimburse the Developer for advances made for any of the foregoing items or for any other costs incurred and for work done which are properly chargeable to the Project set forth at (collectively, the "Project Costs"). The City's authorized representative shall approve all disbursements to pay Project Costs upon a written request of an authorized representative for the Developer, as provided under the Trust Indenture. Proceeds of the Bonds in excess of the proceeds used to fund a debt service reserve fund, if necessary, pay capitalized interest, if any, and pay costs of issuance of the Bonds (including, but not limited to, professional fees of bond counsel, fees of Developer's counsel, Developer's advisor, municipal advisor fees and counsel to the City and purchaser of the Bonds), shall be set aside under the Trust Indenture to fund the Project Costs in an amount expected to be \$38,000,000 as set forth in the Financing Analysis (the "Project Funding Amount") which Project Funding Amount shall be finalized following the Bond Sale. Project Costs exceeding the final Project Funding Amount shall be the sole responsibility of the Developer.

(d) The Project Funding Amount shall only be used for Project Costs.

(e) In the event the Project Costs are less than the amount to be deposited to the construction fund created under the Trust Indenture, the remaining balance held in the Construction Account shall be used in the following order: (i) to restore the balance in the debt service reserve fund for the Bonds, if necessary; (ii) to fund additional costs of the Project as agreed

to by the City Parties and the Developer in writing; or (iii) to pay principal and interest on the Bonds.

(f) If the Bonds are not approved by the Common Council, are unable to be sold, or the validity of the Bonds are contested under Indiana Code 36-7-12-27, or 50 or more taxpayers object to the Lease in accordance with Section 25.2(d) of the Act, the City Parties shall have no further obligations under this Agreement, until and unless the foregoing conditions are resolved or no longer exist.

(g) If Closing does not occur as envisioned herein and is deemed not feasible by the parties hereto (other than as set forth in subsection (c) above), the City and Redevelopment Commission shall, subject to any further proceedings required under law, reimburse Developer for professional fees or other costs paid by Developer in connection with the Projects, such as legal, engineering and other consulting fees, up to a maximum of \$400,000. Developer shall submit invoices for each reimbursement.

(h) If, based on pre-pricing information provided to the City by the underwriter of the Bonds, the net proceeds of the Bonds will not produce the full Project Funding Amount, the City shall not proceed with the sale of the Bonds until first consulting with Developer as to the viability of the overall plan of finance for the Project. Upon the advice of the City's Municipal Advisor, if the City is unable to sell the Bonds in an aggregate principal amount sufficient to yield the Project Funding Amount (the "Bond Sale Deficiency"), it shall not be an Event of Default hereunder. The City shall have no obligation to fund the Bond Sale Deficiency, unless otherwise agreed upon in writing in the form of an amendment to this Agreement.

Section 4.03 Creation of the Allocation Area. To facilitate a funding source for the payment of the principal of and interest on the Bonds, the Redevelopment Commission agrees to use its best efforts to designate the Allocation Area as a new allocation area within the Area which shall include the Project Site. The Allocation Area shall provide for the capture of the Project Tax Increment, and the deposit of such Project Tax Increment into the allocation fund for the Allocation Area to be established by the Redevelopment Commission at the time of the designation of the Allocation Area ("Allocation Fund"). Such Project Tax Increment has not been pledged previously by the Redevelopment Commission to pay any obligations of the Redevelopment Commission or the City. The Redevelopment Commission shall use its best efforts to pledge the Project Tax Increment in accordance with Section 4.02 hereof to the payment of lease rentals by the Redevelopment Commission under the Lease for use to pay the principal of and interest on the Bonds.

Section 4.04 Developer Obligations. In connection with the issuance of the Bonds to complete the Project, the Developer agrees to enter into one or more agreements obligating the Developer as follows:

(a) Project Operating Revenues. Developer and City Parties shall enter into an agreement (the "Operating Revenues Agreement") obligating Developer to pay the Redevelopment Commission an annual amount from revenues of the Project (the "Revenue Payment") which is estimated to be \$2,090,125 as set forth in the Financing Analysis and which will be finalized following the Bond Sale. The Revenue Payment shall be payable in monthly

installments on or before the 10th day of each month of each year, commencing August 10, 2026, and continuing thereafter for so long as the Bonds are outstanding, including bonds issued to refinance the Bonds (the “Refunding Bonds”); provided, however, the final maturity date of any Refunding Bonds shall not exceed the final maturity date of the Bonds. The Operating Revenues Agreement shall provide that the amount of the Revenue Payment shall be reduced as or if the amount of the property taxes paid annually with respect to the Project increase above the amount of the Taxpayer Payment set forth in Section 4.04(b) hereof.

(b) Minimum Taxpayer Payment. Developer and City Parties shall enter into an agreement obligating Developer to pay a minimum annual taxpayer payment in the amount of \$357,790 which constitutes Project Tax Increment (the “Taxpayer Payment”), for so long as the Bonds are outstanding, including any Refunding Bonds; provided, however, the final maturity date of any Refunding Bonds shall not exceed the final maturity date of the Bonds. Beginning with the January 1, 2025 assessment for property taxes payable in 2026, to the extent the actual semiannual installment of property taxes paid on the Project Site to the St. Joseph County Treasurer on the date such semiannual payment is due (the “Actual Semiannual Tax Payment”) is less than \$178,895 (the “Semiannual Minimum Tax Payment”), the Developer shall pay to the Controller of the City (the “Controller”), the fiscal officer of the Redevelopment Commission, the difference between the Semiannual Minimum Tax Payment and the Actual Semiannual Tax Payment, excluding any special assessment fees and charges, penalties or interest, and property taxes paid that are applicable to a tax levy applied as a result of a successful referendum project (“Deficiency Amount”). Developer further agrees that a lien against the Project Site equal in priority to a tax lien granted by the State of Indiana under Indiana Code 6-1.1-22-13, as permitted by Indiana Code 36-7-25-6, shall be imposed on the Taxpayer Payment.

(c) Limitation on Property Tax Appeal or Abatement. Developer understands and acknowledges that the Tax Increment projections prepared for the City Parties for the Development have been based on information provided by the Developer and have been used as the basis for determining the property taxes and assessments to be collected in the Allocation Area. Therefore, the Developer agrees, for so long as the Bonds are outstanding (including Refunding Bonds, provided that the final maturity date of any Refunding Bonds does not exceed the final maturity date of the Bonds), it will not contest or appeal any such tax or assessment or be permitted to file for or pursue a tax abatement for any portion of the Project Site to the extent that any such appeal or abatement would produce Project Tax Increment for the Project Site less than \$357,790 per year. The foregoing limitation does not in any way limit the Developer from undertaking any and all action to correct any technical errors or issues with respect to the Developer’s property tax assessments and/or bill(s) relating to the Project Site. Nothing herein shall limit or affect the Developer’s obligations under the Taxpayer Agreement or pay any Deficiency Amounts as described in Section 4.04(b) hereof.

(d) Costs in Excess of the Project Funding Amount. Except for the Project Funding Amount, no other funds of the City Parties are or will be made available to pay costs to develop, construct and complete the Project. The Developer shall be solely responsible for development costs, construction costs and all costs related thereto exceeding the Project Funding Amount (the “Excess Costs”). To minimize the risk of Excess Costs and to the extent possible, Developer shall enter into a guaranteed maximum price contract for the Project (the “GMP Contract”). The City Parties shall not be required to seek additional funds or issue any additional lease or bond

obligations to fund any Excess Costs. It shall be an Event of Default hereunder if Developer incurs and does not pay Excess Costs.

(e) Ownership and Operation of Fieldhouse Project. Subject to Section 8.06, following completion of the Fieldhouse Project, Developer or its assignee shall own, operate and maintain the Fieldhouse Project for a period of twenty-five (25) years after the City issues a certificate of occupancy (“Mandatory Operation Period”), and may not change the primary use of the Fieldhouse Project without the written consent of the City Parties. In the event that the Developer or its assignee is no longer willing or able to operate the Fieldhouse Project during the Mandatory Operation Period, it shall be an Event of Default under Article VII hereof.

(f) Promissory Note and Mortgage. Prior to Closing, Developer shall cause to be released any existing mortgage on the Project Site, if any. At Closing, Developer shall or Developer shall have caused Mishawaka Fieldhouse LLC (“Mishawaka Fieldhouse”), an Affiliate of Developer, to execute and deliver a promissory note (the “Note”) and mortgage (the “Mortgage”) in form and substance mutually agreeable to the City Parties and the Developer, to accomplish the intent of the Note and Mortgage (collectively, the “Note and Mortgage”) to be recorded in the chain of title of the Project Site, securing the interests of the City Parties in the Revenue Payment and/or Taxpayer Payment described in (a) or (b) above. Such Note and Mortgage shall be first priority over any other financing property interest in the Project. Notwithstanding the foregoing the neither the Developer nor any Affiliate of Developer, including without limitation, Mishawaka Fieldhouse, shall cause a lien to be placed on the Project Site. Imposition of any such lien shall be an Event of Default under Article VII hereof. Within thirty (30) days of the legal defeasance or final payment of the Bonds or any Refunding Bonds, with no Bonds or any Refunding Bonds remaining outstanding, the City Parties shall file or caused to be filed a release of the Mortgage in the St. Joseph County Recorder’s Office.

(g) Prohibited Uses of the Project Funding Amount. In accordance with the EDC Act, no portion of the Project Funding Amount shall be used for private or commercial golf course; country club; massage parlor; tennis club; skating facility (including roller skating, skateboarding, or ice skating); racquet sports facility (including any handball or racquetball court); hot tub facility; suntan facility; racetrack; airplane; skybox or other private luxury box; health club; any facility primarily used for gambling; or any store the principal business of which the sale of alcoholic beverages for consumption off premises.

Section 4.05 Regional Economic Acceleration and Development Initiative (“READI”) Grant Funding. As an additional incentive to foster the further development of the Project, the South Bend-Elkhart Regional Development Authority (the “RDA”) has awarded READI grant funding to the Project in the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000) (the “READI Grant”). The City Parties and the Developer acknowledge that the Fiscal Analysis would require some or all of the READI Grant to be applied to the Project to accommodate increased construction costs and interest rates on the Bonds. The Developer agrees to secure approval from the RDA to apply some or all of the READI Grant to the Project.

ARTICLE V

CONDITIONS TO CLOSING

Section 5.01 Closing. The closing for the Project shall generally mean (a) date of the issuance of the Bonds and (b) the execution of this Agreement and all other instruments, agreements referenced or contemplated herein and any other agreements or documents needed to effectuate the intent of the City Parties and the Developer under this Agreement (the "Closing").

Section 5.02 Conditions to Developer's Obligations. The obligations of the Developer with respect to Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 5.02:

(a) Legal Proceedings. Prior to Closing, the City Parties shall have completed all procedures required under the Laws to undertake the obligations contemplated hereunder including, without limitation, the approvals necessary to enter into the Lease and issue the Bonds, without objection or remonstrance.

(b) Title Conditions. Prior to Closing, Mishawaka Fieldhouse, shall have closed on the acquisition of the Project Site and shall have acquired fee simple title to the Project Site, free from any liens or encumbrances.

(c) Zoning. Prior to Closing, Developer shall have determined that: (i) the zoning for the Project Site is proper and appropriate for the construction of the Project and use of the Project in accordance with the terms and conditions of this Agreement; and (ii) the Project Site is subject only to commitments and restrictions that are acceptable to the Developer in its reasonable discretion.

(d) Environmental Condition. Prior to Closing, Developer, at its sole expense, shall have determined that there is no contamination or pollution on the Project Site, or any groundwater thereunder, by any hazardous waste, material or substance in violation of any Laws, and there are no underground storage tanks located on the Project Site. The Parties shall share copies of all environmental reports prepared for the Project Site to the City.

(e) Project Site Condition. Prior to Closing, the Developer, at its expense, shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are any conditions that would interfere materially with the construction and intended use of the Project to be completed in accordance with the terms and conditions of this Agreement. The Developer has been provided with reports from the site relative to soils and wetlands. It is known and understood that there are regulated wetlands located on the property and that there are soil conditions, including a large amount of topsoil, present on the site that will likely need to be mitigated and/or accounted for as part of the Developer's construction plans.

(f) Utility Availability. Prior to Closing, Developer shall have determined that existing gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are or will be: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this

Agreement. It is known and understood that the Redevelopment Commission as part of this agreement will be extending Veterans Parkway and extending public sewer and water concurrently with the construction of the project and that the extension of sewer and water, and the extension of Veterans Parkway will be substantially completed and available for use prior to the identified occupancy of the Project.

(g) Required Permits. Prior to Closing, Developer shall have: (i) obtained; or (ii) determined that it shall be able to obtain, all permits, licenses, approvals, and consents required for construction of the Project and its intended use.

(h) RDA Approval. Prior to closing, the Developer shall have secured the approval of the RDA to use some or all of the READI Grant for the costs of the Project.

(i) Schedule and Budget. Prior to Closing, Developer shall have delivered to the City, a final project schedule and final Project Budget for the Project.

(j) Survey. Prior to Closing, Developer shall deliver an ALTA Survey describing the real estate, which constitutes the Project Site, upon which the Project is to be constructed.

(k) Mortgage and Note. Prior to Closing, Developer shall deliver the Mortgage for the Project Site and the Note for the Project Site.

(l) Preliminary Design Documents. Preliminary Design Documents shall have been completed and approved by the City.

(m) Closing Documents. Prior to Closing, the City Parties and Developer shall have approved in form and substance all documents, instruments and agreements to be entered into referenced or contemplated hereunder including, without limitation, the Mortgage, the Note, the Funding Agreement, the Revenue Payment Agreement and the Taxpayer Payment Agreement.

(n) No Breach. There shall be no breach of this Agreement by the City Parties or that the City Parties have failed to cure under Section 7.02 hereof.

(o) Acknowledgment and Assumption Agreement. Prior to Closing, Developer, Mishawaka Fieldhouse and the City shall have executed the Acknowledgment and Assumption Agreement.

Section 5.03 Conditions to City Parties Obligations. The obligations of the City Parties with respect to Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 5.03:

(a) Legal Proceedings. The City Parties shall have completed all procedures required under the Laws to undertake the obligations contemplated hereunder including, without limitation, the approvals necessary to designate the Allocation Area, enter into the Lease and issue the Bonds, without objection or remonstrance.

(b) Title Conditions. Prior to Closing, City Parties shall have received the standard current form of American Land Title Association (ALTA) loan policy of title insurance subject

only to Permitted Exceptions, which shall include such title insurance endorsements as City shall reasonably require (the "Title Policy"), or an irrevocable commitment to issue the same, with liability issued by a title insurer.

(c) Zoning PUD. Prior to Closing, the City Parties shall have determined that Developer has obtained: (i) the zoning of the Project Site that is proper and appropriate for the construction of the Project and use of the Project in accordance with the terms and conditions of this Agreement; and (ii) the Development Site is subject only to commitments and restrictions that are acceptable to the Developer in its reasonable discretion.

(d) Environmental Condition. The City Parties have performed no specific investigation relative to the presence of contamination or pollution on the Project Site, or any groundwater thereunder, by any hazardous waste, material or substance in violation of any Laws or relative to the presence of any underground storage tanks located on the Project Site. The understanding of the City Parties as part of their previous acquisition of the property is that the Project Site has been previously used as farmland for many decades. The City Parties have no copies of any environmental reports with respect to the Project Site.

(e) Project Site Condition. Prior to Closing, the City Parties shall have determined that that no test, inspection, examination, study, or investigation of the Project Site establishes that there are any conditions that would interfere materially with the construction and intended use of the Project to be completed in accordance with the terms and conditions of this Agreement.

(f) Utility Availability. Prior to Closing, the City Parties shall have determined that water and sanitary sewer are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement. Other utilities and their extension to the property will be as directed by the Developer.

(g) Required Permits. Prior to Closing, the City Parties shall have determined that Developer has: (i) obtained; or (ii) determined that it shall be able to obtain, all permits, licenses, approvals, and consents required for construction of the Project and its intended use.

(h) RDA Approval. Prior to closing, the Developer shall have secured the approval of the RDA to use some or all of the READI Grant for the costs of the Project.

(i) Schedule and Budget. Prior to Closing, the City Parties shall have received from Developer, a final project schedule and budget for the Project.

(j) Survey. Prior to Closing, the City Parties shall have received from Developer an ALTA Survey describing the real estate, which constitutes the Project Site, upon which the Project is to be constructed.

(k) Mortgage and Note. Prior to Closing, the City Parties shall have received from Developer an executed Mortgage on the Project Site in favor of the City and the Mortgage securing the executed Note payable from the Revenue Payment.

(l) Preliminary Design Documents. Preliminary Design Documents shall have been completed and approved by the City.

(m) Closing Documents. Prior to Closing, the City Parties and Developer shall have approved in form and substance all instruments and agreements to be entered into referenced or contemplated hereunder including, without limitation, the Mortgage, the Note, the Funding Agreement, the Revenue Payment Agreement and the Taxpayer Payment Agreement.

(n) Financial Ability. Prior to the sale of the Bonds, Developer shall have provided, at the request of the City, financial statements of the Developer dated no earlier than June 30, 2022 demonstrating that the Developer has adequate funds to pay Excess Costs in an amount equal to at least 5% of the estimated construction costs of the Projects. Any such financial statements or financial information provided by the Developer, upon the request of the City, shall be treated as confidential financial information under Indiana Code 5-14-3 and the City Parties shall not disclose such information, unless otherwise required by law.

(o) No Breach. There shall be no breach of this Agreement by the Developer or that the Developer has failed to cure under Section 7.01 hereof.

(p) Acknowledgment and Assumption Agreement. Prior to Closing, Developer, Mishawaka Fieldhouse and the City shall have executed the Acknowledgement and Assumption Agreement.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01 Developer. The Developer represents and warrants that (a) Developer is a limited liability company, duly organized and validly existing under the laws of the State; (b) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (c) it has the authority to (i) enter into this Agreement; (ii) perform its obligations hereunder; and (iii) execution of this Agreement has been duly authorized by valid corporate action of the Developer and is a legal, valid and binding obligation of the Developer.

Section 6.02 City Parties. The City Parties represent and warrant that (a) each are duly organized and validly existing under the laws of the State; (b) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (c) subject to further legal proceedings as required under the Laws, they have the authority to (i) enter into this Agreement, (ii) perform their respective obligations hereunder, (iii) and the execution of this Agreement has been duly authorized by valid corporate action of their respective governing bodies and is a legal, valid and binding obligation of the City Parties.

ARTICLE VII

DEFAULTS

Section 7.01 Events of Default. Each of the following shall be an “Event of Default” hereunder:

(a) If either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it;

(b) Failure by the Developer to commence construction of the Project within ninety (90) days of the Closing;

(c) Failure by the Developer to complete the Project by the Completion Date;

(d) Failure by the Developer or its assignee, subject to Section 8.06 hereof, to make the Revenue Payment;

(e) Failure by the Developer or its assignee, subject to Section 8.06 hereof, to make the Taxpayer Payment;

(f) Failure by the Developer or its assignee, subject to Section 8.06 hereof, to operate the Project during the Mandatory Operation Period;

(g) The commencement by Developer of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Developer or of any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the failure of the respective Developer generally to pay its debts as such debts become due, or if any lien or claim is filed on or against the Project, or the taking of corporate action by the Developer in furtherance of any of the foregoing; or

(h) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the respective Developer or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty (30) days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law.

(i) Failure of the Developer to provide, as set forth in Section 3.01(g), the minimum number of traveling youth sporting tournaments or other events per year that is oriented to those living outside the region which brings tourism and room night stays.

Section 7.02 Cure Period. After notice from either party of an Event of Default, the defaulting party is not cured within thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default. However, if an Event of Default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a cure period extend more than one hundred eighty (180) days.

Section 7.03 Remedies.

(a) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses.

(b) Special Remedies. In addition to the remedies described in this Section 7.03, upon an Event of Default, the City Parties may elect to (i) terminate this Agreement, (ii) terminate or suspend the provision of the Project Funding Amount and related agreements, and (iii) to pursue any and all remedies available to foreclose on the Mortgage and Note.

(c) Injunctive Remedies. If an Event of Default occurs, the City Parties shall be entitled to seek specific performance or injunctive relief and in each case Developer hereby waives any claim or defense that the City Parties have an adequate remedy at law.

(d) No Remedy Exclusive. Except as provided to the contrary in this Agreement, no right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by any applicable law.

Section 7.04 Delay. Subject to Section 7.05, if Developer has commenced construction of the Project and Developer falls one hundred twenty (120) or more days behind the Completion Date, then:

(a) City, by delivery of written notice to the Developer, may require the Developer to submit, within thirty (30) days a plan to avoid falling behind the Completion Date (the "Catch-Up Plan") for City's written approval, which approval shall not be unreasonably withheld. At such time as City has approved a Catch-Up Plan, Developer shall implement, and diligently pursue the application of, such Catch-Up Plan.

(b) If the Developer: (i) fails to timely submit a Catch-Up Plan; (ii) submits a Catch-Up Plan that is rejected by the City; (iii) fails to implement an approved Catch-Up Plan; or (iv) implements an approved Catch-Up Plan, but fails to diligently pursue the application thereof; or

(v) implements an approved Catch-Up Plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls sixty (60) or more days behind the applicable dates set forth in the Catch-up Plan; then City may develop a reasonable Catch-Up Plan and require the Developer to implement, and diligently pursue the application of, such Catch-Up Plan.

The Developer shall be responsible for all costs and expenses to prepare and implement a Catch-Up Plan (including the reasonable costs and expenses incurred by City pursuant to this subsection). The Developer's liability for such costs and expenses shall survive termination of this Agreement. No delay or failure by the City Parties to enforce any of the covenants, conditions, reservations and rights contained in this Section 7.04, or to invoke any available remedy with respect to an Event of Default by the Developer shall under any circumstances be deemed or held to be a waiver by the City Parties of the right to do so thereafter, or an estoppel of the City Parties to assert any right available to them upon the occurrence, recurrence of continuation of any violation or violations hereunder.

Section 7.05 Force Majeure. If any party is delayed or hindered in or prevented from the performance of any act required under this Agreement (which does not include the payment of any monetary amounts) by reason of any strike, lock out, labor trouble, inability to procure materials or energy, pandemic, failure of power, riot, insurrection, picketing, sit in, war, acts of foreign or domestic terrorism, civil unrest, or other unavoidable reason of a like nature not attributable to the negligence or fault of the party delayed in performing or doing any act required under the terms of this Agreement, then the performance of the work or action will be excused for the period of the unavoidable delay and the period for performance of any action will be extended for an equivalent period. Any party claiming a force majeure event under this Section 7.03 must notify the other parties within thirty (30) days of the event causing the delay, the extent of the delay, the time periods under this Agreement for which the force majeure event will cause a delay. Failure to provide timely notice constitutes a waiver of any claim to a delay cause by a force majeure event. In no event may any deadline in this Agreement be extended under this Section 7.04 by a period of greater than one (1) total year.

Section 7.06 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the performance of their obligations (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation. The City Parties agree that they will, in good faith, expedite the review and approval of matters relating to this Agreement that are under their respective jurisdiction. The Developers agree that whenever any provision of this Agreement provides for their review and/or approval, they will make a good faith effort to take such action as expeditiously as possible. In calculating any period of time provided for in this Agreement, the number of days allowed shall refer to calendar and not business days. If any day scheduled for performance of any obligation hereunder shall occur on a weekend or legal holiday, the time period allowed and day for performance shall be continued to the next business day.

Section 7.07 Mutual Indemnification. (a) The Developer shall indemnify and hold harmless the City Parties and all officers, employees, agents, representatives, engineers, architects, and attorneys of the City Parties from any and all claims arising that may be asserted at any time against any of such parties to the extent caused by (i) the Developer's failure to perform or

negligent performance of its respective obligations under this Agreement, breaches by the Developer under contracts to which the Developer is a party, to the extent that such contracts relate to performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; (iv) any mechanic's liens filed against the Project Site, the Project, or any adjacent property owned by the City Parties to the extent such liens relate to the performance of any work on the Project Site by Developer or any of its contractors; subcontractors, or suppliers; (v) the breach by Developer of any term or condition of this Agreement or (vi) environmental assessments, past or present environmental contamination, or environmental remediation of the Project Site.

(b) The City Parties shall defend, indemnify and hold harmless the Developer, and all officers, employees, agents, representatives, engineers, architects, and attorneys of the Developer from any and all claims that may be asserted at any time against any of such City Parties to the extent caused by (i) injury to, or death of, persons or loss of, or damage to, property, suffered that is related to or connected with performance of any work on the Project Site by the City Parties or any party acting by, under, through, or on behalf of the City Parties; (ii) mechanic's liens filed against the Project Site to the extent such liens relate to the performance of any work on the Project Site by City Parties or its contractors, or (iii) the use of the City of the proceeds of the Bonds for a purpose other than what is contemplated by this Agreement, it being understood that the indemnification provisions herein do not create a general obligation of the City Parties.

Notwithstanding anything to the contrary set forth herein, the Developer's and City's obligations under this Section 7.07 shall survive the termination of this Agreement.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendment. This Agreement, and any Exhibits attached hereto, may be amended only by the mutual agreement of the parties, and by the execution of said amendment by the parties or their successors in interest.

Section 8.02 Notices. Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the notice is delivered by personal delivery; (b) on the date the notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any notice sent by certified mail, postage prepaid, return receipt requested; (d) on the date received by electronic mail, so long as in each case, the notice is delivered at the addresses set forth below, or to any other address for which notice is given as provided in this Section 8.02:

To the Commissions:

City of Mishawaka Redevelopment Commission
Mishawaka City Hall
100 Lincolnway West
Mishawaka, Indiana 46544

Attn: Clerk

Mishawaka Economic Development Commission
Mishawaka City Hall
100 Lincolnway West
Mishawaka, Indiana 46544
Attn: Clerk

To the City: City of Mishawaka, Indiana
Mishawaka City Hall
100 Lincolnway West
Mishawaka, Indiana 46544

Attn: Clerk

With a copy to: City of Mishawaka, Indiana
Mishawaka City Hall
100 Lincolnway West
Mishawaka, Indiana 46544
Attention: Corporation Counsel

To the Developer: Card Associates Athletic Facilities, LLC
200 E. 186th Street
Westfield, Indiana 46074
Attn: Andy Card

With a copy to: Ice Miller LLP
One American Square
Suite 2900
Indianapolis, Indiana 46282
Attn: Heather James

Either party hereunder may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 8.03 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

Section 8.04 Indiana Law; Dispute Resolution. This Agreement shall be construed in accordance with the laws of the State of Indiana. All Exhibits attached hereto are incorporated herein by reference. Any dispute, controversy or claim arising out of or relating in any way to this Agreement including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of the Agreement, shall require the parties to first meet within thirty days (30) of a party's request discuss and remedy such dispute. Litigation arising from breach of this Agreement shall be filed in the state courts in St. Joseph County, Indiana. In the event of a judicial proceeding brought by one party against the other party, the prevailing party

in the judicial proceeding will be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding.

Section 8.05 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same.

Section 8.06 Assignment. Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site.

(a) Without Consent. Without the prior written approval or consent of the City, the rights and obligations contained in this Agreement may be assigned by the Developer to an Affiliate; provided, however, the Affiliate expressly assumes all of the terms and conditions of this Agreement as well as Developer's obligations hereunder in writing. Upon assignment to an Affiliate, Developer shall provide the City Parties with written notice of such assignment within ten (10) days after the effective date of such assignment including a copy of the fully executed assignment and assumption agreement. Notwithstanding the foregoing, a transfer to an Affiliate of the Developer permitted in this subsection (a) shall not have the effect of releasing the Developer and/or its assignees from the Developer's obligations hereunder until completion of the Project and the issuance of a certificate of occupancy for the Project, at which time Developer shall be released from all liability, so long as any such assignment shall not be a release of the Affiliate.

(b) With Consent. The rights and obligations contained in this Agreement may be assigned by the Developer to a Non-Affiliate with the demonstrated financial means and experience reasonably sufficient to undertake the Developer's obligations hereunder on the conditions that (i) such entity expressly assumes in writing all of the terms and conditions of this Agreement, including, without limitation, that the facility comprising the Project continue to be operated for its intended purpose as contemplated by this Agreement during the Mandatory Operation Period, unless otherwise agreed by the City, (ii) the assignee has expressly assumed in writing the Developer's obligations to pay the Revenue Payment and the Taxpayer Payment, and (iii) the Developer shall have received the express prior written consent of the Mayor of the City, or a representative designated by the Mayor, which consent shall not be unreasonably withheld. Upon completion of any such assignment permitted in this subsection (b), the Developer shall be released from all liability under this Agreement.

(c) For purposes of this Section 8.06, the following definitions shall apply:

"Affiliate" means, with respect to the Developer, (a) a Person which directly or indirectly controls, or is controlled by, or is under common control with, (i) Developer; or (ii) any general partner, manager or managing member of Developer; (b) any other Person 50% or more of the equity interest of which is held beneficially or of record by (i) such Person or (ii) any general partner, manager or managing member of such Person, and (c) any general partner, limited partner or member of (i) such Person or (ii) any general partner or managing member of such Person.

"Control" (including the terms "controls", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the

management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Non-Affiliate” means any specified Person who is not an Affiliate of the Developer.

“Person” means any natural person, general partnership, limited partnership, limited liability company, limited liability limited partnership, corporation, joint venture, trust, business trust, cooperative, association or other legal entity.

Section 8.07 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 8.08 Future Actions. The parties acknowledge that the agreements of the City Parties under this Agreement are subject to future actions by such body, and by the bodies of the City, and compliance with statutory procedures required by law, including public notice and public hearing requirements. The City Parties, each agree to use its best efforts to complete such statutory procedures, and to coordinate with the governing bodies of the City to complete such statutory procedures, and to take the final actions required to implement such agreements.

Section 8.09 Other Tax Relief. Except as described in Section 4.04(c) hereof, nothing in this Agreement shall prohibit the Developer from seeking or claiming any other statutory exemption, deduction, credit or any other tax relief (including, but not limited to, any refund of taxes previously paid with statutory interest) for which the Developer may be or may become eligible, or to which the Developer may be or may become entitled.

Section 8.10 No Third-Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

Section 8.11 No Joint Venture. Nothing in this Agreement shall be construed to create a partnership or joint venture between Developer or any affiliates thereof, and any one or more of the City Parties.

Section 8.12 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

"DEVELOPER"

CARD ASSOCIATES ATHLETIC FACILITIES,
LLC, an Indiana limited liability company

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of Card Associates Athletic Facilities, LLC, who, being first duly sworn, acknowledged the execution of the foregoing Agreement for and on behalf of said limited liability Developer.

Witness my hand and Notarial Seal this _____ day of _____, 2022.

My Commission Expires:

NOTARY PUBLIC

My County of Residence:

Printed

[Signature Page to Economic Development Agreement]

“REDEVELOPMENT COMMISSION”

CITY OF MISHAWAKA
REDEVELOPMENT COMMISSION

By: _____

Printed: _____

Title: _____

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

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of the City of Mishawaka Redevelopment Commission, who, being first duly sworn, acknowledged the execution of the foregoing Agreement for and on behalf of the City of Mishawaka Redevelopment Commission.

Witness my hand and Notarial Seal this _____ day of _____, 2022.

My Commission Expires:

NOTARY PUBLIC

My County of Residence:

Printed

“CITY”

CITY OF MISHAWAKA, INDIANA

By: _____
David A. Wood

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

Before me, a Notary Public in and for the State of Indiana, personally appeared David A. Wood, the Mayor of the City of Mishawaka, who, being first duly sworn, acknowledged the execution of the foregoing Agreement for and on behalf of the City of Mishawaka, Indiana.

Witness my hand and Notarial Seal this _____ day of _____, 2022.

My Commission Expires:

NOTARY PUBLIC

My County of Residence:

Printed

[Signature Page to Economic Development Agreement]

“BUILDING CORPORATION”

CITY OF MISHAWAKA BUILDING
CORPORATION

By: _____

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

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of the City of Mishawaka Building Corporation, who, being first duly sworn, acknowledged the execution of the foregoing Agreement for and on behalf of the City of Mishawaka Redevelopment Commission.

Witness my hand and Notarial Seal this _____ day of _____, 2022.

My Commission Expires:

NOTARY PUBLIC

My County of Residence:

Printed

[Signature Page to Economic Development Agreement]

EXHIBIT A

Project Site

(See legal description below and attached map)

A part of Lot 2 and Lot 4 of Juday Creek Business Park Subdivision in the City of Mishawaka, Harris Township, St. Joseph County, Indiana, the plat of which is recorded in Instrument #1811362 in the Office of the Recorder of St. Joseph County, Indiana with the part of said Lot 4 being uniquely established as Parcel 4A as described, depicted, and recorded in Instrument #2021-45807 in the Office of Recorder of St. Joseph County, Indiana, described as follows:

COMMENCING at the southwest corner of said Lot 2; thence North 00 degrees 16 minutes 03 seconds West (bearing for this and all subsequent bearings is based on the bearing system of the plat for Juday Creek Business Park) 614.59 feet along the west line of said Lot 2 to the **POINT OF BEGINNING** of this description; thence along the westerly and northerly lines of said Lot 2 for the following four (4) calls:

- 1) thence continuing North 00 degrees 16 minutes 03 seconds West 713.00 feet;
- 2) thence North 00 degrees 20 minutes 06 seconds West 317.63 feet;
- 3) thence North 29 degrees 21 minutes 33 seconds East 403.32 feet;
- 4) thence North 89 degrees 33 minutes 41 seconds East 1,123.32 feet to an east corner of said Lot 2, also being a westerly corner of said Lot 4;

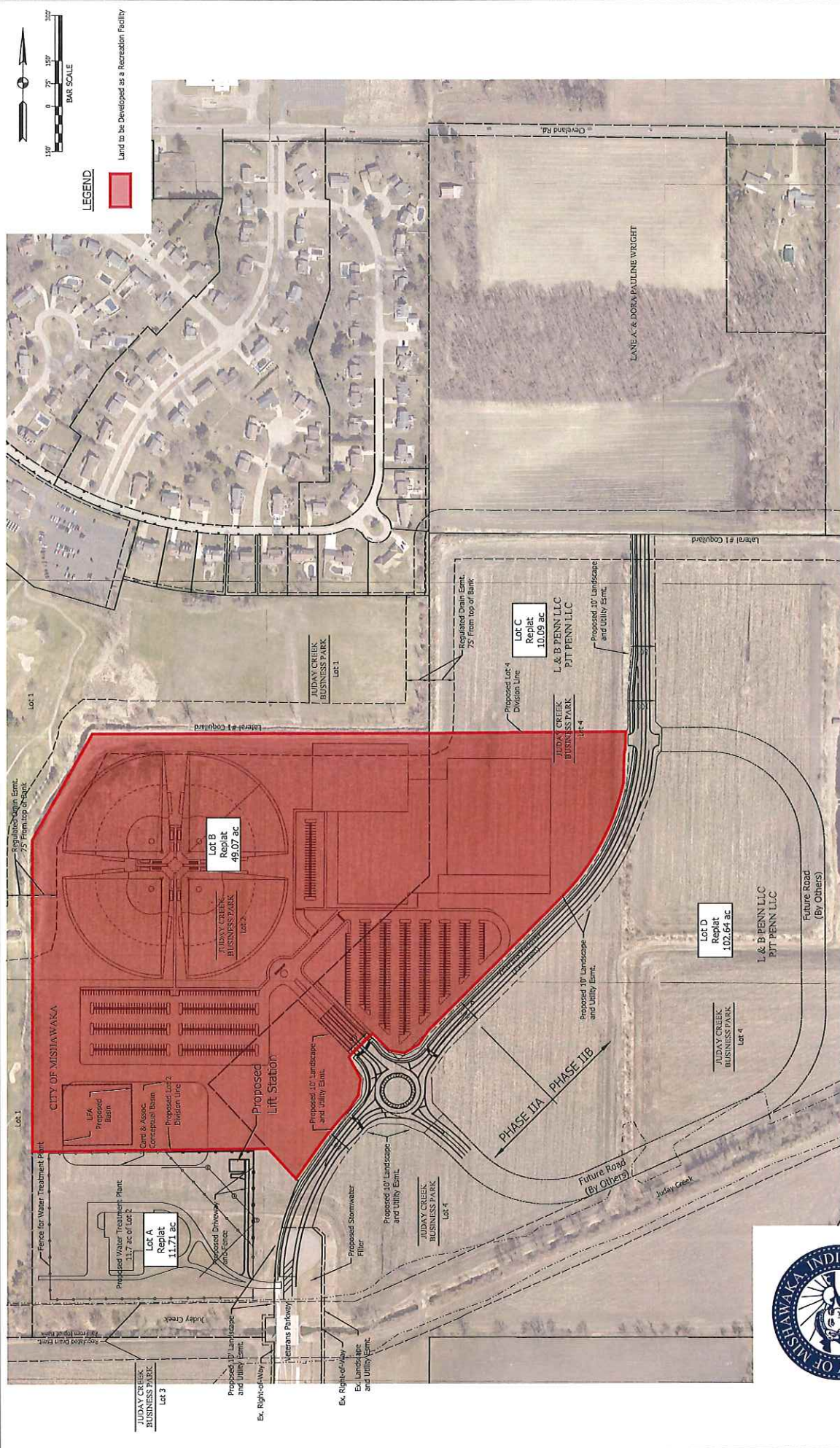
thence North 89 degrees 12 minutes 56 seconds East 655.68 feet to the proposed westerly right-of-way line of Veterans Parkway and easterly boundary of said Parcel 4A; thence along the proposed westerly and northwesterly right-of-way lines of said Veterans Parkway and easterly boundary of said Parcel 4A for the following fifteen (15) calls:

- 1) thence South 01 degree 21 minutes 00 seconds West 55.43 feet;
- 2) thence South 30 degrees 40 minutes 18 seconds East 22.77 feet;
- 3) thence South 04 degrees 07 minutes 16 seconds West 94.88 feet;
- 4) thence Southwesterly 449.45 feet along an arc to the right having a radius of 778.50 feet and subtended by a long chord having a bearing of South 28 degrees 23 minutes 00 seconds West 443.23 feet;
- 5) thence South 44 degrees 55 minutes 21 seconds West 622.47 feet;
- 6) thence South 34 degrees 37 minutes 04 seconds West 55.90 feet;

- 7) thence South 61 degrees 37 minutes 19 seconds West 62.64 feet;
- 8) thence North 77 degrees 48 minutes 45 seconds West 49.93 feet;
- 9) thence North 49 degrees 06 minutes 54 seconds West 85.21 feet;
- 10) thence South 44 degrees 55 minutes 21 seconds West 100.00 feet;
- 11) thence South 35 degrees 04 minutes 10 seconds East 86.31 feet;
- 12) thence South 05 degrees 58 minutes 00 seconds West 60.44 feet;
- 13) thence South 38 degrees 03 minutes 14 seconds West 58.53 feet;
- 14) thence South 38 degrees 08 minutes 51 seconds West 143.91 feet;
- 15) thence South 34 degrees 55 minutes 14 seconds West 149.11 feet to an east corner of Lot 2 of

said Juday Creek Business Park Subdivision;

thence North 43 degrees 19 minutes 01 second West 145.79 feet along a southwestern line of said Lot 4 and said Parcel 4A; thence South 89 degrees 03 minutes 38 seconds West 787.07 feet to the **POINT OF BEGINNING** and containing 49.07 acres, more or less.



CITY OF MISHAWAKA
VETERANS PARKWAY PHASE II - JUDY CREEK BUSINESS PARK
DEVELOPMENT AGREEMENT EXHIBIT



EXHIBIT B

Project Improvements Description

(See Attached)

**Card & Associates
Mishawaka Fieldhouse
Project Description**



Mishawaka Fieldhouse will be an approximate 230,000sf, state-of-the-art, multi-use facility.

Facility Use

The Facility's day-to-day will be predominately youth sports centric, supported by:

- 94,729 square feet of Hardwood Courts, currently planned as 9 Basketball Courts, a Championship Basketball Court, 19 Volleyball Courts, and potential to be lined for Pickleball.
- 61,655 square feet of Turf, planned to serve Baseball, Softball, Football, Soccer, Rugby, Lacrosse, etc..
 - o The turf is able to be divisible, whether it is (1) large, 61,655sf space, (2) 30,828sf rectangles, (4) 15,413sf squares, or a combination of the above.
- 7,257 square feet of batting and pitching tunnels to support the baseball and softball uses.

When portions of the Facility are not being used for sport, the Facility will activate as a space for other uses, such as conventions, wholesales, charity events, and other events.

Examples of "other events" from current CA facilities include: Wrestling (Ortho and Professional), Tae-Kwon-Do, School Dances, Gymnastics Events, Concerts, etc..

To aid in these other uses, the current budget accounts for the purchase of a multi-use flooring system that, when placed on top of the turf, creates a singular flat surface to aid in the activation of the above uses.

In addition to the above uses, the Facility will also be supported by:

- 30,000 square feet of tenant space, catering to wellness and training providers.
 - o Medical, Fitness, Recovery, Training, etc..
- 1,734 square feet of concession space with a full-service kitchen.
- 11,291 square foot mezzanine, housing the batting cages, weight room, and classroom.
 - o Remaining space used for viewing, tenant activation, etc.
- Numerous support spaces throughout
 - o Restrooms, Lounges, Seating, etc..

**Card & Associates
Mishawaka Fieldhouse
Project Description**



Facility Programming

Once operational, the Facility will be filled with homegrown programming, partnership rentals and activations, tournaments, and the other uses mentioned.

Much like Card & Associates has done in the past, operations will create programming and leagues to meet the demands of the local region.

This will include individual training and team programs for all sports serviced by the facility, strategic partnerships in sports like Volleyball and Baseball, and other partnerships to compliment what the operations team does not service.

The operations team will also foster the creation/growth of leagues for all sports serviced. Examples of leagues created in other facilities are:

- IYBL: 550 Team Basketball League
- Primetime Flag Football League
- Primetime Rec Baseball League
- June Summer High School League
- CSW Pickleball League

Additionally, CA has numerous partners in the tournament sector, with some being:

- Under Armour
- Nike
- Adidas
- Jr. NBA
- USA Basketball

Card & Associates has received MOUs from numerous local operators, detailing their intent to partner with Mishawaka Fieldhouse and use the space upon opening.

Card & Associates
Mishawaka Fieldhouse
Project Description



Square Footage Summary

SPACE PROGRAM				
ROOM NAME	AREA	DEPARTMENT	OCCUPANT FACTOR	OCCUPANCY
AUXILIARY SPACE	2023 SF		50	41
MECHANICAL	Not Placed			
MECHANICAL	428 SF			
MECHANICAL	428 SF			
MECHANICAL	428 SF			
MECHANICAL	428 SF			
VEND STOR	158 SF			
BASKETBALL COURTS				
BASKETBALL COURTS	94729 SF	BASKETBALL COURTS	50	1895
BATTING				
CAGES	7257 SF	BATTING	100	73
CLASSROOM	965 SF	BATTING	50	20
WEIGHTS	1650 SF	BATTING	50	33
BUILDING SERVICES				
BUILDING SUPPORT	2302 SF	BUILDING SERVICES	300	8
CONCESSIONS	1734 SF	BUILDING SERVICES	100	18
COURT STORAGE	767 SF	BUILDING SERVICES	100	8
EL	54 SF	BUILDING SERVICES		
EL	54 SF	BUILDING SERVICES		
EL EQ	57 SF	BUILDING SERVICES		
IT/ELEC	152 SF	BUILDING SERVICES	100	2
MENS RESTROOMS	1104 SF	BUILDING SERVICES	0	
STOR	506 SF	BUILDING SERVICES	100	6
VEND	Not Placed	BUILDING SERVICES	100	
WOMENS RESTROOMS	1181 SF	BUILDING SERVICES	0	
FIELDS				
FLOORING STORAGE	1641 SF	FIELDS	300	6
TURF FIELDS	61655 SF	FIELDS	100	617
TURF STORAGE	1191 SF	FIELDS	300	4
ICE RINKS				
ICE LOCKERS	6519 SF	ICE RINKS	50	131
ICE RINK 1	28177 SF	ICE RINKS	50	564
ICE RINK 2	27249 SF	ICE RINKS	50	545
ICE RINK SUPPORT	Not Placed	ICE RINKS	300	
ICE SUPPORT SPACE	2706 SF	ICE RINKS	300	10
PRO SHOP	600 SF	ICE RINKS	50	13
RENTALS	845 SF	ICE RINKS	50	17
SKATE CHANGING	2375 SF	ICE RINKS	50	48
ZAMBONI	2315 SF	ICE RINKS	300	8
OFFICE				
CONFERENCE	295 SF	OFFICE	15	20
OFFICE	130 SF	OFFICE	100	2
OFFICE	144 SF	OFFICE	100	2
OFFICE	144 SF	OFFICE	100	2
OFFICE	219 SF	OFFICE	100	3
OPEN OFFICE	766 SF	OFFICE	100	8
PUBLIC CIRCULATION				
CONCOURSE	11379 SF	PUBLIC CIRCULATION	0	
DESK	657 SF	PUBLIC CIRCULATION	100	7
LOBBY	1385 SF	PUBLIC CIRCULATION	0	
TURF/COURT OBSERVATION	11291 SF	PUBLIC CIRCULATION	50	226
VESTIBULE	1159 SF	PUBLIC CIRCULATION	0	
TENANT				
TENANT 1	14434 SF	TENANT	100	145
TENANT 2	8663 SF	TENANT	100	87
Grand total: 47	302349 SF			4569

EXHIBIT C

Site Plan

(See Attached)

EXHIBIT D

Architectural Renderings

(See Attached)

EXHIBIT E

Preliminary Project Budget

(See Attached)



		Construction Budget	
Breakout Description	Cost/ GSF	Total Cost	
Foundations	\$ 8.23	\$	1,905,150.00
Superstructure	\$ 45.43	\$	10,519,070.00
Exterior Enclosure	\$ 7.11	\$	1,646,238.00
Roofing	\$ 1.06	\$	244,800.00
Interior Construction	\$ 5.79	\$	1,339,910.00
Interior Finishes	\$ 3.40	\$	787,298.00
Conveying	\$ 0.39	\$	90,000.00
Plumbing	\$ 3.15	\$	729,423.00
HVAC	\$ 8.25	\$	1,910,395.00
Fire Protection	\$ 2.00	\$	463,126.00
Electrical	\$ 7.00	\$	1,620,941.00
Site Preparation & Improvements	\$ 21.03	\$	4,869,310.00
Site Services	\$ 10.11	\$	2,340,969.00
Construction Hard Cost Subtotal	\$ 122.95	\$	28,466,630.00
Contingency	6%	\$	1,707,998.00
Liability Insurance w/ Risk	NA	\$	283,652.00
Subtotal		\$	1,991,650.00
General Contractor Fee	4%	\$	1,218,331.00
FFE	NA	\$	4,250,000.00
Architectural	NA	\$	400,000.00
Civil Engineering	NA	\$	175,000.00
Professional Fees	NA	\$	250,000.00
Subtotal		\$	825,000.00
CDG Fee	3.50%	\$	1,243,664.80
PROJECT TOTAL		\$	37,995,275.80

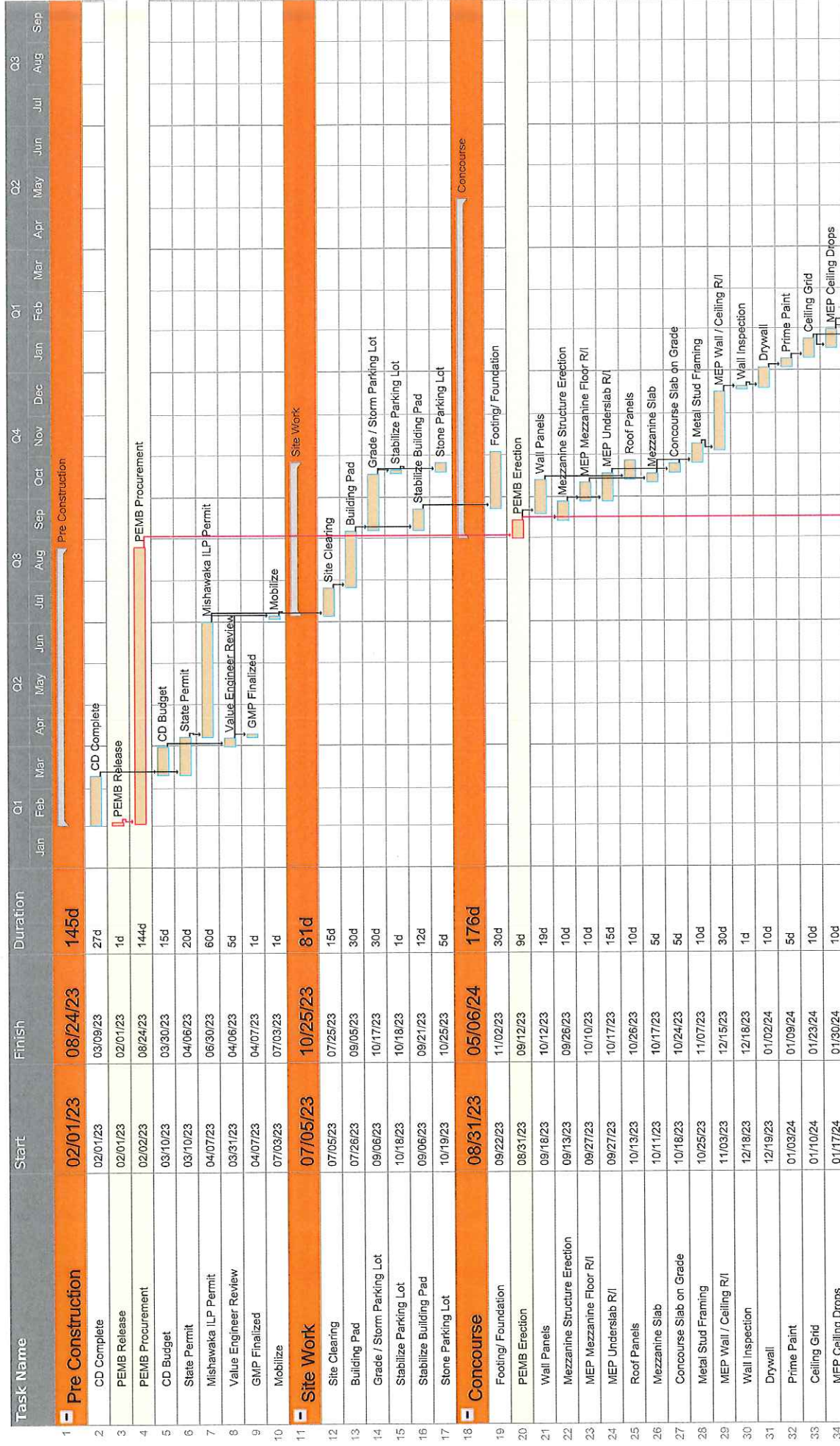
EXHIBIT F

Construction Schedule

(See Attached)

Mishawaka Fieldhouse

11787 Lantern Road, Suite 100
Fishers, Indiana 46038
Phone 317.577.0007
Fax 317.577.0286



Task Name		Start	Finish	Duration	Q1				Q2				Q3				Q4				Q1				Q2				Q3					
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
35	Concessions wall panels																																	
36	1st Coat Paint																																	
37	Restroom Tile																																	
38	Floor Covering Offices																																	
39	MEP Wall Finishes																																	
40	Final Coat Paint																																	
41	Owner Furnished Equipment																																	
42	Basketball Courts	09/13/23																																
43	PEMB Erection	09/13/23																																
44	MEP Underslab R/I	11/08/23																																
45	PEMB Wall Panels BC	11/22/23																																
46	Slab	12/07/23																																
47	MEP Overhead R/I	12/21/23																																
48	PEMB Roof Panels	01/26/24																																
49	Paint Roof Structure	02/09/24																																
50	Overhead MEP Finishes	02/23/24																																
51	Owner Installed Equipment	03/15/24																																
52	Turf	11/08/23																																
53	PEMB Erection	11/08/23																																
54	PEMB Wall Panels Turf	01/05/24																																
55	PEMB Roof Panels Turf	03/01/24																																
56	MEP Underslab R/I	01/05/24																																
57	Slab	03/15/24																																
58	Slab Infill Material Placement	03/29/24																																
59	MEP Overhead R/I	01/26/24																																
60	Paint Roof Structure	03/15/24																																
61	MEP Overhead Finishes	03/29/24																																
62	Owner Installed Equipment	05/10/24																																

EXHIBIT G

Insurance Requirements

(See Attached)



DEVELOPER INSURANCE REQUIREMENTS

The Developer, its General Contractor/subcontractor(s), or their affiliates shall obtain and maintain the below listed policies of insurance written by a company reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on the Projects. The City Parties shall be named as an additional insured on the Developer's, its general contractor's and subcontractor's Commercial General Liability policies of insurance.

1. The Developer, its General Contractor/subcontractor(s), or their affiliates shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Projects are located, property insurances written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Projects on a replacement cost basis. The Developer's, its General Contractor/subcontractor(s'), or their affiliates' property insurance coverage shall be no less than the amount of the initial [Bonds], plus the value of subsequent modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until a certificate of occupancy is issued or thereafter as provided in this Agreement, unless otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the City Parties in the Projects as insureds.
2. Workers Compensation insurance coverage in accordance with statutory requirements.
3. Employers Liability Insurance with limits of not less than \$1,000,000.00 each accident; \$1,000,000.00 Disease each employee; and \$1,000,000.00 Disease Policy Limit.
4. Commercial General Liability Insurance on ISO form GCO001 10 01 (or a substitute form providing equivalent coverage) and general contractor and subcontractor(s) shall provide the Company with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG203 7 10 01 (or substitute forms providing equivalent coverage) naming the City Parties as Additional Insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City of Mishawaka per the follows:
 - i. \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit);
 - ii. \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and

**Card & Associates
Mishawaka Fieldhouse
Insurance Requirements**



- iii. \$1,000,000.00 Personal Injury Liability to include coverage for employee-related claims.
- 5. Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City Parties as additional insureds.
- 6. Umbrella Liability: \$10,000,000.00.
- 7. Professional Liability: If the contract is the subject of any professional services or design work, the party rendering those services must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed for a minimum limit of \$2,000,000.00.

The general contractor and subcontractor(s) shall obtain from each of its insurers a waiver of subrogation on the General Liability, Automobile and Workers Compensation policies in favor of the City of Mishawaka with respect to losses arising out of or in connection with the Projects.

EXHIBIT H

Financing Analysis

(See Attached)

DMS 23354271v6

October 27, 2022



MUNICIPAL ADVISORS

Baker Tilly Municipal Advisors, LLC
8365 Keystone Crossing, Ste 300
Indianapolis, IN 46240
United States of America

T: +1 (317) 465 1500
F: +1 (317) 465 1550
bakertilly.com

Mishawaka Redevelopment Commission
c/o Mr. Ken Prince, Executive Director
Planning and Community Development
City Hall
600 East Third Street
Mishawaka, Indiana 46544

Re: Juday Creek Athletics & Sports Complex

Dear Mr. Prince:

The attached schedules (listed below) present unaudited and limited information for the purpose of discussion of the Juday Creek Athletics & Sports Complex by the appropriate officers, officials and advisors of the City of Mishawaka. The use of these schedules should be restricted to this purpose, for internal use only, as the information is subject to future revision and final report.

Page

3 Summary of Illustrative Financing Options

Scenario 1: Assumes DSR is funded from a Surety; Assumes \$4.115MM additional cash contribution

Scenario 2: Assumes DSR is funded from Bond proceeds; Assumes \$7.365MM additional cash contribution

- 4 Illustrative Project Costs and Funding
- 5 Illustrative Amortization of \$37,015,000 Principal Amount of
Taxable Economic Development Lease Rental Revenue Bonds
- 5 Comparison of Illustrative Revenues and Illustrative Lease Rentals
- 7 Comparison of Estimated Annual Revenues and Illustrative Obligations –
Reasonable Expectations Test

Scenario 3: Assumes DSR is funded from Bond Proceeds; Assumes \$5.2MM additional cash contribution

- 8 Illustrative Project Costs and Funding
- 9 Illustrative Amortization of \$39,995,000 Principal Amount of
Taxable Economic Development Lease Rental Revenue Bonds
- 10 Comparison of Illustrative Revenues and Illustrative Lease Rentals
- 11 Comparison of Estimated Annual Revenues and Illustrative Obligations –
Reasonable Expectations Test

Supporting Information

- 12 Estimated Annual Tax Increment from the Proposed Development – *Fieldhouse Only*
- 13 Historical Innkeeper's Tax Revenue

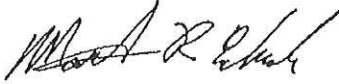
In the preparation of these schedules, certain assumptions were made as noted regarding certain future events. As is the case with such assumptions regarding future events and transactions, some or all may not occur as expected and the resulting differences could be material. We have not examined the underlying assumptions nor have we audited or reviewed the historical data. Consequently, we express no opinion thereon nor do we have a responsibility to prepare subsequent reports.

Mishawaka Redevelopment Commission,
Re: Juday Creek Athletics & Sports Complex
October 27, 2022
Page Two

We would appreciate your questions or comments on this information and would provide additional information upon request.

Very truly yours,

BAKER TILLY MUNICIPAL ADVISORS, LLC



Matthew R. Eckerle, Principal



Emma R. Adlam, Director

MISHAWAKA REDEVELOPMENT COMMISSION

Juday Creek Athletics & Sports Complex

SUMMARY OF ILLUSTRATIVE FINANCING OPTIONS

Scenario	Debt Service Reserve Funding	Illustrative Additional Cash Contribution Needed	Illustrative Average Annual Company Operating Revenues	Net Proceeds Available for the Project	Illustrative Par Amount of Bonds
		(1)	(2)		
1	Surety	\$4,115,000	\$2,090,000	(3) \$38,000,000	\$37,015,000 (4)
2	Bond Proceeds	7,365,000	2,090,000	(3) 38,000,000	37,015,000 (4)
3	Bond Proceeds	5,200,000	2,360,000	(5) 38,000,000	39,995,000 (6)

- (1) Represents the illustrative cash contribution over the \$3,880,000 anticipated to be contributed from Innkeeper's Revenues.
- (2) Represents the illustrative annual Company Operating Revenues needed for the lease rental payments.
- (3) See page 6.
- (4) See page 4.
- (5) See page 10.
- (6) See page 8.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenarios 1 & 2

Juday Creek Athletics & Sports Complex

ILLUSTRATIVE PROJECT COSTS AND FUNDING

<u>Illustrative Project Costs:*</u>	Scenario 1: DSR Surety	Scenario 2: Fully-Funded DSR
Net proceeds available for the Fieldhouse Project (1)	\$38,000,000	\$38,000,000
Capitalized interest (2)	6,025,408	6,025,408
Debt service reserve surety (4.5%) (3)	153,089	
Debt service reserve (4)		3,401,981
Allowance for underwriter's discount (0.75%)	277,613	277,613
Allowance for bond issuance costs and contingencies	553,890	554,998
Total Illustrative Project Costs	<u>\$45,010,000</u>	<u>\$48,260,000</u>

Illustrative Project Funding:*

Taxable Economic Development Lease Rental Revenue Bonds (5)	\$37,015,000	\$37,015,000
Cash Contribution (6)	3,880,000	3,880,000
Additional Cash Contribution (7)	4,115,000	7,365,000
Total Illustrative Project Funding	<u>\$45,010,000</u>	<u>\$48,260,000</u>

- (1) Represents Bond proceeds, net of issuance costs, that will be available for capital expenditures related to the projects.
- (2) Assumes interest will be capitalized through February 15, 2025 and partially capitalized through August 15, 2025. The final financing structure will determine the amount of interest to be capitalized.
- (3) Assumes a debt service reserve surety with a premium of 4.5% of the maximum annual debt service payment.
- (4) Assumes a debt service reserve funded from bond proceeds at the maximum annual debt service payment.
- (5) Assumes the Bonds are payable from 1.00% of the County's total Innkeeper's Tax rate of 8.00%, Company operational revenues, Project Tax Increment Revenues, TIF Revenues from the City's Consolidated Allocation Area, and the City's property tax backup.
- (6) Assumes a \$1,000,000 cash contribution to the Project from existing Innkeeper's Tax Revenues, per the City. Assumes Innkeeper's Tax Revenues from 2022, 2023, and 2024 are available to fund the project in the assumed amount of \$960,000 per year.
- (7) Assumes an additional cash contribution to fund project costs.

*Preliminary, subject to change.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenarios 1 & 2

Juday Creek Athletics & Sports Complex

**ILLUSTRATIVE AMORTIZATION OF \$37,015,000* PRINCIPAL AMOUNT OF
TAXABLE ECONOMIC DEVELOPMENT LEASE RENTAL REVENUE BONDS**

Assumes Bonds dated January 26, 2023

Illustrative True Interest Cost 7.07%

Payment Date	Principal Outstanding*	Principal*	Illustrative Interest Rates (1)	Illustrative Interest	Illustrative Total Debt Service	Illustrative Capitalized Interest	Illustrative Net Debt Service	Illustrative Fiscal Year Debt Service	Illustrative Annual Lease Rental Payment (2)
08/15/23	\$37,015,000			\$1,408,138	\$1,408,138	(\$1,408,138)	\$0		
02/15/24	37,015,000			1,273,693	1,273,693	(1,273,693)	0	\$0	\$0
08/15/24	37,015,000			1,273,693	1,273,693	(1,273,693)	0		
02/15/25	37,015,000			1,273,693	1,273,693	(1,273,693)	0	0	0
08/15/25	37,015,000			1,273,693	1,273,693	(796,193)	477,500		
02/15/26	37,015,000	\$425,000	5.80%	1,273,693	1,698,693		1,698,693	2,176,193	2,182,000
08/15/26	36,590,000	440,000	5.85%	1,261,368	1,701,368		1,701,368		
02/15/27	36,150,000	450,000	5.90%	1,248,498	1,698,498		1,698,498	3,399,865	3,405,000
08/15/27	35,700,000	465,000	5.95%	1,235,223	1,700,223		1,700,223		
02/15/28	35,235,000	480,000	6.00%	1,221,389	1,701,389		1,701,389	3,401,611	3,407,000
08/15/28	34,755,000	490,000	6.05%	1,206,989	1,696,989		1,696,989		
02/15/29	34,265,000	505,000	6.10%	1,192,166	1,697,166		1,697,166	3,394,155	3,400,000
08/15/29	33,760,000	520,000	6.15%	1,176,764	1,696,764		1,696,764		
02/15/30	33,240,000	540,000	6.20%	1,160,774	1,700,774		1,700,774	3,397,538	3,403,000
08/15/30	32,700,000	555,000	6.25%	1,144,034	1,699,034		1,699,034		
02/15/31	32,145,000	575,000	6.28%	1,126,690	1,701,690		1,701,690	3,400,724	3,406,000
08/15/31	31,570,000	590,000	6.30%	1,108,635	1,698,635		1,698,635		
02/15/32	30,980,000	610,000	6.35%	1,090,050	1,700,050		1,700,050	3,398,685	3,404,000
08/15/32	30,370,000	630,000	6.35%	1,070,683	1,700,683		1,700,683		
02/15/33	29,740,000	650,000	6.45%	1,050,680	1,700,680		1,700,680	3,401,363	3,407,000
08/15/33	29,090,000	670,000	6.45%	1,029,718	1,699,718		1,699,718		
02/15/34	28,420,000	690,000	6.55%	1,008,110	1,698,110		1,698,110	3,397,828	3,403,000
08/15/34	27,730,000	715,000	6.55%	985,513	1,700,513		1,700,513		
02/15/35	27,015,000	735,000	6.65%	962,096	1,697,096		1,697,096	3,397,609	3,403,000
08/15/35	26,280,000	760,000	6.65%	937,658	1,697,658		1,697,658		
02/15/36	25,520,000	785,000	6.75%	912,388	1,697,388		1,697,388	3,395,045	3,401,000
08/15/36	24,735,000	815,000	6.75%	885,894	1,700,894		1,700,894		
02/15/37	23,920,000	840,000	6.85%	858,388	1,698,388		1,698,388	3,399,281	3,405,000
08/15/37	23,080,000	870,000	6.85%	829,618	1,699,618		1,699,618		
02/15/38	22,210,000	900,000	7.15%	799,820	1,699,820		1,699,820	3,399,438	3,405,000
08/15/38	21,310,000	930,000	7.15%	767,645	1,697,645		1,697,645		
02/15/39	20,380,000	965,000	7.15%	734,398	1,699,398		1,699,398	3,397,043	3,403,000
08/15/39	19,415,000	1,000,000	7.15%	699,899	1,699,899		1,699,899		
02/15/40	18,415,000	1,035,000	7.15%	664,149	1,699,149		1,699,149	3,399,048	3,405,000
08/15/40	17,380,000	1,070,000	7.15%	627,148	1,697,148		1,697,148		
02/15/41	16,310,000	1,110,000	7.15%	588,895	1,698,895		1,698,895	3,396,043	3,402,000
08/15/41	15,200,000	1,150,000	7.15%	549,213	1,699,213		1,699,213		
02/15/42	14,050,000	1,190,000	7.15%	508,100	1,698,100		1,698,100	3,397,313	3,403,000
08/15/42	12,860,000	1,235,000	7.15%	465,558	1,700,558		1,700,558		
02/15/43	11,625,000	1,280,000	7.25%	421,406	1,701,406		1,701,406	3,401,964	3,407,000
08/15/43	10,345,000	1,325,000	7.25%	375,006	1,700,006		1,700,006		
02/15/44	9,020,000	1,375,000	7.25%	326,975	1,701,975		1,701,975	3,401,981	3,407,000
08/15/44	7,645,000	1,420,000	7.25%	277,131	1,697,131		1,697,131		
02/15/45	6,225,000	1,475,000	7.25%	225,656	1,700,656		1,700,656	3,397,788	3,403,000
08/15/45	4,750,000	1,525,000	7.25%	172,188	1,697,188		1,697,188		
02/15/46	3,225,000	1,585,000	7.25%	116,906	1,701,906		1,701,906	3,399,094	3,405,000
08/15/46	1,640,000	1,640,000	7.25%	59,450	1,699,450		1,699,450	1,699,450	1,702,500
Totals		<u>\$37,015,000</u>		<u>\$40,859,462</u>	<u>\$77,874,462</u>	<u>(\$6,025,408)</u>	<u>\$71,849,054</u>	<u>\$71,849,055</u>	<u>\$71,968,500</u>

(1) Interest rate assumptions provided by Robert W. Baird & Co., Inc. on October 20, 2022.

(2) Represents the annual debt service rounded up to the next \$1,000 plus \$5,000 for Trustee and administrative fees.

*Preliminary, subject to change. The City reserves the right to adjust principal maturities to achieve its financial objectives with respect to the Bonds.

(Subject to the attached letter dated October 27, 2022)

(Preliminary - Subject to Change)

(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenarios 1 & 2

Juday Creek Athletics & Sports Complex

COMPARISON OF ESTIMATED REVENUES TO ILLUSTRATIVE LEASE RENTALS

Taxes Payable Year	Estimated Revenues				Illustrative Lease Rentals (4)	Estimated Revenues for 125% Coverage (5)	Estimated Debt Service Coverage
	Innkeeper's Tax Revenues (1)	Minimum Tax Increment Payment (2)	Company Operating Revenues For Debt Service (3)	Total (6)			
2022	\$960,000			\$960,000 (6)			N/A
2023	960,000			960,000 (6)			N/A
2024	960,000			960,000 (6)			N/A
2025	960,000		\$1,222,000	2,182,000	(\$2,182,000)	\$545,500	125%
2026	960,000	\$357,790	2,087,210	3,405,000	(3,405,000)	851,250	125%
2027	960,000	357,790	2,089,210	3,407,000	(3,407,000)	851,750	125%
2028	960,000	357,790	2,082,210	3,400,000	(3,400,000)	850,000	125%
2029	960,000	357,790	2,085,210	3,403,000	(3,403,000)	850,750	125%
2030	960,000	357,790	2,088,210	3,406,000	(3,406,000)	851,500	125%
2031	960,000	357,790	2,086,210	3,404,000	(3,404,000)	851,000	125%
2032	960,000	357,790	2,089,210	3,407,000	(3,407,000)	851,750	125%
2033	960,000	357,790	2,085,210	3,403,000	(3,403,000)	850,750	125%
2034	960,000	357,790	2,085,210	3,403,000	(3,403,000)	850,750	125%
2035	960,000	357,790	2,083,210	3,401,000	(3,401,000)	850,250	125%
2036	960,000	357,790	2,087,210	3,405,000	(3,405,000)	851,250	125%
2037	960,000	357,790	2,087,210	3,405,000	(3,405,000)	851,250	125%
2038	960,000	357,790	2,085,210	3,403,000	(3,403,000)	850,750	125%
2039	960,000	357,790	2,087,210	3,405,000	(3,405,000)	851,250	125%
2040	960,000	357,790	2,084,210	3,402,000	(3,402,000)	850,500	125%
2041	960,000	357,790	2,085,210	3,403,000	(3,403,000)	850,750	125%
2042	960,000	357,790	2,089,210	3,407,000	(3,407,000)	851,750	125%
2043	960,000	357,790	2,089,210	3,407,000	(3,407,000)	851,750	125%
2044	960,000	357,790	2,085,210	3,403,000	(3,403,000)	850,750	125%
2045	960,000	357,790	2,087,210	3,405,000	(3,405,000)	851,250	125%
2046	480,000 (7)	178,895 (7)	1,043,605	1,702,500	(1,702,500)	425,625	125%
Totals	\$23,520,000	\$7,334,695	\$43,993,805	\$74,848,500	(\$71,968,500)	\$17,992,125	

(1) Represents 1.00% of the total tax rate of 8.00%. Based on the 2019 collections. See page 13. Assumes the City's 1.00% component expires July 1, 2046.

(2) See page 12. Assumes the Allocation Area's 25-year term is triggered with the issuance of the estimated bonds.

(3) Represents estimated Company Operating Revenues required to make annual lease rental payments.

(4) See page 5.

(5) Represents the estimated amount of revenues needed to provide debt service coverage. Assumes the revenues consist of Consolidated TIF Revenues through the life of the Consolidated Allocation Area (2039) and other available revenues of the City in years 2040-2046.

(6) Assumes the Innkeeper's Tax revenues in years 2022-2024 are applied to the Project.

(7) Represents a half-year of the revenue stream due to the final maturity of August 15, 2046.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

Juday Creek Athletics & Sports Complex

COMPARISON OF ESTIMATED ANNUAL REVENUES AND ILLUSTRATIVE OBLIGATIONS - REASONABLE EXPECTATIONS TEST

Taxes Payable Year	Estimated Revenues			Total	Outstanding Debt Service			Total	Estimated Revenues Available for Coverage (7)	Illustrative Lease Rentals (8)	Estimated Revenues Remaining
	Estimated Imkeeper's Tax (1)	Estimated TIF Revenues (2)	Estimated Other Revenues (3)		2015 Bonds (4)	2017 Bonds (5)	2021 LR Bonds (6)				
2022	\$960,000	\$16,579,800		\$17,539,800	\$50,050	\$2,330,655	(\$2,703,000)	(\$5,083,705)	\$12,456,095		\$12,456,095
2023	960,000	16,833,200		17,793,200	(49,350)		(5,089,000)	(5,138,350)	12,654,850		12,654,850
2024	960,000	16,833,200		17,793,200	(48,650)		(5,090,000)	(5,138,650)	12,654,550		12,654,550
2025	960,000	16,833,200		17,793,200	(52,900)		(5,077,000)	(5,129,900)	12,663,300		12,663,300
2026	960,000	16,781,920		17,741,920	(52,100)		(5,052,000)	(5,104,100)	12,637,820	(\$2,182,000)	10,481,300
2027	960,000	16,559,820		17,519,820	(51,300)		(4,983,000)	(5,034,300)	12,637,820	(3,405,000)	9,232,820
2028	960,000	16,496,640		17,456,640	(50,500)		(4,958,000)	(5,008,500)	12,485,520	(3,407,000)	9,078,520
2029	960,000	16,490,550		17,450,550	(49,700)		(4,959,000)	(5,008,700)	12,441,850	(3,403,000)	9,038,850
2030	960,000	16,490,550		17,450,550	(48,900)		(4,950,000)	(4,998,900)	12,451,650	(3,406,000)	9,045,650
2031	960,000	16,490,550		17,450,550	(48,100)		(4,951,000)	(4,999,100)	12,451,450	(3,404,000)	9,047,450
2032	960,000	16,490,550		17,450,550	(52,300)		(4,950,000)	(5,002,300)	12,448,250	(3,407,000)	9,041,250
2033	960,000	14,790,730		15,750,730	(51,400)			(51,400)	15,699,330	(3,403,000)	12,296,330
2034	960,000	14,790,730		15,750,730	(50,500)			(50,500)	15,700,230	(3,403,000)	12,297,230
2035	960,000	14,790,730		15,750,730	(49,600)			(49,600)	15,701,130	(3,401,000)	12,300,130
2036	960,000	14,790,730		15,750,730	(48,700)			(48,700)	15,702,030	(3,405,000)	12,297,030
2037	960,000	13,649,640		14,609,640	(52,750)			(52,750)	14,556,890	(3,405,000)	11,151,890
2038	960,000	12,542,430		13,502,430	(51,750)			(51,750)	13,450,680	(3,403,000)	10,047,680
2039	960,000	12,477,340		13,437,340	(50,750)			(50,750)	13,386,590	(3,405,000)	9,981,590
2040	960,000		\$3,292,500	4,252,500					4,252,500	(3,402,000)	850,500
2041	960,000		3,293,750	4,253,750					4,253,750	(3,403,000)	850,750
2042	960,000		3,298,750	4,258,750					4,258,750	(3,407,000)	851,750
2043	960,000		3,298,750	4,258,750					4,258,750	(3,407,000)	851,750
2044	960,000		3,293,750	4,253,750					4,253,750	(3,403,000)	850,750
2045	960,000		3,296,250	4,256,250					4,256,250	(3,405,000)	851,250
2046	480,000 (9)		1,648,125	2,128,125					2,128,125	(1,702,500)	425,625
Totals	\$93,520,000	\$280,712,310	\$21,421,875	\$325,654,185	(\$909,300)	(\$2,330,655)	(\$2,762,000)	(\$56,001,955)	\$269,652,230	(\$71,988,500)	\$197,683,730

4) Decrease to 1.00% of the total tax rate of 8.00%. Based on the 2019 collections. See page 13. Assumes the City's 1.00% component expires July 1, 2046.

(1) Represents 1.00% of the total tax rate of 8.00%. Based on the 2019 Collections. See page 13: Assumes the City's 1.00% component expires.

(2) Represents the estimated annual Consolidated TIF Revenues per the analysis dated July 22, 2022 of Baker Tilly Municipal Advisors, LLC.

(2) Represents the estimated annual Consolidated I/F Revenues per the analysis dated July 22, 2022 of B

(2) Represents the estimated annual Consolidated I/F Revenues per the analysis dated July 22, 2022 of B

(2) Represents the estimated annual Consolidated I/F Revenues per the analysis dated July 22, 2022 of B

(3) Represents other legally available revenues of the City needed to provide 125% debt service coverage.

(4) Represents the annual debt service payments due on the Redevelopment District Taxable Incremental Revenue Bonds, Series 2017.

(5) Represents the annual debt service payments due on the Taxable Economic Development Rental Revenue Bonds, Series 2017.

(6) Represents the annual lease rental payments due on the Redevelopment Authority Lease Rental Revenue Bonus of 1.0%.

(7) Represents e

(g) Represents a half-year of the revenue stream due to the final maturity of August 15, 2046.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenario 3

Juday Creek Athletics & Sports Complex

ILLUSTRATIVE PROJECT COSTS AND FUNDING

Illustrative Project Costs:*

Net proceeds available for the Fieldhouse Project (1)	\$38,000,000
Capitalized interest (2)	6,548,940
Debt service reserve (3)	3,675,818
Allowance for underwriter's discount (0.75%)	299,963
Allowance for bond issuance costs and contingencies	<u>550,279</u>
Total Illustrative Project Costs	<u><u>\$49,075,000</u></u>

Illustrative Project Funding:*

Taxable Economic Development Lease Rental Revenue Bonds (4)	\$39,995,000
Cash Contribution (5)	3,880,000
Additional Cash Contribution (6)	<u>5,200,000</u>
Total Illustrative Project Funding	<u><u>\$49,075,000</u></u>

- (1) Represents Bond proceeds, net of issuance costs, that will be available for capital expenditures related to the projects.
- (2) Assumes interest will be capitalized through February 15, 2025 and partially capitalized through August 15, 2025. The final financing structure will determine the amount of interest to be capitalized.
- (3) Assumes a debt service reserve funded from bond proceeds at the maximum annual debt service payment.
- (4) Assumes the Bonds are payable from 1.00% of the County's total Innkeeper's Tax rate of 8.00%, Company operational revenues, Project Tax Increment Revenues, TIF Revenues from the City's Consolidated Allocation Area, and the City's property tax backup.
- (5) Assumes a \$1,000,000 cash contribution to the Project from existing Innkeeper's Tax Revenues, per the City. Assumes Innkeeper's Tax Revenues from 2022, 2023, and 2024 are available to fund the project in the assumed amount of \$960,000 per year.
- (6) Assumes an additional cash contribution to fund project costs.

*Preliminary, subject to change.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenario 3

Juday Creek Athletics & Sports Complex

**ILLUSTRATIVE AMORTIZATION OF \$39,995,000* PRINCIPAL AMOUNT OF
TAXABLE ECONOMIC DEVELOPMENT LEASE RENTAL REVENUE BONDS**

Assumes Bonds dated January 26, 2023

Illustrative True Interest Cost 7.07%

Payment Date	Principal Outstanding*	Principal*	Illustrative Interest Rates (1)	Illustrative Interest	Illustrative Total Debt Service	Illustrative Capitalized Interest	Illustrative Net Debt Service	Illustrative Fiscal Year Debt Service	Illustrative Annual Lease Rental Payment (2)
08/15/23	\$39,995,000			\$1,521,503	\$1,521,503	(\$1,521,503)	\$0		
02/15/24	39,995,000			1,376,234	1,376,234	(1,376,234)	0	\$0	\$0
08/15/24	39,995,000			1,376,234	1,376,234	(1,376,234)	0		
02/15/25	39,995,000			1,376,234	1,376,234	(1,376,234)	0	0	0
08/15/25	39,995,000			1,376,234	1,376,234	(898,734)	477,500		
02/15/26	39,995,000	\$460,000	5.80%	1,376,234	1,836,234		1,836,234	2,313,734	2,319,000
08/15/26	39,535,000	475,000	5.85%	1,362,894	1,837,894		1,837,894		
02/15/27	39,060,000	485,000	5.90%	1,349,001	1,834,001		1,834,001	3,671,895	3,677,000
08/15/27	38,575,000	500,000	5.95%	1,334,693	1,834,693		1,834,693		
02/15/28	38,075,000	515,000	6.00%	1,319,818	1,834,818		1,834,818	3,669,511	3,675,000
08/15/28	37,560,000	530,000	6.05%	1,304,368	1,834,368		1,834,368		
02/15/29	37,030,000	550,000	6.10%	1,288,336	1,838,336		1,838,336	3,672,704	3,678,000
08/15/29	36,480,000	565,000	6.15%	1,271,561	1,836,561		1,836,561		
02/15/30	35,915,000	580,000	6.20%	1,254,187	1,834,187		1,834,187	3,670,747	3,676,000
08/15/30	35,335,000	600,000	6.25%	1,236,207	1,836,207		1,836,207		
02/15/31	34,735,000	620,000	6.28%	1,217,457	1,837,457		1,837,457	3,673,664	3,679,000
08/15/31	34,115,000	640,000	6.30%	1,197,989	1,837,989		1,837,989		
02/15/32	33,475,000	660,000	6.35%	1,177,829	1,837,829		1,837,829	3,675,818	3,681,000
08/15/32	32,815,000	680,000	6.35%	1,156,874	1,836,874		1,836,874		
02/15/33	32,135,000	700,000	6.45%	1,135,284	1,835,284		1,835,284	3,672,158	3,678,000
08/15/33	31,435,000	725,000	6.45%	1,112,709	1,837,709		1,837,709		
02/15/34	30,710,000	745,000	6.55%	1,089,328	1,834,328		1,834,328	3,672,036	3,678,000
08/15/34	29,965,000	770,000	6.55%	1,064,929	1,834,929		1,834,929		
02/15/35	29,195,000	795,000	6.65%	1,039,711	1,834,711		1,834,711	3,669,640	3,675,000
08/15/35	28,400,000	825,000	6.65%	1,013,278	1,838,278		1,838,278		
02/15/36	27,575,000	850,000	6.75%	985,846	1,835,846		1,835,846	3,674,124	3,680,000
08/15/36	26,725,000	880,000	6.75%	957,159	1,837,159		1,837,159		
02/15/37	25,845,000	910,000	6.85%	927,459	1,837,459		1,837,459	3,674,618	3,680,000
08/15/37	24,935,000	940,000	6.85%	896,291	1,836,291		1,836,291		
02/15/38	23,995,000	970,000	7.15%	864,096	1,834,096		1,834,096	3,670,388	3,676,000
08/15/38	23,025,000	1,005,000	7.15%	829,419	1,834,419		1,834,419		
02/15/39	22,020,000	1,045,000	7.15%	793,490	1,838,490		1,838,490	3,672,909	3,678,000
08/15/39	20,975,000	1,080,000	7.15%	756,131	1,836,131		1,836,131		
02/15/40	19,895,000	1,120,000	7.15%	717,521	1,837,521		1,837,521	3,673,653	3,679,000
08/15/40	18,775,000	1,160,000	7.15%	677,481	1,837,481		1,837,481		
02/15/41	17,615,000	1,200,000	7.15%	636,011	1,836,011		1,836,011	3,673,493	3,679,000
08/15/41	16,415,000	1,245,000	7.15%	593,111	1,838,111		1,838,111		
02/15/42	15,170,000	1,285,000	7.15%	548,603	1,833,603		1,833,603	3,671,714	3,677,000
08/15/42	13,885,000	1,335,000	7.15%	502,664	1,837,664		1,837,664		
02/15/43	12,550,000	1,380,000	7.25%	454,938	1,834,938		1,834,938	3,672,601	3,678,000
08/15/43	11,170,000	1,430,000	7.25%	404,913	1,834,913		1,834,913		
02/15/44	9,740,000	1,485,000	7.25%	353,075	1,838,075		1,838,075	3,672,988	3,678,000
08/15/44	8,255,000	1,535,000	7.25%	299,244	1,834,244		1,834,244		
02/15/45	6,720,000	1,590,000	7.25%	243,600	1,833,600		1,833,600	3,667,844	3,673,000
08/15/45	5,130,000	1,650,000	7.25%	185,963	1,835,963		1,835,963		
02/15/46	3,480,000	1,710,000	7.25%	126,150	1,836,150		1,836,150	3,672,113	3,678,000
08/15/46	1,770,000	1,770,000	7.25%	64,163	1,834,163		1,834,163	1,834,163	1,837,500
Totals		\$39,995,000		\$44,146,450	\$84,141,450	(\$6,548,940)	\$77,592,509	\$77,592,511	\$77,709,500

(1) Interest rate assumptions provided by Robert W. Baird & Co., Inc. on October 20, 2022.

(2) Represents the annual debt service rounded up to the next \$1,000 plus \$5,000 for Trustee and administrative fees.

*Preliminary, subject to change. The City reserves the right to adjust principal maturities to achieve its financial objectives with respect to the Bonds.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenario 3

Juday Creek Athletics & Sports Complex

COMPARISON OF ESTIMATED REVENUES TO ILLUSTRATIVE LEASE RENTALS

Taxes Payable Year	Estimated Revenues				Illustrative Lease Rentals	Estimated Revenues for 125% Coverage	Estimated Debt Service Coverage
	Innkeeper's Tax Revenues	Minimum Tax Increment Payment	Company Operating Revenues For Debt Service	Total			
	(1)	(2)	(3)		(4)	(5)	
2022	\$960,000			\$960,000 (6)			N/A
2023	960,000			960,000 (6)			N/A
2024	960,000			960,000 (6)			N/A
2025	960,000		\$1,359,000	2,319,000	(\$2,319,000)	\$579,750	125%
2026	960,000	\$357,790	2,359,210	3,677,000	(3,677,000)	919,250	125%
2027	960,000	357,790	2,357,210	3,675,000	(3,675,000)	918,750	125%
2028	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2029	960,000	357,790	2,358,210	3,676,000	(3,676,000)	919,000	125%
2030	960,000	357,790	2,361,210	3,679,000	(3,679,000)	919,750	125%
2031	960,000	357,790	2,363,210	3,681,000	(3,681,000)	920,250	125%
2032	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2033	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2034	960,000	357,790	2,357,210	3,675,000	(3,675,000)	918,750	125%
2035	960,000	357,790	2,362,210	3,680,000	(3,680,000)	920,000	125%
2036	960,000	357,790	2,362,210	3,680,000	(3,680,000)	920,000	125%
2037	960,000	357,790	2,358,210	3,676,000	(3,676,000)	919,000	125%
2038	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2039	960,000	357,790	2,361,210	3,679,000	(3,679,000)	919,750	125%
2040	960,000	357,790	2,361,210	3,679,000	(3,679,000)	919,750	125%
2041	960,000	357,790	2,359,210	3,677,000	(3,677,000)	919,250	125%
2042	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2043	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2044	960,000	357,790	2,355,210	3,673,000	(3,673,000)	918,250	125%
2045	960,000	357,790	2,360,210	3,678,000	(3,678,000)	919,500	125%
2046	480,000 (7)	178,895 (7)	1,178,605	1,837,500	(1,837,500)	459,375	125%
Totals	\$23,520,000	\$7,334,695	\$49,734,805	\$80,589,500	(\$77,709,500)	\$19,427,375	

- (1) Represents 1.00% of the total tax rate of 8.00%. Based on the 2019 collections. See page 13. Assumes the City's 1.00% component expires July 1, 2046.
- (2) See page 12. Assumes the Allocation Area's 25-year term is triggered with the issuance of the estimated bonds.
- (3) Represents estimated Company Operating Revenues required to make annual lease rental payments.
- (4) See page 9.
- (5) Represents the estimated amount of revenues needed to provide debt service coverage. Assumes the revenues consist of Consolidated TIF Revenues through the life of the Consolidated Allocation Area (2039) and other available revenues of the City in years 2040-2046.
- (6) Assumes the Innkeeper's Tax revenues in years 2022-2024 are applied to the Project.
- (7) Represents a half-year of the revenue stream due to the final maturity of August 15, 2046.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Scenario 3

Juday Creek Athletics & Sports Complex

COMPARISON OF ESTIMATED ANNUAL REVENUES AND ESTIMATED OBLIGATIONS - REASONABLE EXPECTATIONS TEST

Taxes Payable Year	Estimated Revenues			Outstanding Debt Service			Estimated Revenues Available for Coverage (7)	Illustrative Lease Rentals (8)	Estimated Revenues Remaining
	Estimated Inkeeper's Tax (1)	Estimated TIF Revenues (2)	Estimated Other Revenues (3)	Total	2015 Bonds (4)	2017 Bonds (5)	2021 LR Bonds (6)		
2022	\$960,000	\$16,579,800		\$17,539,800	(\$50,050)	(\$2,330,655)	(\$2,703,000)	(\$5,083,705)	\$12,456,095
2023	960,000	16,833,200		17,793,200	(49,350)		(5,089,000)	(5,138,350)	12,654,850
2024	960,000	16,833,200		17,793,200	(48,650)		(5,090,000)	(5,138,650)	12,654,550
2025	960,000	16,833,200		17,793,200	(52,900)		(5,077,000)	(5,129,900)	10,344,300
2026	960,000	16,781,920		17,741,920	(52,100)		(5,052,000)	(5,104,100)	(\$2,319,000)
2027	960,000	16,559,820		17,519,820	(51,300)		(4,983,000)	(5,034,300)	8,960,820
2028	960,000	16,496,640		17,456,640	(50,500)		(4,958,000)	(5,008,500)	8,810,520
2029	960,000	16,490,550		17,450,550	(49,700)		(4,959,000)	(5,008,700)	8,770,140
2030	960,000	16,490,550		17,450,550	(48,900)		(4,951,000)	(4,998,900)	8,765,850
2031	960,000	16,490,550		17,450,550	(48,100)		(4,951,000)	(4,998,900)	8,772,650
2032	960,000	16,490,550		17,450,550	(52,300)		(4,950,000)	(5,002,300)	8,770,450
2033	960,000	14,790,730		15,750,730	(51,400)			(51,400)	8,770,250
2034	960,000	14,790,730		15,750,730	(50,500)			(50,500)	12,021,330
2035	960,000	14,790,730		15,750,730	(49,600)			(49,600)	12,025,230
2036	960,000	14,790,730		15,750,730	(48,700)			(48,700)	12,021,130
2037	960,000	13,649,640		14,609,640	(52,750)			(52,750)	12,022,030
2038	960,000	12,542,430		13,502,430	(51,750)			(51,750)	10,880,890
2039	960,000	12,477,340		13,437,340	(50,750)			(50,750)	9,772,680
2040	960,000		\$3,638,750	4,598,750					9,707,590
2041	960,000		3,636,250	4,596,250					919,750
2042	960,000		3,637,500	4,597,500					919,250
2043	960,000		3,637,500	4,597,500					919,500
2044	960,000		3,631,250	4,591,250					918,250
2045	960,000		3,637,500	4,597,500					919,500
2046	480,000 (9)		1,816,875	2,296,875					459,375
Totals	\$17,280,000	\$280,712,310	\$23,635,625	\$327,867,935	(\$909,300)	(\$2,330,655)	(\$52,762,000)	(\$56,001,955)	\$194,156,480

(1) Represents 1.00% of the total tax rate of 8.00%. Based on the 2019 collections. See page 13. Assumes the City's 1.00% component expires July 1, 2046.

(2) Represents the estimated annual Consolidated TIF Revenues per the analysis dated July 22, 2022 of Baker Tilly Municipal Advisors, LLC.

(3) Represents other legally available revenues of the City needed to provide 125% debt service coverage.

(4) Represents the annual debt service payments due on the Redevelopment District Taxable Tax Increment Revenue Bonds, Series 2015.

(5) Represents the annual debt service payments due on the Taxable Economic Development Revenue Bonds, Series 2017.

(6) Represents the annual lease rental payments due on the Redevelopment Authority Lease Rental Revenue Bonds of 2021.

(7) Represents estimated revenues available for payment of the Illustrative Lease Rentals to the extent that Project Tax Increment and Company Operating Revenues are insufficient or not available.

(8) See page 9.

(9) Represents a half-year of the revenue stream due to the final maturity of August 15, 2046.

(Subject to the attached letter dated October 27, 2022)

(Preliminary - Subject to Change)

(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION

Supporting Information

Juday Creek Athletics & Sports Complex

ESTIMATED ANNUAL TAX INCREMENT FROM THE PROPOSED DEVELOPMENT

Fieldhouse only

Proposed Development	January 1 Completion Date (1)	Estimated Sq. Ft./Acres (2)	Estimated Assessed Value / Sq. Ft./Acres (3)	Estimated Assessed Value Year Payable 2026
Fieldhouse	2025	231,563	\$45	\$10,420,335
Land (4)	2025	14	25,000	350,000
Total Estimated Net Assessed Value				10,770,335
Less: Base Assessed Value (5)				0
Estimated Incremental Assessed Value				10,770,335
Times: Tax Rate (6)				\$3.9001
Estimated Tax Increment				420,050
Less: Estimated Circuit Breaker Credit (7)				(62,260)
Estimated Net Project Tax Increment (8)				\$357,790

- (1) Per Developer representatives, construction will be completed by August 1, 2024. Assumes the first taxes payable year will be the year following the January 1 assessment date.
- (2) Per Developer representatives. Assumes the Fieldhouse is approximately 231,563 square feet.
- (3) Estimated assessed values are based upon comparable properties located within the State of Indiana. The actual assessed value will be determined by the St. Joseph County Assessor upon completion, and the actual assessed values may be materially different from the values assumed in this analysis.
- (4) Includes the total land acreage for the fieldhouse and parking.
- (5) Assumes the Commission establishes a new allocation area consisting of the new project site with a base assessment date of January 1, 2022. Represents the pay 2023 net assessed value for the proposed project site parcels #71-04-27-378-055.000-036 and #71-04-27-200-032.000-036, per the St. Joseph County Auditor's Office. Both parcels are owned by the City and therefore are tax-exempt.
- (6) Represents the certified pay 2022 tax rate for the Mishawaka - Harris Township taxing district.
- (7) Assumes the Circuit Breaker Tax Credit, which limits property tax liability to 3% of gross assessed value for a commercial parcel, is applied. Accounts for the St. Joseph County 2022 Local Income Tax Property Tax Replacement Credit of 8.2562%.
- (8) Assumes the Developer will enter into an agreement that provides for minimum annual project net tax increment revenues of \$357,790.

Note: No assumption has been made for future assessed value growth or change in tax rates. Changes to the assumptions outlined above may materially affect the tax increment revenue estimates included in this analysis.

(Subject to the attached letter dated October 27, 2022)
(Preliminary - Subject to Change)
(For Internal Use Only)

MISHAWAKA REDEVELOPMENT COMMISSION***Supporting Information******Juday Creek Athletics & Sports Complex*****HISTORICAL INNKEEPER'S TAX REVENUE**

Year	Total Collections (6% rate)	1.0% Rate
	(1)(2)	(3)
2011	\$3,572,080	\$595,347
2012	3,630,006	605,001
2013	3,852,302	642,050
2014	4,179,467	696,578
2015	4,749,836	791,639
2016	4,930,183	821,697
2017	5,239,133	873,189
2018	5,679,728	946,621
2019	5,766,555	961,093
2020	3,454,155	575,693
2021	5,818,370 (4)	854,360
2022	6,056,182 (5)	827,825 (5)(6)

- (1) Per the St. Joseph County Auditor's Office.
- (2) The 6% rate became effective on July 1, 1994. Effective as of October 1, 2021, the rate will be 8%.
- (3) Represents annual collections per 1.0% of the total 6% Innkeeper's Tax Rate. The Sports Complex Fund will be allocated 1.0% of the total 8% Innkeeper's Tax Rate, per IC 6-9-1-6.2.
- (4) The St. Joseph County Innkeeper's Tax rate was increased from 6% to 8% as of October 1, 2021.
- (5) Represents total collections through September 2022.
- (6) Per Visit South Bend Mishawaka.

(Subject to the attached letter dated October 27, 2022)

(Preliminary - Subject to Change)

(For Internal Use Only)

NOV 02 2022

City Clerk
Mishawaka, IN

RESOLUTION NO. 2022-34

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVING A LEASE BETWEEN THE CITY OF MISHAWAKA
BUILDING CORPORATION AND THE CITY OF MISHAWAKA
REDEVELOPMENT COMMISSION RELATED TO THE ATHLETIC FACILITY
PROJECT AND TAKING OTHER ACTIONS RELATED THERETO**

WHEREAS, the City of Mishawaka Redevelopment Commission (the "Redevelopment Commission"), the governing body of the City of Mishawaka Department of Redevelopment and the Redevelopment District of the City of Mishawaka, Indiana (the "District"), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, the City of Mishawaka Building Corporation (the "Building Corporation") has been incorporated as an Indiana nonprofit corporation operating pursuant to Indiana Code 23-17 in order to finance buildings and other capital improvements in the City; and

WHEREAS, the City, the Redevelopment Commission, the Building Corporation, and Card Associates Athletic Facilities, LLC (the "Developer"), have negotiated an Economic Development Agreement (the "Development Agreement") to provide for the construction and equipping of an indoor sports facility complex in the City that will serve as a regional destination for sports tournaments and other events (the "Project") as more fully described in the Development Agreement; and

WHEREAS, to induce the Developer to complete the Project, the City will consider issuing its taxable economic development lease rental revenue bonds in one or more series under the Indiana Code 36-7-11.9 and 12, to be designated as the "City of Mishawaka, Indiana, Taxable Economic Development Lease Rental Revenue Bonds, Series 2022 (Sports Facility Project)" (with such further series or different series designation as determined to be necessary or appropriate) in an aggregate principal amount not to exceed Forty-five Million Dollars (45,000,000) (the "Bonds"), the net proceeds of such Bonds to be used for the purpose of paying all or a portion of the costs of the Project and related expenses including, but not limited to, capitalized interest on the Bonds, a debt service reserve fund from proceeds of the Bonds or the cost of a reserve surety, if necessary, and costs of issuance of the Bonds; and

WHEREAS, the Bonds will be payable from payments made by the Building Corporation to the City under a Loan Agreement (the "Loan Agreement") by and between the City and the Building Corporation as evidenced by a Note which payments will be made by the Building Corporation from lease payments made by the Redevelopment Commission to the Building Corporation under a Lease (the "Lease") between the Building Corporation, as lessor, and the Redevelopment Commission, as lessee, providing for lease of certain roads in the City pursuant to Section 25.2 of the Act as more fully described in the Lease; and

WHEREAS, the Redevelopment Commission on November 1, 2022, adopted a resolution approving a proposed form of the Lease which provides for the lease by the Redevelopment Commission from the Building Corporation of certain roads in the City as more fully described in the Lease; and

WHEREAS, the Redevelopment Commission has previously declared an area within the City as an economic development area and known as the “Consolidated Area Improvement Project” (the “Area”) and designated the Area as an allocation area in accordance with Section 39 of the Act for the purposes of capturing incremental ad valorem property taxes levied and collected on all taxable real property in such Area (the “Consolidated Area TIF”); and

WHEREAS, the Redevelopment Commission on November 1, 2022, approved and adopted a resolution for the purpose of making certain amendments to the Area and its plan including to designate an area, presently part of the Area, as a separate allocation area pursuant to Section 39 of the Act to be known as the “Sports Facility Allocation Area” (the “Sports Facility Allocation Area”) for purposes of capturing incremental ad valorem property taxes levied and collected on all taxable real property in the Sports Facility Allocation Area (the “Sports Facility Allocation Area TIF”); and

WHEREAS, the lease rentals payable under the Lease are payable from a levy by the Redevelopment Commission of a special benefits tax upon all of the taxable real property within the District (the “Special Benefits Tax”); provided, however, the Commission reasonably expects the Special Benefits Tax will not be required as the Commission reasonably expects to pay the Lease Rentals due during the term of the Lease from other revenues legally available to the Commission including (i) certain hotel-motel tax revenues available with respect to the Project pursuant to Indiana Code 6-9-1-6.2 and pledged for such purpose by the St. Joseph County Hotel-Motel Board of Managers, (ii) Sports Facility Allocation Area TIF, (iii) Project operating revenues paid by the Developer, and (iv) to the extent necessary, Consolidated Area TIF and legally available revenues of the City; and

WHEREAS, the annual rentals payable by the Commission under the Lease will be pledged by the Building Corporation to make the payments due under the Loan Agreement which will be used to pay the principal of and interest on the Bonds; and

WHEREAS, the Common Council of the City (the “Common Council”) desires to approve the Lease as required by Section 25.2 of the Act, which provides that any lease approved by a resolution of the Commission must be approved by the fiscal body of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, AS FOLLOWS:

SECTION 1. The Common Council hereby approves of the execution and delivery of the Lease, as approved by the Commission, pursuant to Section 25.2 of the Act, including, if necessary, the levy by the Redevelopment Commission of the Special Benefits Tax; provided, however, it is expected that the Special Benefits Tax will not be necessary because the Commission reasonably expects to pay the Lease Rentals due during the term of the Lease from other revenues legally available to the Commission including (i) hotel-motel tax revenues available with respect to the Project pursuant to Indiana Code 6-9-1-6.2 and pledged for such purpose by the St. Joseph County Hotel-Motel Board of Managers, (ii) Sports Facility Allocation Area TIF, (iii) Project operating revenues paid by the Developer, and (iv) to the extent necessary in the event the other revenues described in (i) through and including (iii) hereof are not available, Consolidated Area TIF and legally available revenues of the City. The foregoing approval is subject to the following: (a) the

maximum annual lease rental payment during the term of the Lease shall not exceed \$5,000,000, (b) the maximum interest rate on the Bonds shall not exceed eight and one-half percent (8.50%) per annum, (c) the Bonds may be subject to optional redemption prior to maturity on any date not earlier than five (5) years following the date of issuance of the Bonds, with specific dates and redemption terms to be determined at the time of the sale of the Bonds and approved by the City, all upon the advice of Baker Tilly Municipal Advisors, LLC, the municipal advisor to the City (the "Municipal Advisor"), (d) the maximum term of the Lease shall not exceed twenty-five (25) years, and (e) interest on the Bonds may be capitalized or paid from the proceeds of the Bonds for a period up to three (3) years from the date of issuance of the Bonds based upon the recommendation of the Municipal Advisor.

SECTION 2. The Common Council hereby agrees that to the extent it is necessary for the Commission to consider legally available revenues of the City when determining if it is necessary to levy the Special Benefits Tax, the Commission may take such legally available revenues of the City into account for such purposes and the Common Council will make legally available revenues available for such purpose subject to and conditioned upon the appropriation of the funds necessary to fulfill such requirement.

SECTION 3. This Resolution shall be in full force and effect from and after its adoption by the Common Council.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this ____ day of November, 2022, at ____ o'clock, P.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor for his approval and signature this ____ day of November, 2022.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED and SIGNED by me this ____ day of November, 2022.

David A. Wood, Mayor

LEASE AGREEMENT

between

CITY OF MISHAWAKA BUILDING CORPORATION

LESSOR

and

CITY OF MISHAWAKA
REDEVELOPMENT COMMISSION

LESSEE

Dated as of November ____, 2022

(Sports Facility Project)

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and dated as of this _____ day of November, 2022, by and between the CITY OF MISHAWAKA BUILDING CORPORATION (the "Lessor"), an Indiana nonprofit corporation, and the CITY OF MISHAWAKA REDEVELOPMENT COMMISSION (the "Lessee"), the governing body of the City of Mishawaka, Department of Redevelopment and the Redevelopment District of the City of Mishawaka, Indiana (the "District"), acting for and on behalf of the City of Mishawaka, Indiana (the "City").

WITNESSETH:

WHEREAS, the Lessor exists for the purpose, among others, of financing and leasing buildings and other capital improvements in the City; and

WHEREAS, the City has created the Lessee to undertake redevelopment and economic development in the City in accordance with Indiana Code 36-7-14 and Indiana Code 36-7-25 (collectively, the "Redevelopment Act"); and

WHEREAS, to foster additional economic development in the City, the City, the Lessor, and the Lessee desire to provide for the construction and equipping of an indoor sports facility that will serve as a regional destination for sports tournaments and other events (the "Project") in accordance with an Economic Development Agreement, dated as of November ___, 2022 (the "Development Agreement"), among the City, the Lessor, the Lessee, and Card Associates Athletic Facilities, LLC (the "Developer"); and

WHEREAS, as further described in the Development Agreement, a portion of the costs of the construction and equipping of the Project will be financed by the proceeds of bonds to be issued by the City in a maximum original issued amount not to exceed Forty-Five Million Dollars (\$45,000,000) (the "Bonds"), pursuant to Indiana Code 36-7-11.9 and 12 (the "EDC Act") and a Trust Indenture, to be dated as of the first day of the month in which the Bonds are sold or issued (the "Indenture"), between the City and the financial institution selected to serve as bond trustee (the "Trustee"); and

WHEREAS, the proceeds of the Bonds will be loaned by the City to the Lessor pursuant to a Loan Agreement to be dated as of the first day of the month in which the Bonds are sold or issued (the "Loan Agreement"), by and between the City and the Lessor and the Lessor will, in turn, loan the proceeds of the Bonds to the Developer pursuant to a Funding Loan Agreement to be dated as of the first day of the month in which the Bonds are sold or issued (the "Funding Loan Agreement") by and between the Lessor, the Developer, and the City, which the Developer will use to construct and equip the Project pursuant to the Development Agreement; and

WHEREAS, the Bonds will be payable solely from payments made by the Lessor pursuant to the Loan Agreement and the Lessor's obligations under the Loan Agreement will be payable from the annual rentals to be paid by the Lessee under this Lease as the same may be offset by payments made by the Developer pursuant to its obligations under the Funding Loan Agreement; and

WHEREAS, payments under this Lease will be assigned by the Lessor to the Trustee to pay debt service on and other necessary incidental expenses related to the Bonds; and

WHEREAS, the Lessor has acquired or will acquire an interest in the real estate which will serve as the leased premises (the "Leased Premises") described on Exhibit A hereto and such interest shall be for a term no less than the term of this Lease; and

WHEREAS, the Lessee has determined, after a public hearing held pursuant to the Redevelopment Act after notice given pursuant to I.C. § 5-3-1, that the lease rentals provided for in this Lease are fair and reasonable, that the execution of this Lease is necessary and that the service provided by the Project will serve the public purpose of the City and is in the best interests of its residents, and the Common Council of the City (the "Common Council") has, by resolution, approved this Lease in accordance with the provisions of Section 25.2 of the Redevelopment Act, and the Resolution has been entered in the official records of the Common Council; and

WHEREAS, the Lessor has duly authorized the execution of this Lease by Resolution, and the Resolution has been entered in the official records of the Lessor.

THIS AGREEMENT WITNESSETH THAT:

1. **Premises, Term and Warranty.** The Lessor does hereby lease, demise and let to Lessee all of the Lessor's right, title and interests in and to the Leased Premises.

TO HAVE AND TO HOLD the Leased Premises with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee, beginning on the date the Lessor acquires an interest in any of the Leased Premises and ending on the day prior to a date not later than twenty-five (25) years after such date of acquisition by the Lessor. Notwithstanding the foregoing, the term of this Lease will terminate at the earlier of (a) the exercise by the Lessee of the option to purchase all of the Leased Premises pursuant to Section 11 hereof and the payment of the option price, or (b) the payment or defeasance of all bonds and obligations issued by the City and secured by this Lease or any portion thereof; provided that no bonds or other obligations of the Lessor issued to finance or refinance the Project remain outstanding at the time of such payment or defeasance. The Lessor hereby represents that it is possessed of, or will acquire, the Leased Premises and the Lessor warrants and will defend the Leased Premises against all claims whatsoever not suffered or caused by the acts or omissions of the Lessee or its assigns.

Notwithstanding the foregoing, the Leased Premises may be amended to add additional property to the Leased Premises or remove any portion of the Leased Premises, including, but not limited to the Leased Premises, provided however, following such amendment, the rental payable under this Lease shall be based on the value of the portion of the Leased Premises which is available for use, and the rental payments due under this Lease shall be in amounts sufficient to pay when due all principal of and interest on all outstanding Bonds.

2. **Lease Rental.** (a) **Fixed Rental Payments.** The Lessee agrees to pay rental for the Leased Premises at an annual rate per year during the term of the Lease not to exceed Five Million Dollars (\$5,000,000), payable in semi-annual installments. Each such semi-annual installment, payable as hereinafter described, shall be based on the value of the Leased Premises, together with that portion of the Project which is complete and ready for use by the Lessee at the time such semi-annual installment is made. Such rental shall be payable in advance in semi-annual installments on February 1 and August 1 of each year, with the first rental installment due no earlier than August 1, 2025. The last semi-annual rental payment due before the expiration of this

Lease shall be adjusted to provide for rental at the yearly rate so specified from the date such installment is due to the date of the expiration of this Lease.

After the sale of the Bonds, the annual rental shall be reduced to an amount sufficient to pay principal and interest due in each twelve (12) month period commencing each year on August 1, rounded up to the next One Thousand Dollars (\$1,000), together with incidental costs in each year in an amount to be determined at the time the Bonds are sold for the purpose of paying annual trustee fees and related costs, payable in advance in semi-annual installments. In addition, each such reduced semi-annual installment shall be based on the value of the Leased Premises at the time such semi-annual installment is made. Such amount of adjusted rental shall be endorsed on this Lease at the end hereof in the form of Exhibit B attached hereto by the parties hereto as soon as the same can be done after the sale of the Bonds, and such endorsement shall be recorded as an addendum to this Lease.

(b) **Additional Rental Payments.** (i) The Lessee shall pay as further rental in addition to the rentals paid under Section 2(a) for the Leased Premises ("Additional Rentals") the amount of all taxes and assessments levied against or on account of the Leased Premises or the receipt of lease rental payments and the amount required to reimburse the Lessor for any insurance payments made by it under Section 6. The Lessee shall pay as additional rental all administrative expenses of the Lessor, including ongoing trustee fees, relating to the Bonds. Any and all such payments shall be made and satisfactory evidence of such payments in the form of receipts shall be furnished to the Lessor by the Lessee, at least three (3) days before the last day upon which such payments must be paid to avoid delinquency. If the Lessee shall in good faith desire to contest the validity of any such tax or assessment, the Lessee shall so notify the Lessor and shall furnish bond with surety to the approval of the Lessor conditioned for the payment of the charges so desired to be contested and all damages or loss resulting to the Lessor from the nonpayment thereof when due, the Lessee shall not be obligated to pay the contested amounts until such contests shall have been determined.

(ii) The Lessee may, by Resolution, pay Additional Rentals to enable the Lessor to redeem or purchase Bonds prior to maturity. Rental payments due under this Section 2 shall be reduced to the extent such payments are allocable to the Bonds redeemed or purchased by the Lessor with such Additional Rentals. The Lessee shall be considered as having an ownership interest in the Leased Premises valued at an amount equal to the amount of the Additional Rentals paid pursuant to this subsection (b)(ii).

(c) **Source of Payment of Rentals.** The annual rentals set forth in Section 2(a) hereof and the Additional Rentals shall be payable solely from the levy of a special benefits tax upon all of the taxable property within the Redevelopment District (the "Special Benefits Tax") pursuant to Section 27 of the Redevelopment Act. The Lessee may pay the annual rentals and the Additional Rentals, or any other amounts due hereunder, from any other revenues legally available to the Lessee; provided, however, the Lessee shall be under no obligation to pay any annual rentals or Additional Rentals or any other amounts due hereunder from any moneys or properties of the Lessee except the Special Benefits Tax received by the Lessee.

3. **Payment of Rentals.** All rentals payable under the terms of this Lease shall be paid by the Lessee to the Trustee under the Indenture, or to such other bank or trust company as may from time to time succeed the Trustee. Any successor trustee under the Indenture shall be endorsed on this Lease at the end hereof by the parties hereto as soon as possible after selection,

and such endorsement shall be recorded as an addendum to this Lease. All payments so made by the Lessee shall be considered as payment to the Lessor of the rentals payable hereunder.

4. **Abatement of Rent; Substitution.** If any part of the Leased Premises is taken under the exercise of the power of eminent domain, so as to render it unfit, in whole or part, for use by the Lessee, it shall then be the obligation of the Lessor to restore and reconstruct that portion of the Leased Premises as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessor excepted; provided, however, that the Lessor shall not be obligated to expend on such restoration or reconstruction more than the condemnation proceeds received by the Lessor.

If any part of the Leased Premises shall be partially or totally destroyed, or is taken under the exercise of the power of eminent domain, so as to render it unfit, in whole or part, for use or occupancy by the Lessee, the rent shall be abated for the period during which the Leased Premises or such part thereof is unfit or unavailable for use, and the abatement shall be in proportion to the percentage of the Leased Premises which is unfit or unavailable for use or occupancy.

Notwithstanding the foregoing, the Leased Premises may be amended to add additional property to the Leased Premises or remove any portion of the Leased Premises, provided however, following such amendment, the rental payable under this Lease shall be based on the value of the portion of the Leased Premises which is available for use, and the rental payments due under this Lease shall be in amounts sufficient to pay when due all principal of and interest on all outstanding Bonds. In the event that all or a portion of the Leased Premises shall be unavailable for use by the Lessee, subject to the completion of any process required by law, the Lessor and the Lessee shall amend the Lease to add to and/or replace a portion of the Leased Premises to the extent necessary to provide for available Leased Premises with a value supporting rental payments under the Lease sufficient to pay when due all principal of and interest on outstanding Bonds.

5. **Maintenance, Alterations and Repairs.** The Lessee may enter into agreements with one (1) or more other parties for the operation, maintenance, repair and alterations of all or any portion of the Leased Premises. Such other parties may assume all responsibility for operation, maintenance, repairs and alterations to the Leased Premises. At the end of the term of this Lease, the Lessee shall deliver the Leased Premises to the Lessor in as good condition as at the beginning of the term, reasonable wear and tear only excepted.

6. **Insurance.** During the full term of this Lease, the Lessee shall, at its own expense, keep in effect public liability insurance in amounts customarily carried for similar properties. Such insurance may be provided under the public liability self-insurance program of the City. Additionally, notwithstanding anything in this Lease to the contrary, Lessee does not waive any governmental immunity or liability limitations available to it under Indiana law.

The proceeds of the public liability insurance required herein (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid. Such policies shall be for the benefit of persons having an insurable interest in the Leased Premises, and shall be made payable to the Lessor, the Lessee, and the Trustee and to such other person or persons as the Lessor may designate. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana and deposited with the Lessor and the Trustee. If, at any time, the Lessee fails to maintain insurance in accordance with this Section, such insurance may be obtained by the

Lessor and the amount paid therefor shall be added to the amount of rentals payable by the Lessee under this Lease; provided, however, that the Lessor shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance.

The insurance policies described in this Section 6 may be acquired by another party and shall satisfy this Section as long as the Lessor, the Lessee and the Trustee are named as additional insureds under such policies. Such coverage may be provided by scheduling it under a blanket insurance policy or policies.

7. **Eminent Domain.** If title to or the temporary use of the Leased Premises, or any part thereof, shall be taken under the exercise or the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by the Trustee under the Indenture.

Such proceeds shall be applied in one (1) or more of the following ways:

- (a) The restoration of the Leased Premises to substantially the same condition as it existed prior to the exercise of that power of eminent domain, or
- (b) The acquisition, by construction or otherwise, of other improvements suitable for the Lessee's operations on the Leased Premises and which are in furtherance of the purposes of the Redevelopment Act (the improvements shall be deemed a part of the Leased Premises and available for use and occupancy by the Lessee without the payment of any rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby).

Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct the Lessor and the Trustee in writing as to which of the ways specified in this Section the Lessee elects to have the net proceeds of the condemnation award applied. Any balance of the net proceeds of the award in such eminent domain proceedings not required to be applied for the purposes specified in subsections (a) or (b) above shall be deposited in the sinking fund held by the Trustee under the Indenture and applied to the repayment of the Bonds.

The Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof and will to the extent it may lawfully do so permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor. In no event will the Lessor voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld.

8. **General Covenant.** The Lessee shall not assign this Lease or mortgage, pledge or sublet the Leased Premises herein described, without the written consent of the Lessor. The Lessee shall contract with the other parties to use and maintain the Leased Premises in accordance with the laws, regulations and ordinances of the United States of America, the State of Indiana, the City and all other proper governmental authorities.

9. **Reserved.**

10. **Option to Renew.** The Lessor hereby grants to the Lessee the right and option to renew this Lease for a further like or lesser term upon the same or like conditions as herein contained, and applicable to the portion of the premises for which the renewal applies, and the Lessee shall exercise this option by written notice to the Lessor given upon any rental payment date prior to the expiration of this Lease.

11. **Option to Purchase.** The Lessor hereby grants to the Lessee the right and option, on any date, upon sixty (60) days' written notice to the Lessor, to purchase the Leased Premises, or any portion thereof, at a price equal to the amount required to pay all indebtedness incurred on account of the Leased Premises, or such portion thereof (including indebtedness incurred for the refunding of any such indebtedness), including all premiums payable on the redemption thereof and accrued and unpaid interest, and including the proportionate share of the expenses and charges of liquidation, if the Lessor is to be then liquidated. In no event, however, shall such purchase price exceed the capital actually invested in such property by the Lessor represented by outstanding securities or existing indebtedness plus the cost of transferring the property and liquidating the Lessor. The phrase "capital actually invested" as used herein shall be construed to include, but not by way of limitation, the following amounts expended by the Lessor in connection with the acquisition and financing of the Leased Premises: organization expenses, financing costs, carry charges, legal fees, architects' fees and reasonable costs and expenses incidental thereto.

Upon request of the Lessee, the Lessor agrees to furnish an itemized statement setting forth the amount required to be paid by the Lessee in order to purchase the Leased Premises, or any portion thereof, including, but not limited to all indebtedness incurred on account of the Leased Premises in accordance with the preceding paragraph. Upon the exercise of the option to purchase granted herein, the Lessor will upon payment of the option price deliver, or cause to be delivered, to the Lessee documents conveying to the Lessee, or any entity (including the City) designated by the Lessee, all of the Lessor's title to the property being purchased, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to the property was subject when conveyed to the Lessor; (ii) those liens and encumbrances created by the Lessee and to the creation or suffering of which the Lessee consented, and liens for taxes or special assessments not then delinquent; and (iii) those liens and encumbrances on its part contained in this Lease.

In the event of purchase of the Leased Premises, or any portion thereof as set forth above, by the Lessee or conveyance of the Leased Premises, or any portion thereof as set forth above, to the Lessee or the Lessee's designee, the Lessee shall procure and pay for all surveys, title searches, abstracts, title policies and legal services that may be required, and shall furnish at the Lessee's expense all documentary stamps or tax payments required for the transfer of title.

Nothing contained herein shall be construed to provide that the Lessee shall be under any obligation to purchase the Leased Premises, or any portion thereof as set forth above, or under any obligation respecting the creditors, members or security holders of the Lessor.

12. **Transfer to Lessee.** If the Lessee has not exercised its option to renew in accordance with the provisions of Section 10, and has not exercised its option to purchase the Leased Premises, or any portion thereof, in accordance with the provisions of Section 11, and upon the full discharge and performance by the Lessee of its obligations under this Lease, the

Leased Premises, or such portion thereof remaining, shall thereupon become the absolute property of the Lessee, subject to the limitations, if any, on the conveyance of the site for the Leased Premises to the Lessor and, upon the Lessee's request the Lessor shall execute proper instruments conveying to the Lessee, or to any entity (including the City) designated by the Lessee, all of Lessor's title to the Leased Premises, or such portion thereof.

13. **Defaults.** If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; or (b) in the observance of any other covenant, agreement or condition hereof, and such default shall continue for ninety (90) days after written notice to correct such default; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

14. **Notices.** Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at the following addresses: (a) to Lessor: City of Mishawaka Building Corporation, Attention: President, c/o City Controller, 100 Lincolnway West, Mishawaka, Indiana; (b) to Lessee: City of Mishawaka Redevelopment Commission, Attention: President, c/o Planning and Community Development Office, 100 Lincolnway West, Mishawaka, Indiana.

The Lessor, the Lessee and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

15. **Successors or Assigns.** All covenants of this Lease, whether by the Lessor or the Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

16. **Construction of Covenants.** All provisions herein contained shall be construed in accordance with the EDC Act and the Redevelopment Act (collectively, the "Act"), and to the extent of inconsistencies, if any, between the covenants and agreements in this Lease and the provisions of the Act, the Act shall be deemed to be controlling and binding upon the Lessor and the Lessee; provided, however, any amendment to the Act after the date hereof shall not have the effect of amending this Lease.

[Signatures follow on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed for and on their behalf on the date first written above.

LESSOR:

**CITY OF MISHAWAKA BUILDING
CORPORATION**

President

ATTEST:

Secretary

LESSEE:

**CITY OF MISHAWAKA
REDEVELOPMENT COMMISSION**

Vice-President

ATTEST:

Secretary

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of the City of Mishawaka Building Corporation (the "Building Corporation"), and acknowledged the execution of the foregoing Lease for and on behalf of the Building Corporation.

WITNESS my hand and notarial seal this ____ day of _____, 2022.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of the City of Mishawaka Redevelopment Commission (the "Commission"), and acknowledged the execution of the foregoing Lease for and on behalf of the Commission.

WITNESS my hand and notarial seal this ____ day of _____, 2022.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

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

Randolph R. Rompola

This instrument was prepared by Randolph R. Rompola, Barnes & Thornburg LLP,
100 North Michigan, Suite 700, South Bend, Indiana 46601.

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

All of the Building Corporation's interest in all or a portion of the Leased Premises which consists of (i) Douglas Road, from western City limits to Creekside Village entrance; (ii) Main Street, from Edison Lakes Parkway to northern City limits; (iii) Douglas Road, from Fir Road to eastern City limits; (iv) Holy Cross Parkway, from Edison Lakes Parkway to Douglas Road; and (v) Edison Lakes Parkway, from Main Street to Day Road, all as more particularly described as follows:

[Legal descriptions will be included here for the Leased Premises prior to recording.]

EXHIBIT B

ADDENDUM TO LEASE BETWEEN CITY OF MISHAWAKA BUILDING CORPORATION, LESSOR AND CITY OF MISHAWAKA REDEVELOPMENT COMMISSION, LESSEE

THIS ADDENDUM (this "Addendum"), entered into as of this ____ day of _____, 202__, by and between City of Mishawaka Building Corporation (the "Lessor"), and City of Mishawaka Redevelopment Commission (the "Lessee");

WITNESSETH:

WHEREAS, the Lessor entered into a lease with the Lessee dated as of November ___, 2022 (the "Lease"); and

WHEREAS, it is provided in the Lease that there shall be endorsed thereon the adjusted rental.

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the parties to the Lease that the adjusted rental is set forth on Appendix I attached hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed for and on their behalf as of the day and year first above written.

LESSOR

CITY OF MISHAWAKA BUILDING CORPORATION

President

ATTEST:

Secretary

LESSEE

CITY OF MISHAWAKA REDEVELOPMENT COMMISSION

Vice-President

ATTEST:

Secretary

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

Randolph R. Rompola

STATE OF INDIANA)

This instrument was prepared by Randolph R. Rompola Barnes & Thornburg LLP,
100 North Michigan, Suite 700, South Bend, Indiana 46601.

COUNTY OF ST. JOSEPH) SS:
)

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of the City of Mishawaka Building Corporation (the "Building Corporation"), and acknowledged the execution of the foregoing Addendum to Lease for and on behalf of the Building Corporation.

WITNESS my hand and notarial seal this _____ day of _____, 2022.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

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

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the Vice-President and Secretary, respectively, of the City of Mishawaka Redevelopment Commission (the "Commission"), and acknowledged the execution of the foregoing Addendum to Lease for and on behalf of the Commission.

WITNESS my hand and notarial seal this _____ day of _____, 2022.

(Seal)

(Written Signature)

(Printed Signature)
Notary Public

My Commission expires:

My county of residence is:

Appendix I to Addendum to Lease

Adjusted Rental Schedule

Payment <u>Date</u>	Total <u>Rental Payment</u>
------------------------	--------------------------------

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAC, MMC

OCT 12 2022

City Clerk
Mishawaka, IN

PETITION 22-17

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2022-37

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Harris Township, St. Joseph County, State of Indiana, to-wit:

TRACT 1:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, WHICH IS DESCRIBED AS: BEGINNING AT A 5/8" CAPPED REBAR SET ON THE EAST RIGHT OF WAY LINE OF GUMWOOD ROAD WHICH IS IN NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST, 40.00 FEET FROM A POINT ON THE WEST LINE OF SECTION 27 AND CENTERLINE OF GUMWOOD ROAD WHICH IS SOUTH 00 DEGREES 28 MINUTES 39 SECONDS EAST, 714.90 FEET (S 00 DEGREES 21 MINUTES 04 SECONDS EAST, 715.00 FEET, RECORD) FROM A BRASS ' PLUG FOUND MARKING THE NORTHWEST CORNER OF SECTION 27; THENCE NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST 147.66 FEET (158.00 FEET, RECORD) TO A FOUND 1/2" REBAR; THENCE NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 55 FEET TO A FOUND 1/2" REBAR; THENCE NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST, 462.00 FEET TO A FOUND 1/2" REBAR; THENCE SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 621.77 FEET (627.26 FEET, RECORD) TO A 5/8" CAPPED REBAR SET ON THE NORTH RIGHT OF WAY LINE OF CASS ROAD; THENCE ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89 DEGREES 27 MINUTES 13 SECONDS WEST, 601.47 FEET (SOUTH 89 DEGREES 17 MINUTES 44 SECONDS WEST, 620.02 FEET, RECORD) TO A 5/8" CAPPED REBAR SET ON THE EAST RIGHT OF WAY LINE OF GUMWOOD ROAD; THENCE ALONG THE EAST RIGHT OF WAY LINE OF GUMWOOD ROAD, NORTH 00 DEGREES 28 MINUTES 39 SECONDS WEST, 566.05 FEET (NORTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 573.41 FEET, RECORD) TO THE POINT OF BEGINNING.

ALSO:

Proposed Ordinance No: 2022-37

Ordinance No: _____

RIGHTS AND BENEFITS OF AN EASEMENT AGREEMENT DATED AUGUST 25, 1988, BETWEEN UNIVERSITY GARDENS, INC., AN INDIANA CORPORATION AND CHARTER MEDICAL-ST. JOSEPH COUNTY, INC., AN INDIANA CORPORATION RECORDED AUGUST 29, 1988 AS DOCUMENT NUMBER 8823780 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

TRACT 2:

THE FOLLOWING DESCRIBED REAL ESTATE IN ST. JOSEPH COUNTY, IN THE STATE OF INDIANA, TO WIT:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 27 WHICH IS NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST 606.06 FEET (RECORD NORTH 613.48 FEET) FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27, SAID POINT ALSO BEING SOUTH 715.00 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27, AND SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF GROUND DESCRIBED AS PARCEL I ON DEED DOCUMENT NO. 9810239 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA, RECORDER'S OFFICE; THENCE ALONG THE BOUNDARY OF SAID PARCEL FOR THE NEXT FOUR COURSES, SOUTH 89 DEGREES 45 MINUTES 41 SECONDS EAST, 198.00 FEET (RECORD NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST) AND NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 55.00 FEET AND NORTH 89 DEGREES 45 MINUTES 41 SECONDS WEST, 198.00 FEET (RECORD SOUTH WEST) TO THE WEST LINE OF SAID SECTION 27 AND THENCE ALONG SAID WEST LINE, SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 55.00 FEET (RECORD SOUTH) TO THE POINT OF BEGINNING. LESS AND EXCEPT THE FOLLOWING:

THE WEST FORTY (40) FEET OF THE FOLLOWING-DESCRIBED REAL ESTATE:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 27 WHICH IS NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST 606.06 FEET (RECORD NORTH 613.48 FEET) FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27, SAID POINT ALSO BEING SOUTH 715.00 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27, AND SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF GROUND DESCRIBED AS PARCEL I ON DEED DOCUMENT NO. 9810239 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA, RECORDER'S OFFICE; THENCE ALONG THE BOUNDARY OF SAID PARCEL FOR THE NEXT FOUR COURSES, SOUTH 89 DEGREES 45 MINUTES 41 SECONDS EAST, 198.00 FEET (RECORD NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST) AND NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 55.00 FEET AND NORTH 89 DEGREES 45 MINUTES 41 SECONDS WEST, 198.00 FEET (RECORD SOUTH WEST) TO THE WEST LINE OF SAID SECTION 27 AND THENCE ALONG SAID WEST LINE, SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 55.00 FEET (RECORD SOUTH) TO THE POINT OF BEGINNING.

COMMON ADDRESS: Northeast Corner of North Main Street and East University Drive

Proposed Ordinance No: 2022-37

Ordinance No: _____

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as S-2 Planned Unit Development subject to the attached conditions:

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions - The subject parcel is a vacant parcel of land located at the northeast corner of N. Main Street and E. University Drive. These roads are highly travelled commercial corridors providing major north-south access, and to a lesser extent east-west access, through the City. Adjacent land uses include a multi-tenant office park to the north; an apartment complex, veterinary hospital, and vacant unincorporated land to the east; a multi-tenant shopping center to south; and a hotel and medical buildings to the west.
2. Character of Buildings - The character of the buildings within the surrounding area is mixed with multi-tenant offices, apartments, medical, a hotel, and single and multi-tenant commercial.
3. The most desirable/highest and best use - Because of the parcel's proximity to both commercial and residential uses, the most desirable use for the property is a mixed use commercial and residential development as proposed.
4. Conservation of property values - The proposed zoning should not be injurious to property values in the surrounding area. The property is currently zoned for commercial use, and with the additional proposed commercial and residential uses will be compatible with the adjacent existing uses.
5. Comprehensive Plan - The 2000 Mishawaka Comprehensive Plan, created in 1990, guided service commercial development within this property. The proposal is consistent with the Comprehensive Plan

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2022, at _____ o'clock ____ M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

Proposed Ordinance No: _____

Ordinance No: _____

PRESENTED by me to the Mayor this _____ day of _____, 2022,
at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2022, at
_____ o'clock _____.M.

David A. Wood, Mayor

PETITION #22-17
NEC North Main Street and East University Drive
Conditions of Approval

Uses:

1. Permitted uses shall be limited to those identified in the C-1 General Commercial Zoning District and supplemented as follows.
2. One lot may contain a commercial car wash and vacuuming facility.
3. Two lots may contain a restaurant with a drive thru.
4. Multifamily Residential R-3 uses.
5. Residential uses may be combined with commercial uses, where the commercial use is on the ground floor and residential uses located above the commercial use.
6. Off-premise signs/billboards shall be prohibited.
7. Outside storage and display shall be prohibited.
8. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view as follows:
 - a. Dumpsters shall be screened by a wall matching the buildings materials of the principal building.
 - b. Dumpster locations shall be located a minimum of 120' away from the public right-of-way of Main Street and University Drive.

Traffic Impact:

1. Any additional right-of-way, and road improvements, required for either Main Street or University Drive improvements associated with the proposed development project shall be dedicated and/or constructed at the sole expense of the developer. The City may at its discretion work with the developer to create a separate agreement to participate if signal access to University Drive is negotiated between the developer and the adjacent property owner.
2. Phasing improvements associated with this project shall be determined by the City Director of Engineering.
3. The number, locations, and/or type of curb cuts on any City street to access the project site shall be determined by the City Director of Engineering. Conceptually access shall include one temporary right-in-right-out access on University Drive and one permanent access on Main Street that shall preclude any left turn movement out of the development site to travel south bound on Main Street. The temporary right-in-right-out access on University Drive shall be removed concurrent with any connection to the property to the east that provides access to University Drive. Installation of unmountable medians, and/or, modifications to existing medians shall be required as part of any access installation.
4. Improvements shall take place as determined by the City Director of Engineering as identified on approved final site plan(s).

Road Access and Internal Circulation:

1. A hierarchy of the internal vehicular road networks shall be provided as follows:
 - a. A minimum access throat/stacking area on the site shall be provided at each proposed entrance point from its intersection with the public right-of-way as may be approved by the City Director of Engineering as part of any final site plan approval.

- b. An internal drive shall be provided in a dedicated easement that connects internal lots between Main Street and University Drive. All lots shall have legal dedicated access to both public streets. The internal access drive shall be constructed as part of Phase 1. Sidewalk and landscape installation associated with the drive shall be determined as part of each subsequent planned unit development submission.
 - c. Internal stacking and turning movements at internal intersections shall be provided and protected based on actual proposed uses as the planned unit development is built out. This hierarchy shall be reviewed as part of each subsequent final planned unit development site plan submission.
 2. Access and utility easements shall be dedicated for the potential future development of the property to the east. The number and location of access and utility connections shall be determined by the City and shall connect to the dedicated internal drive easement required herein.
 3. A sidewalk and/or pedestrian plan shall be submitted concurrent with the filling of the first final planned unit development site plan submission, including:
 - a. Pedestrian access within the site to all businesses. This could be a walk on one side of the internal access drive as may be determined by the developer.
 - b. Pedestrian access at a minimum from within the site to the northeast corner of the intersection of Main Street and University Drive.

Stormwater Management:

1. The type and extent of stormwater facilities proposed within the PUD shall be limited/restricted by the City Director of Engineering.

Lighting:

1. All site lighting shall be limited to 30 feet in height.
2. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
3. Location and shielding of all proposed lighting shall be used to minimize impact to projected and future residential uses on and adjacent to the site.

Signage:

1. Signage shall be allowed in accordance with the Mishawaka C-1 on-premise sign standards and varied as follows:
 - a. Each buildable lot within the Planned Unit Development shall be permitted one freestanding monument sign consistent with the City Freestanding sign corridor overlay district on Main Street and University Drive.
 - b. Any additional identification signage, if necessary, shall be limited to one freestanding monument sign per entrance on University Drive and Main Street consistent with the City Freestanding sign corridor overlay district on Main Street and University Drive, and shall only be permitted for the advertising of a lot within the planned unit development that does not have frontage on the public right of way and only has access to the internal drive.
 - c. All freestanding monument signs shall be located a minimum of 100' apart and shall not obstruct or create clear vision area issues with the proposed access points on University Drive or Main Street.
 - d. Temporary construction fence covering which may include information about the project, elevations, renderings, slogans, logos, advertising, and other similar information shall be allowed up to the point of occupancy of the

principal building on any given lot within the Planned Unit Development during its construction.

Car Wash Specific Restrictions:

1. Supplemental to the C-1 required landscaping, a mounded 2-4' high planted landscaped strip shall be required continuously adjacent to the public right-of-way where the car wash lot is adjacent to public right of way.
2. Building signage shall be limited to 120 square feet per building façade, with a maximum of 400 square feet for the façade signage for the entire building.
3. Internal directional signage for the car wash shall not be plainly visible from the public right of way. Small ground mounted signs shall be used where practical.
4. All vacuums, if provided, shall be located on the east of the eastern side of the building, if provided (furthest away from Main Street), and shall be a minimum of 50' from the right of way of University Drive.
5. Flag poles, if provided shall be a minimum of 25' from any public right of way, and a maximum of 50' in height.
6. Per the City's Design review; development plan restrictions, building materials for all facades of the building shall be 100% architecturally appropriate materials. Each façade shall consist of a minimum of 60% masonry.
7. Detailing, waxes, and oil changes may occur only as an accessory to the principle use as a car wash. Standalone detailing and oil change facilities shall not be permitted as a use.

Landscaping:

1. Landscaping shall follow the established standards in the C-1 General Commercial District and as supplemented as follows:
 - a. An opaque six-foot fence shall be mandatory along property lines that are contiguous to any residentially zoned property, in conjunction with a combination of the following:
 - i. One deciduous shade (over-story) tree every 40 feet; or
 - ii. One evergreen tree for every 10 feet.
 - iii. This buffer area shall be a minimum of 15' wide. Planting may be clustered instead of evenly spaced to most effectively provide the necessary screen.
2. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission. Phasing of installation shall occur concurrent with development, except that the Planning Commission may require the installation of screening and buffering along property lines prior to when adjacent developments are proposed when deemed necessary/appropriate.
3. Decorative landscaping shall be provided at the northeast corner of Main Street and University drive as measured by 10' perpendicularly from the existing corner cut, adjacent to and outside of the right-of-way. This area shall include mixed planting materials of various heights including evergreen and flowering material, and may not include any signage or other accessory structure. Plantings shall not obstruct or create clear vision area problems. This landscaping shall be installed as part of the first phase of construction.
4. Decorative landscaping shall be provided at the corner of each drive approach/access point to public right of way within the Planned Unit Development as measured by a 15' triangular corner cut, adjacent to and outside of the right-of-way. This area shall

include mixed planting materials of various heights including evergreen and flowering material, and may not include any signage or other accessory structure other than directional signs. Plantings shall not obstruct or create clear vision area problems. This landscaping shall be installed as part of the first phase of construction.

5. Planting of trees as required by ordinance for each development lot/project shall be a mix of ornamental and deciduous shade trees. Shade trees may include columnar varieties.
6. A minimum 10' wide planting area shall be provided adjacent to all public right of way and on either side of the internal access drive for required plantings. This area shall be in addition to any required right-of-way or easements required to be dedicated.
7. Deciduous shade trees, which may include columnar varieties, and/or ornamental trees shall be planted adjacent to the internal access drive easement on both sides that match the planting requirement of the ordinance adjacent to the public right of way with the intent to provide a tree lined street. Only shade trees, which may include columnar varieties shall be planted adjacent to any sidewalk.

Parking:

1. The car wash shall provide parking to meet maximum staffing levels including overlap of shift changes plus 2 visitor parking spaces.
2. For residential uses, a minimum of 1.2 spaces per residential unit shall be provided.
3. All other uses shall meet the minimum standards identified by the City of Mishawaka Zoning Ordinance.

Setbacks:

1. Setbacks for Commercial uses shall follow the established standards in the C-1 General Commercial District.
2. Setbacks for residential uses shall follow the established standards in the R-3 Multi-family residential district.

Building Height:

1. Building height for all structures shall not exceed 60'.

Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first final planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads, sidewalks, pedestrian access, and other related infrastructure.

STAFF REPORT

Location: Northeast Corner of N. Main Street & E. University Drive

Date: October 11, 2022

Petition: 22- 17

Prepared By: DJS / KBP

GENERAL INFORMATION

Applicant: Memorial Health Systems / Abonmarche Consultants

Status: Property Owner / Surveyor, Engineer & Site Design Consultant

Request: Rezone from C-1 General Commercial District & S-2 Planned Unit Development District to the S-2 Planned Unit Development District to allow for a mixed use development to include commercial uses, a car wash, two restaurants with drive-thru facilities, and residential

Zoning Classification: C-1 General Commercial District & S-2 Planned Unit Development District

Lot Size: Approximately 10 acres including the N. Main Street & E. University Drive rights-of-way

Applicable Regulations: Section 137-671 thru 137-679 / Planned Unit Development S-2 District, Section 137-40 / Plan Commission, and Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Office Park – Multi-Tenant Buildings / University Gardens)

South: C-2 Shopping Center Commercial (Single & Multi-Tenant Buildings / University Commons anchored by Target)

East: C-1 General Commercial (Veterinary Office / University Park Veterinary Hospital), R-3 Multi-Family Residential (Apartments / Spring Lake), and Unincorporated St. Joseph County

West: S-2 Planned Unit Development (Hotel & Medical Uses / Baymont Inn & Memorial Lighthouse Imaging Center)

Thoroughfare: N. Main Street & E. University Drive

School District: Penn-Harris-Madison School Corporation

Township: Harris

Public Utilities: All public utilities are available and will be connected to/throughout the site at the developer's expense.

Comprehensive Plan: Service Commercial

ANALYSIS

The Petitioner is requesting to rezone property located at the northeast corner of N. Main Street and E. University Drive from the C-1 General Commercial District and S-2 Planned Unit Development District to the S-2 Planned Unit Development District to allow for commercial uses, a Drive n' Shine car wash, two restaurants with drive-thru facilities, and townhome/multi-family residential. The first phase of the development will include the car wash facility. Future phases will include commercial and residential uses per market demand. The PUD shall be known as the University and Main PUD.

The approximate 10 acre property, including the adjacent rights-of-way, is currently vacant and zoned for general commercial use. When annexed into the City in 1987, the property was occupied by Charter Hospital of South Bend. The hospital was demolished in the late 1990s. A small parking lot and access drives, which served the hospital, remain on the site. These improvements will be removed with the proposed redevelopment of the property.

The property is surrounded by a multi-tenant office park to the north; an apartment complex, veterinary hospital, and vacant unincorporated land to the east; a multi-tenant shopping center to south; and a hotel and medical buildings to the west. The proposed mixed-use development is consistent with the recommended use per the comprehensive plan and compatible with the existing adjacent office, commercial, medical, and multi-family residential uses. Prior to the widening and realignment of E. University Drive, formerly a two-lane county road (Cass Road), a majority of the property to the south between N. Main Street and Fir Road was vacant. Commercial development of the corridor spurred following the road improvements completed in the early 2000s.

The conceptual site plan submitted with the petition shows a car wash and vacuum center within the southwest corner of the property with several commercial and residential buildings accessed by a common "U" shaped collector drive. Permitted uses shall be limited to those identified in the C-1 General Commercial District, one car wash and vacuuming facility, two restaurants with drive-thru facilities, and R-3 Multi-Family Residential uses. Residential use is permitted above ground-level commercial uses.

The proposed planned unit development re-opens an ongoing discussion regarding automobile related uses being proposed on Main Street. Most recently, a Valvoline Oil Change facility was proposed in the current Home Depot parking lot that was approved by the Common Council with a 5-4 vote which was subsequently vetoed by the Mayor. The Mayor's veto was not overridden and the project ended up relocating to Grape Road and is currently under construction.

When the developer approached staff regarding this request, there were a number of outlying factors that we felt should be considered. First, was an acknowledgement from the developer of the City's desire to maintain a high standard for the corridor and that the development request includes more property than just a car wash. The developer identified that they would be willing to commit to a higher level of signage, landscaping, and building materials for the car wash.

The other extenuating factor is the location of the property and the associated access restrictions associated with it. This parcel has been marketed for years, with not much interest except for a few automobile oriented uses which had contacted staff. Despite being in a very prominent location, the access to the site is limited on Main Street and University Drive by the amount of traffic and stacking that occurs at the intersection. Barring negotiating with the adjacent landowner to the east for access to the traffic signal that provides access to the Target Center, any access located on University Drive would be limited to a right-in/right-out and would require the construction of a median in the road at considerable expense. Main Street access is a little better, but access would still be limited by having no left out of the site. Construction of the concrete barrier islands, deceleration lanes, and other required improvements in the public right-of-way as conceptually shown on the site plan will be the responsibility of the developer. All road improvements are subject to review and approval by the Department of Engineering. The right-in/right-out access on E. University Drive is not ideal. As mentioned, the contingent developer has approached the owner of the veterinary hospital to the east in an effort to acquire the property or allow a common access drive through the property to provide access via the existing signalized intersection. To date, these efforts have not been successful. The Engineering Department commented that the site

should include a stub/access drive along the east property line to accommodate a future drive extension to access the traffic signal.

The combination of commitments of development standards, the site challenges, and the fact that Midas Muffler and Brake shop is located just west of the intersection of Main and University has allowed staff to recommend in favor of the request. As with almost all requests we receive, there are inherent positives and negatives associated with requests. If it were not for all three factors- the multiple years of unsuccessful marketing of the property with access restrictions, the higher commitments on the developmental standards, and the presence of Midas very close to the proposed site, staff would not have provided a favorable recommendation.

The proposed landscaping, parking, signage and other developmental regulations are outlined below in the conditions of approval. The developer had submitted proposed standards which staff then modified to reflect what we believe the intent should be regarding a "higher" standard for the auto use and the larger planned unit development at this prominent Main Street intersection. Staff's conditions provide a higher standard for building materials, restrictions on signage, a requirement to provide a higher level of landscaping, and places a restriction on uses to limit the planned unit development to only one car wash and two drive thru restaurants. In addition to just the car wash, the conditions are intended to direct the overall layout and quality of the planned unit development.

Similar to other planned unit developments, the contingent developer is only proposing to establish the range of permitted uses and basic development requirements of the planned unit development. The petitioner's proposed development regulations are attached to the petition. As mentioned, Planning Staff used this a basis for drafting the below conditions.

If approved, a more detailed final planned unit development site plan would be submitted at a later date identifying road improvements, storm drainage, grading, landscaping, and other required improvements.

The Electric Department commented that easements and electric route/service will need to be determined.

The Water Department commented that they should be contacted regarding water service, metering, or backflow needs.

The Building and Fire Departments have reviewed and approved the request providing no comments.

RECOMMENDATION

Staff recommends in favor of Petition 22-17 to rezone approximately 10 acres located at the northeast corner of N. Main Street and E. University Drive from the C-1 General Commercial District and S-2 Planned Unit Development District to the S-2 Planned Unit Development District to allow for commercial uses, a car wash, two restaurants with drive-thru facilities, and townhome/multi-family residential subject to the following PUD development standards/conditions:

Uses:

1. Permitted uses shall be limited to those identified in the C-1 General Commercial Zoning District and supplemented as follows.
2. One lot may contain a commercial car wash and vacuuming facility.
3. Two lots may contain a restaurant with a drive thru.
4. Multifamily Residential R-3 uses.
5. Residential uses may be combined with commercial uses, where the commercial use is on the ground floor and residential uses located above the commercial use.
6. Off-premise signs/billboards shall be prohibited.
7. Outside storage and display shall be prohibited.
8. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view as follows:
 - a. Dumpsters shall be screened by a wall matching the buildings materials of the principal building.

- b. Dumpster locations shall be located a minimum of 120' away from the public right-of-way of Main Street and University Drive.

Traffic Impact:

1. Any additional right-of-way, and road improvements, required for either Main Street or University Drive improvements associated with the proposed development project shall be dedicated and/or constructed at the sole expense of the developer. The City may at its discretion work with the developer to create a separate agreement to participate if signal access to University Drive is negotiated between the developer and the adjacent property owner.
2. Phasing improvements associated with this project shall be determined by the City Director of Engineering.
3. The number, locations, and/or type of curb cuts on any City street to access the project site shall be determined by the City Director of Engineering. Conceptually access shall include one temporary right-in-right-out access on University Drive and one permanent access on Main Street that shall preclude any left turn movement out of the development site to travel south bound on Main Street. The temporary right-in-right-out access on University Drive shall be removed concurrent with any connection to the property to the east that provides access to University Drive. Installation of unmountable medians, and/or, modifications to existing medians shall be required as part of any access installation.
4. Improvements shall take place as determined by the City Director of Engineering as identified on approved final site plan(s).

Road Access and Internal Circulation:

1. A hierarchy of the internal vehicular road networks shall be provided as follows:
 - a. A minimum access throat/stacking area on the site shall be provided at each proposed entrance point from its intersection with the public right-of-way as may be approved by the City Director of Engineering as part of any final site plan approval.
 - b. An internal drive shall be provided in a dedicated easement that connects internal lots between Main Street and University Drive. All lots shall have legal dedicated access to both public streets. The internal access drive shall be constructed as part of Phase 1. Sidewalk and landscape installation associated with the drive shall be determined as part of each subsequent planned unit development submission.
 - c. Internal stacking and turning movements at internal intersections shall be provided and protected based on actual proposed uses as the planned unit development is built out. This hierarchy shall be reviewed as part of each subsequent final planned unit development site plan submission.
2. Access and utility easements shall be dedicated for the potential future development of the property to the east. The number and location of access and utility connections shall be determined by the City and shall connect to the dedicated internal drive easement required herein.
3. A sidewalk and/or pedestrian plan shall be submitted concurrent with the filling of the first final planned unit development site plan submission, including:
 - a. Pedestrian access within the site to all businesses. This could be a walk on one side of the internal access drive as may be determined by the developer.
 - b. Pedestrian access at a minimum from within the site to the northeast corner of the intersection of Main Street and University Drive.

Stormwater Management:

1. The type and extent of stormwater facilities proposed within the PUD shall be limited/restricted by the City Director of Engineering.

Lighting:

1. All site lighting shall be limited to 30 feet in height.
2. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.

3. Location and shielding of all proposed lighting shall be used to minimize impact to projected and future residential uses on and adjacent to the site.

Signage:

1. Signage shall be allowed in accordance with the Mishawaka C-1 on-premise sign standards and varied as follows:
 - a. Each buildable lot within the Planned Unit Development shall be permitted one freestanding monument sign consistent with the City Freestanding sign corridor overlay district on Main Street and University Drive.
 - b. Any additional identification signage, if necessary, shall be limited to one freestanding monument sign per entrance on University Drive and Main Street consistent with the City Freestanding sign corridor overlay district on Main Street and University Drive, and shall only be permitted for the advertising of a lot within the planned unit development that does not have frontage on the public right of way and only has access to the internal drive.
 - c. All freestanding monument signs shall be located a minimum of 100' apart and shall not obstruct or create clear vision area issues with the proposed access points on University Drive or Main Street.
 - d. Temporary construction fence covering which may include information about the project, elevations, renderings, slogans, logos, advertising, and other similar information shall be allowed up to the point of occupancy of the principal building on any given lot within the Planned Unit Development during its construction.

Car Wash Specific Restrictions:

1. Supplemental to the C-1 required landscaping, a mounded 2-4' high planted landscaped strip shall be required continuously adjacent to the public right-of-way where the car wash lot is adjacent to public right of way.
2. Building signage shall be limited to 120 square feet per building façade, with a maximum of 400 square feet for the façade signage for the entire building.
3. Internal directional signage for the car wash shall not be plainly visible from the public right of way. Small ground mounted signs shall be used where practical.
4. All vacuums, if provided, shall be located on the east of the eastern side of the building, if provided (furthest away from Main Street), and shall be a minimum of 50' from the right of way of University Drive.
5. Flag poles, if provided shall be a minimum of 25' from any public right of way, and a maximum of 50' in height.
6. Per the City's Design review; development plan restrictions, building materials for all facades of the building shall be 100% architecturally appropriate materials. Each façade shall consist of a minimum of 60% masonry.
7. Detailing, waxes, and oil changes may occur only as an accessory to the principle use as a car wash. Standalone detailing and oil change facilities shall not be permitted as a use.

Landscaping:

1. Landscaping shall follow the established standards in the C-1 General Commercial District and as supplemented as follows:
 - a. An opaque six-foot fence shall be mandatory along property lines that are contiguous to any residentially zoned property, in conjunction with a combination of the following:
 - i. One deciduous shade (over-story) tree every 40 feet; or
 - ii. One evergreen tree for every 10 feet.
 - iii. This buffer area shall be a minimum of 15' wide. Planting may be clustered instead of evenly spaced to most effectively provide the necessary screen.
2. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission. Phasing of installation shall occur concurrent with development, except that the Planning Commission may require the installation of screening and buffering along property lines prior to when adjacent developments are proposed when deemed necessary/appropriate.

3. Decorative landscaping shall be provided at the northeast corner of Main Street and University drive as measured by 10' perpendicularly from the existing corner cut, adjacent to and outside of the right-of-way. This area shall include mixed planting materials of various heights including evergreen and flowering material, and may not include any signage or other accessory structure. Plantings shall not obstruct or create clear vision area problems. This landscaping shall be installed as part of the first phase of construction.
4. Decorative landscaping shall be provided at the corner of each drive approach/access point to public right of way within the Planned Unit Development as measured by a 15' triangular corner cut, adjacent to and outside of the right-of-way. This area shall include mixed planting materials of various heights including evergreen and flowering material, and may not include any signage or other accessory structure other than directional signs. Plantings shall not obstruct or create clear vision area problems. This landscaping shall be installed as part of the first phase of construction.
5. Planting of trees as required by ordinance for each development lot/project shall be a mix of ornamental and deciduous shade trees. Shade trees may include columnar varieties.
6. A minimum 10' wide planting area shall be provided adjacent to all public right of way and on either side of the internal access drive for required plantings. This area shall be in addition to any required right-of-way or easements required to be dedicated.
7. Deciduous shade trees, which may include columnar varieties, and/or ornamental trees shall be planted adjacent to the internal access drive easement on both sides that match the planting requirement of the ordinance adjacent to the public right of way with the intent to provide a tree lined street. Only shade trees, which may include columnar varieties shall be planted adjacent to any sidewalk.

Parking:

1. The car wash shall provide parking to meet maximum staffing levels including overlap of shift changes plus 2 visitor parking spaces.
2. For residential uses, a minimum of 1.2 spaces per residential unit shall be provided.
3. All other uses shall meet the minimum standards identified by the City of Mishawaka Zoning Ordinance.

Setbacks:

1. Setbacks for Commercial uses shall follow the established standards in the C-1 General Commercial District.
2. Setbacks for residential uses shall follow the established standards in the R-3 Multi-family residential district.

Building Height:

1. Building height for all structures shall not exceed 60'.

Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first final planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads, sidewalks, pedestrian access, and other related infrastructure.

This recommendation is based on the following findings of fact:

1. Existing Conditions- The subject parcel is a vacant parcel of land located at the northeast corner of N. Main Street and E. University Drive. These roads are highly travelled commercial corridors providing major north-south access, and to a lesser extent east-west access, through the City. Adjacent land uses include a multi-tenant office park to the north; an apartment complex, veterinary hospital, and

vacant unincorporated land to the east; a multi-tenant shopping center to south; and a hotel and medical buildings to the west.

2. Character of Buildings – The character of the buildings within the surrounding area is mixed with multi-tenant offices, apartments, medical, a hotel, and single and multi-tenant commercial.
3. The most desirable/highest and best use – Because of the parcel's proximity to both commercial and residential uses, the most desirable use for the property is a mixed use commercial and residential development as proposed.
4. Conservation of property values - The proposed zoning should not be injurious to property values in the surrounding area. The property is currently zoned for commercial use, and with the additional proposed commercial and residential uses will be compatible with the adjacent existing uses.
5. The 2000 Mishawaka Comprehensive Plan, created in 1990, guided service commercial development within this property. The proposal is consistent with the Comprehensive Plan

ATTACHMENTS

Aerial, Photograph(s), Petition, Conceptual Site Plan, Location Map



Aerial Photograph
Vacant Property
Northeast Corner of N. Main Street & E. University Drive



P1. Looking northerly toward the site from the southeast corner of N. Main St. & E. University Dr.



P2. Looking northeasterly toward the site from the southwest corner of N. Main St. & E. University Dr.

PETITION #22-17
NEC North Main Street and East University Drive
Conditions of Approval

Uses:

1. Permitted uses shall be limited to those identified in the C-1 General Commercial Zoning District and supplemented as follows.
2. One lot may contain a commercial car wash and vacuuming facility.
3. Two lots may contain a restaurant with a drive thru.
4. Multifamily Residential R-3 uses.
5. Residential uses may be combined with commercial uses, where the commercial use is on the ground floor and residential uses located above the commercial use.
6. Off-premise signs/billboards shall be prohibited.
7. Outside storage and display shall be prohibited.
8. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view as follows:
 - a. Dumpsters shall be screened by a wall matching the buildings materials of the principal building.
 - b. Dumpster locations shall be located a minimum of 120' away from the public right-of-way of Main Street and University Drive.

Traffic Impact:

1. Any additional right-of-way, and road improvements, required for either Main Street or University Drive improvements associated with the proposed development project shall be dedicated and/or constructed at the sole expense of the developer. The City may at its discretion work with the developer to create a separate agreement to participate if signal access to University Drive is negotiated between the developer and the adjacent property owner.
2. Phasing improvements associated with this project shall be determined by the City Director of Engineering.
3. The number, locations, and/or type of curb cuts on any City street to access the project site shall be determined by the City Director of Engineering. Conceptually access shall include one temporary right-in-right-out access on University Drive and one permanent access on Main Street that shall preclude any left turn movement out of the development site to travel south bound on Main Street. The temporary right-in-right-out access on University Drive shall be removed concurrent with any connection to the property to the east that provides access to University Drive. Installation of unmountable medians, and/or, modifications to existing medians shall be required as part of any access installation.
4. Improvements shall take place as determined by the City Director of Engineering as identified on approved final site plan(s).

Road Access and Internal Circulation:

1. A hierarchy of the internal vehicular road networks shall be provided as follows:
 - a. A minimum access throat/stacking area on the site shall be provided at each proposed entrance point from its intersection with the public right-of-way as may be approved by the City Director of Engineering as part of any final site plan approval.

- b. An internal drive shall be provided in a dedicated easement that connects internal lots between Main Street and University Drive. All lots shall have legal dedicated access to both public streets. The internal access drive shall be constructed as part of Phase 1. Sidewalk and landscape installation associated with the drive shall be determined as part of each subsequent planned unit development submission.
 - c. Internal stacking and turning movements at internal intersections shall be provided and protected based on actual proposed uses as the planned unit development is built out. This hierarchy shall be reviewed as part of each subsequent final planned unit development site plan submission.
- 2. Access and utility easements shall be dedicated for the potential future development of the property to the east. The number and location of access and utility connections shall be determined by the City and shall connect to the dedicated internal drive easement required herein.
- 3. A sidewalk and/or pedestrian plan shall be submitted concurrent with the filling of the first final planned unit development site plan submission, including:
 - a. Pedestrian access within the site to all businesses. This could be a walk on one side of the internal access drive as may be determined by the developer.
 - b. Pedestrian access at a minimum from within the site to the northeast corner of the intersection of Main Street and University Drive.

Stormwater Management:

- 1. The type and extent of stormwater facilities proposed within the PUD shall be limited/restricted by the City Director of Engineering.

Lighting:

- 1. All site lighting shall be limited to 30 feet in height.
- 2. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
- 3. Location and shielding of all proposed lighting shall be used to minimize impact to projected and future residential uses on and adjacent to the site.

Signage:

- 1. Signage shall be allowed in accordance with the Mishawaka C-1 on-premise sign standards and varied as follows:
 - a. Each buildable lot within the Planned Unit Development shall be permitted one freestanding monument sign consistent with the City Freestanding sign corridor overlay district on Main Street and University Drive.
 - b. Any additional identification signage, if necessary, shall be limited to one freestanding monument sign per entrance on University Drive and Main Street consistent with the City Freestanding sign corridor overlay district on Main Street and University Drive, and shall only be permitted for the advertising of a lot within the planned unit development that does not have frontage on the public right of way and only has access to the internal drive.
 - c. All freestanding monument signs shall be located a minimum of 100' apart and shall not obstruct or create clear vision area issues with the proposed access points on University Drive or Main Street.
 - d. Temporary construction fence covering which may include information about the project, elevations, renderings, slogans, logos, advertising, and other similar information shall be allowed up to the point of occupancy of the

principal building on any given lot within the Planned Unit Development during its construction.

Car Wash Specific Restrictions:

1. Supplemental to the C-1 required landscaping, a mounded 2-4' high planted landscaped strip shall be required continuously adjacent to the public right-of-way where the car wash lot is adjacent to public right of way.
2. Building signage shall be limited to 120 square feet per building façade, with a maximum of 400 square feet for the façade signage for the entire building.
3. Internal directional signage for the car wash shall not be plainly visible from the public right of way. Small ground mounted signs shall be used where practical.
4. All vacuums, if provided, shall be located on the east of the eastern side of the building, if provided (furthest away from Main Street), and shall be a minimum of 50' from the right of way of University Drive.
5. Flag poles, if provided shall be a minimum of 25' from any public right of way, and a maximum of 50' in height.
6. Per the City's Design review; development plan restrictions, building materials for all facades of the building shall be 100% architecturally appropriate materials. Each façade shall consist of a minimum of 60% masonry.
7. Detailing, waxes, and oil changes may occur only as an accessory to the principle use as a car wash. Standalone detailing and oil change facilities shall not be permitted as a use.

Landscaping:

1. Landscaping shall follow the established standards in the C-1 General Commercial District and as supplemented as follows:
 - a. An opaque six-foot fence shall be mandatory along property lines that are contiguous to any residentially zoned property, in conjunction with a combination of the following:
 - i. One deciduous shade (over-story) tree every 40 feet; or
 - ii. One evergreen tree for every 10 feet.
 - iii. This buffer area shall be a minimum of 15' wide. Planting may be clustered instead of evenly spaced to most effectively provide the necessary screen.
2. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission. Phasing of installation shall occur concurrent with development, except that the Planning Commission may require the installation of screening and buffering along property lines prior to when adjacent developments are proposed when deemed necessary/appropriate.
3. Decorative landscaping shall be provided at the northeast corner of Main Street and University drive as measured by 10' perpendicularly from the existing corner cut, adjacent to and outside of the right-of-way. This area shall include mixed planting materials of various heights including evergreen and flowering material, and may not include any signage or other accessory structure. Plantings shall not obstruct or create clear vision area problems. This landscaping shall be installed as part of the first phase of construction.
4. Decorative landscaping shall be provided at the corner of each drive approach/access point to public right of way within the Planned Unit Development as measured by a 15' triangular corner cut, adjacent to and outside of the right-of-way. This area shall

include mixed planting materials of various heights including evergreen and flowering material, and may not include any signage or other accessory structure other than directional signs. Plantings shall not obstruct or create clear vision area problems. This landscaping shall be installed as part of the first phase of construction.

5. Planting of trees as required by ordinance for each development lot/project shall be a mix of ornamental and deciduous shade trees. Shade trees may include columnar varieties.
6. A minimum 10' wide planting area shall be provided adjacent to all public right of way and on either side of the internal access drive for required plantings. This area shall be in addition to any required right-of-way or easements required to be dedicated.
7. Deciduous shade trees, which may include columnar varieties, and/or ornamental trees shall be planted adjacent to the internal access drive easement on both sides that match the planting requirement of the ordinance adjacent to the public right of way with the intent to provide a tree lined street. Only shade trees, which may include columnar varieties shall be planted adjacent to any sidewalk.

Parking:

1. The car wash shall provide parking to meet maximum staffing levels including overlap of shift changes plus 2 visitor parking spaces.
2. For residential uses, a minimum of 1.2 spaces per residential unit shall be provided.
3. All other uses shall meet the minimum standards identified by the City of Mishawaka Zoning Ordinance.

Setbacks:

1. Setbacks for Commercial uses shall follow the established standards in the C-1 General Commercial District.
2. Setbacks for residential uses shall follow the established standards in the R-3 Multi-family residential district.

Building Height:

1. Building height for all structures shall not exceed 60'.

Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first final planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads, sidewalks, pedestrian access, and other related infrastructure.

SEP 01 2022

City Clerk
Mishawaka, IN



DATE: August 23, 2022

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION TO REZONE

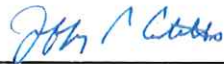
The undersigned **Memorial Health Systems Inc** respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

See attached legal description.

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 General Commercial District and S-2 Planned Unit Development District. Said property is currently vacant.

Petitioner(s) desire said real estate to be rezoned to S-2 Planned Unit Development District. Petitioner(s) further state that they intend to utilize said land for.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.



Jeff Costello
Memorial Health Systems

CONTACT PERSON:

Steve Ruby, PLA
Abonmarche Consultants
(574) 528-2201
sruby@abonmarche.com

TRACT 1:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, WHICH IS DESCRIBED AS: BEGINNING AT A 5/8" CAPPED REBAR SET ON THE EAST RIGHT OF WAY LINE OF GUMWOOD ROAD WHICH IS IN NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST, 40.00 FEET FROM A POINT ON THE WEST LINE OF SECTION 27 AND CENTERLINE OF GUMWOOD ROAD WHICH IS SOUTH 00 DEGREES 28 MINUTES 39 SECONDS EAST, 714.90 FEET (S 00 DEGREES 21 MINUTES 04 SECONDS EAST, 715.00 FEET, RECORD) FROM A BRASS 'PLUG FOUND MARKING THE NORTHWEST CORNER OF SECTION 27; THENCE NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST 147.66 FEET (158.00 FEET, RECORD) TO A FOUND 1/2" REBAR; THENCE NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 55 FEET TO A FOUND 1/2" REBAR; THENCE NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST, 462.00 FEET TO A FOUND 1/2" REBAR; THENCE SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 621.77 FEET (627.26 FEET, RECORD) TO A 5/8" CAPPED REBAR SET ON THE NORTH RIGHT OF WAY LINE OF CASS ROAD; THENCE ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89 DEGREES 27 MINUTES 13 SECONDS WEST, 601.47 FEET (SOUTH 89 DEGREES 17 MINUTES 44 SECONDS WEST, 620.02 FEET, RECORD) TO A 5/8" CAPPED REBAR SET ON THE EAST RIGHT OF WAY LINE OF GUMWOOD ROAD; THENCE ALONG THE EAST RIGHT OF WAY LINE OF GUMWOOD ROAD, NORTH 00 DEGREES 28 MINUTES 39 SECONDS WEST, 566.05 FEET (NORTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 573.41 FEET, RECORD) TO THE POINT OF BEGINNING.

ALSO:

RIGHTS AND BENEFITS OF AN EASEMENT AGREEMENT DATED AUGUST 25, 1988, BETWEEN UNIVERSITY GARDENS, INC., AN INDIANA CORPORATION AND CHARTER MEDICAL-ST. JOSEPH COUNTY, INC., AN INDIANA CORPORATION RECORDED AUGUST 29, 1988 AS DOCUMENT NUMBER 8823780 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

TRACT 2:

THE FOLLOWING DESCRIBED REAL ESTATE IN ST. JOSEPH COUNTY, IN THE STATE OF INDIANA, TO WIT:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 27 WHICH IS NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST 606.06 FEET (RECORD NORTH 613.48 FEET) FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27, SAID POINT ALSO BEING SOUTH 715.00 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27, AND SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF GROUND DESCRIBED AS PARCEL I ON DEED DOCUMENT NO. 9810239 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA, RECORDER'S OFFICE; THENCE ALONG THE BOUNDARY OF SAID PARCEL FOR THE NEXT FOUR COURSES, SOUTH 89 DEGREES 45 MINUTES 41 SECONDS EAST, 198.00 FEET (RECORD NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST) AND NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 55.00 FEET AND NORTH 89 DEGREES 45 MINUTES 41 SECONDS WEST, 198.00 FEET (RECORD SOUTH WEST) TO THE WEST LINE OF SAID SECTION 27 AND THENCE ALONG SAID WEST LINE, SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 55.00 FEET (RECORD SOUTH) TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING:

THE WEST FORTY (40) FEET OF THE FOLLOWING-DESCRIBED REAL ESTATE:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 27 WHICH IS NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST 606.06 FEET (RECORD NORTH 613.48 FEET) FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27, SAID POINT ALSO BEING SOUTH 715.00 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27, AND SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF GROUND DESCRIBED AS PARCEL I ON DEED DOCUMENT NO. 9810239 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA, RECORDER'S OFFICE; THENCE ALONG THE BOUNDARY OF SAID PARCEL FOR THE NEXT FOUR COURSES, SOUTH 89 DEGREES 45 MINUTES 41 SECONDS EAST, 198.00 FEET (RECORD NORTH 89 DEGREES 24 MINUTES 04 SECONDS EAST) AND NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 55.00 FEET AND NORTH 89 DEGREES 45 MINUTES 41 SECONDS WEST, 198.00 FEET (RECORD SOUTH WEST) TO THE WEST LINE OF SAID SECTION 27 AND THENCE ALONG SAID WEST LINE, SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 55.00 FEET (RECORD SOUTH) TO THE POINT OF BEGINNING.

Uses:

1. Permitted uses shall be limited to those identified in the C-1 General Commercial and C-2 Shopping Center Commercial Districts.
2. One car wash may be allowed.
3. Two restaurants with a drive through may be allowed.
4. Townhomes and/or Multifamily Residential uses may be allowed.
5. Residential uses may be combined with commercial uses, where the commercial use is on the ground floor and residential uses located above the commercial use.
6. Off-premise signs/billboards shall be prohibited.
7. Outside storage and display shall be prohibited.
8. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view as follows:
 - a. Dumpsters shall be screened by a wall matching the buildings materials of the principal building.
 - b. Dumpster locations shall be located away from any roads and out of view of Main Street and University Drive.

Traffic Impact:

1. Any additional right-of-way required for either Main Street or University Drive improvements associated with the proposed development project shall be dedicated.
2. Phasing improvements associated with this project shall be determined by the City Director of Engineering.
3. The number, locations, and/or type of curb cuts on any City street to access the project site shall be determined by the City Director of Engineering.
4. Improvements shall take place consistent with an approved site plan as required herein.

Road and Pedestrian Connections:

1. A hierarchy of the internal vehicular road networks shall be provided as follows:
 - a. A minimum access throat/stacking area of 85 lineal feet on the site shall be provided at each proposed entrance point from its intersection with the public right-of-way.
 - b. Internal stacking and turning movements at intersections shall be provided and protected based on actual proposed uses as the planned unit development is built out.
 - c. This hierarchy shall be reviewed as part of each subsequent final planned unit development site plan submission.
2. Access and utility easements shall be dedicated for the potential future development of the property to the east.
3. A sidewalk and/or pedestrian access plan shall be submitted concurrent with the filling of the first final planned unit development site plan submission, including:
 - a. Pedestrian access within the site to all businesses located therein, except the car wash;
 - b. Pedestrian access at a minimum from within the site to the northeast corner of the intersection of Main Street and University Drive; and

Stormwater Management:

1. The type and extent of stormwater facilities proposed within the PUD shall be limited/restricted by the City Director of Engineering.

Lighting:

1. All site lighting shall be limited to 25 feet in height.
2. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
3. Shielding of lighting shall be required to the on-site residential uses and to current and future residential uses to the east of the site.

Signage:

1. Signage shall be allowed in accordance with the Mishawaka C-1 on-premise sign standards and varied as follows:
 - a. The car wash site at the corner of Main Street and University Drive shall be allowed two freestanding signs, with a maximum combined size of 450 square feet and 270 square feet of copy area.
 - b. An additional freestanding sign shall be allowed on the lot at the northeast corner of Main Street and University Drive for a development sign with space for each business in the development. The sign shall be a maximum of 35 feet in height, 450 square feet in size, and 270 square feet in copy area. A signage easement shall be established for this sign to allow the multiple businesses within the site to place a sign on the directory sign.
 - c. Seasonal banners and general development identification banners may be allowed for decorative and parking lot light poles throughout the site.
 - d. Temporary construction fence covering which may include information about the project, elevations, renderings, slogans, logos, advertising, and other similar information shall be allowed.

Landscaping:

1. Landscaping shall follow the established standards in the C-1 General Commercial District and varied as follows:
 - a. An opaque six-foot fence shall be mandatory along property lines that are contiguous to any residentially zoned property, in conjunction with one of or a combination of the following:
 - i. One deciduous shade (over-story) tree every 30 feet; or
 - ii. Eight evergreen trees for every 100 feet.
2. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission. Phasing of installation shall occur concurrent with development, except that the Planning Commission may require the installation of screening and buffering along property lines prior to when adjacent developments are proposed when deemed necessary/appropriate.

Parking:

1. The car wash shall have no minimum parking requirements.
2. For residential uses, a minimum of 1 spaces per residential unit shall be provided.

3. All other uses shall require a minimum of 4 spaces per 1,000 sq. ft. of floor area.

Setbacks:

1. Setbacks shall follow the established standards in the C-1 General Commercial District.

Building Height:

1. Building height shall follow the established standards in the C-1 General Commercial District.

Phasing:

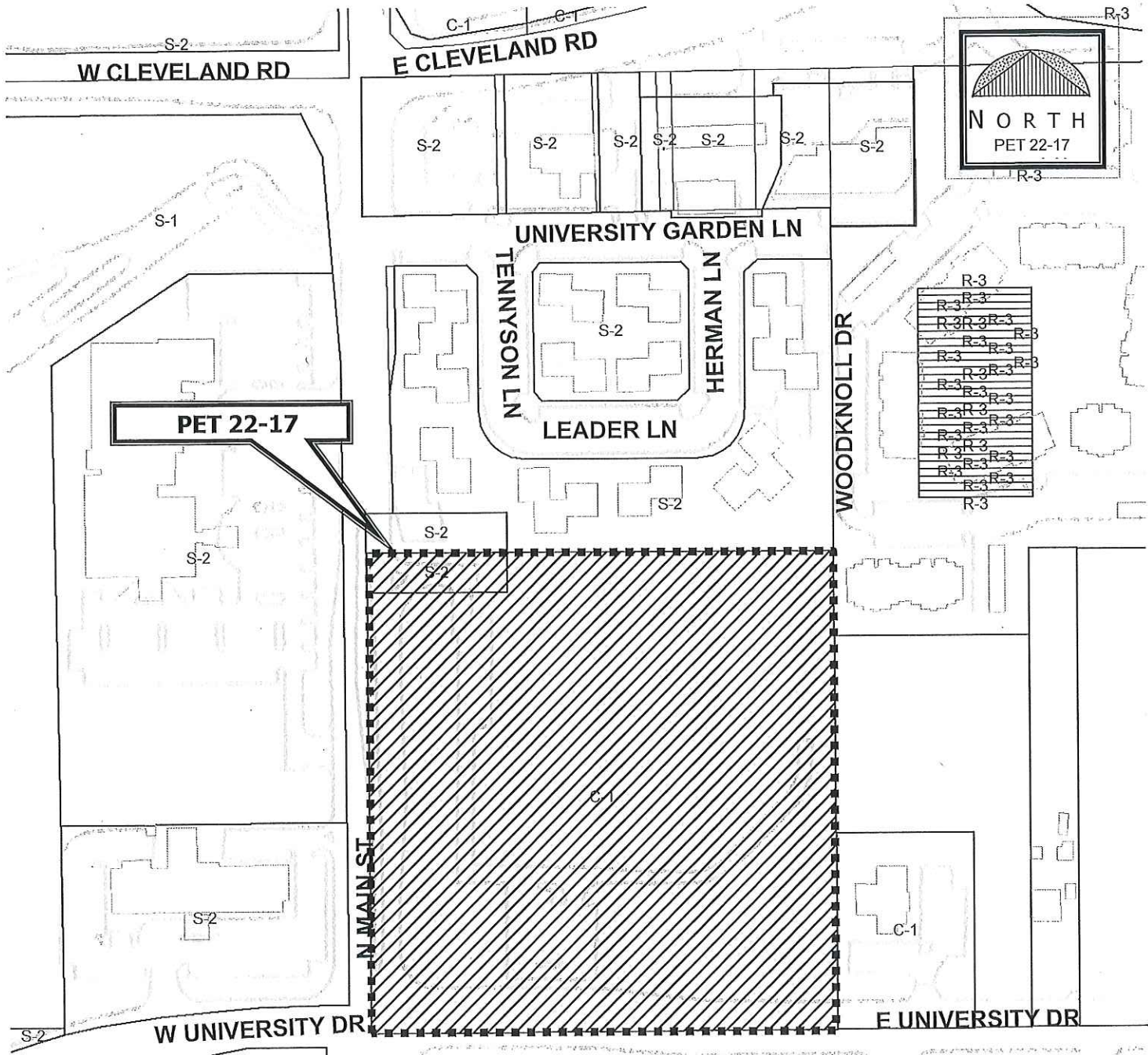
1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first final planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads, sidewalks, pedestrian access, and other related infrastructure.



PROJECT:
UNIVERSITY & MAIN DEVELOPMENT
MISHAWAKA, INDIANA

ABONMARCHE
 315 W. Jefferson Blvd.
 South Bend, IN 46601
 T 574.232.8700
 F 574.261.4440
 abonmarc@aol.com

ISSUED BY	
DESIGNED BY	DH
CHECKED BY	
PA REVIEWER	
DATE	
CLASSIC VIEW	
TOTAL	
SIGNATURE	
DATE	
SCALE	
HORIZ.	1" = 50'
VERT:	
ACROSS	
22-0781	
SHEET NO.	
1 of 1	



Location Map PET 22-17

MEMORIAL HEALTH SYSTEM INC.
(CURRENT OWNER)

NE CORNER OF N. MAIN ST. &
E. UNIVERSITY DR.

REZONING FROM C-1 GENERAL COMM.
TO S-2 PLANNED UNIT DEVELOPMENT
TO ALLOW A MIXED-USE COMMERCIAL
& RESIDENTIAL DEVELOPMENT

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, AMC, MMC

OCT 12 2022

City Clerk
Mishawaka, IN

PETITION 22-18

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2022-38

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

A PARCEL OF LAND BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 28; THENCE NORTH 0 DEGREES 06 MINUTES 19 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 28, A DISTANCE OF 596.36 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 0 DEGREES 06 MINUTES 19 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 80.00 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 58 SECONDS WEST, A DISTANCE OF 372.32 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET; THENCE SOUTH 20 DEGREES 00 MINUTES 16 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET, A DISTANCE OF 85.12 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 58 SECONDS EAST, A DISTANCE OF 401.74 FEET TO THE PLACE OF BEGINNING.

COMMON ADDRESS: 5540 North Main Street

which real estate is now classified as S-2 Planned Unit Development shall hereafter be amended to allow for a restaurant with drive-thru, reduction in the number of parking spaces, and the use of fiber cement board.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

Proposed Ordinance No: 2022-38

Ordinance No: _____

1. Existing Conditions – The subject property is currently occupied by an existing dine-in only restaurant. Adjacent uses include a restaurant with drive-thru and hotel to the north, a multi-family residential apartment complex to the east, a restaurant with drive-thru to the south, and a multi-tenant commercial building and two restaurants with drive-thru facilities to the west.
2. Character of Buildings in Area – Buildings along N. Main Street between Douglas Road and Indian Ridge Boulevard include a hotel, a bank, several restaurants with drive-thru facilities, a food distribution business, an optometrist, an office, a car wash/lube/detailing business, a home improvement retailer, and an office supply business.
3. The most desirable/highest and best use – The requested PUD amendment will allow a restaurant with drive-thru facilities to be constructed on the property which is not currently permitted. Continued commercial or restaurant use, including the proposed auto-oriented restaurant, is the most desirable and best use along this part of the heavily travelled N. Main Street corridor.
4. Conservation of property values – The proposed amendment should not be injurious to property values in the surrounding area. A 7' high solid screening fence is required along the east property line adjacent to the residentially zoned apartment complex.
5. Comprehensive Plan – The property was identified as service commercial in the Mishawaka 2000 Comprehensive Plan. The restaurant with drive-thru use is reasonable consistent with that guided use.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2022, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2022,
at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

Proposed Ordinance No: 2022-38

Ordinance No: _____

APPROVED by me this _____ day of _____, 2022, at
_____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: 5540 N. Main Street

October 11, 2022

Petition: 22- 18

Prepared By: DJS

GENERAL INFORMATION

Applicant: Jinder Food Services Inc. / Net Lease Acquisitions LLC

Status: Property Owner / Contingent Owner & Developer

Request: Amend a part of the N. Main Street Planned Unit Development to allow a restaurant with drive-thru facilities, a reduction in the required number of parking spaces, and use of fiber cement board as an appropriate architectural material

Zoning Classification: S-2 Planned Unit Development District / Permitted for commercial, retail, and office uses

Lot Size: Approximately 0.71 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District (Ord. 4440) & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development District (Restaurant with Drive-Thru / Arby's & Hotel / Comfort Inn & Suites)
South: S-2 Planned Unit Development (Restaurant with Drive-Thru / Culver's)
East: R-3 Multi-Family Residential (Apartment Complex / Indian Lakes)
West: S-2 Planned Unit Development District (Multi-Tenant Commercial / Home Depot and Office Depot & Restaurants with Drive-Thru / Krispy Kreme Doughnuts & Chick-Fil-A)

Thoroughfare: N. Main Street

School District: South Bend Community School Corporation

Township: Clay

Public Utilities: All utilities are available and currently serve the property.

Comprehensive Plan: Service Commercial (Office Parks, Medical Centers, & Hotels)

ANALYSIS

The applicant and contingent owner/developer, Net Lease Acquisitions LLC, is requesting to amend a part of the N. Main Street Planned Unit Development (PUD) to allow a restaurant with drive-thru facilities, a reduction in the required number of parking spaces, and the use of fiber cement board as an appropriate architectural material.

The approximate 0.71 acre property is currently developed with a 3,000 sq. ft. building occupied by Windy City Gyros, a dine-in only restaurant. The building was constructed in 2002 for a Samuel Mancino's Italian Eatery which was in business until 2015. Taste of India occupied the building from 2015 to 2017.

Per the applicable PUD regulations (Ordinance 4440), permitted uses within the property were limited to office/retail, medical service, office buildings, and hotels.

The applicant is proposing to redevelop the site for a 7 Brew Coffee drive-thru. Per the preliminary site plan, the building will be 510 sq. ft. with a one-way access drive to the south leading to a dual-drive through lanes north of the building. Canopies will be provided on both the south and north sides of the building protecting customers and employees when ordering and picking up beverages. Per discussions with the applicant and provided building elevations, there will be no order board or pick up window as employees will personally take orders outside of the building and delivery beverages to the queued vehicles. A total of seven (7) parking spaces are proposed for employees only since no indoor seating will be provided. All of the existing improvements will likely be razed with the exception of the common access drives along the west and east sides of the property. These drives provide common north-south access between all the commercial properties on the east side of N. Main Street between E. Douglas Road and E. Indian Ridge Boulevard. Access is restricted along this section of N. Main Street to three locations for the six commercial properties.

Based on 15 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the C-7 Auto-Oriented Restaurant Commercial use, a total of eight (8) parking spaces are required for the 510 sq. ft. building. As previously mentioned, a total of seven (7) parking spaces are proposed including one (1) ADA compliant space. Planning Staff supports the one (1) space reduction due the proposed coffee shop being drive-thru only.

The C-7 district design review regulations require that a minimum of 2/3 of each building façade visible from the public right-of-way or private collector road serving multiple properties be constructed with appropriate architectural materials. At this property, this requirement is applicable to all façades. Appropriate materials include natural brick, stone or other similar material; glass; exterior insulation and finish systems (EIFS); decorative concrete block or similar masonry units; painted/stained lap wood siding; and other high quality materials as deemed appropriate by the Plan Commission. The proposed building materials include masonry board decorative wall panels and Nichiha SandStone fiber cement panels exclusive of the metal panel roof, aluminum canopy, and all windows and doors. Planning Staff supports the use of these high quality materials regularly used in commercial construction. The proposed gray and maroon colors with the blue accent roof and canopy will meet the color requirements.

Landscaping is required per the minimum landscaping and screening regulations for commercial property (Section 137-815) and per the screening/fencing regulations for the C-7 district [Section 137-457 (10)].

Similar to when the original Planned Unit Development was approved, the petitioner is only proposing to establish, or in this case, amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed Final Planned Unit Development site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

The Engineering Department commented that efforts shall be made to prevent cars in line from blocking the cross-access drive to the Arby's site to the north.

The Electric Department commented that an electric service plan will need to be provided and approved. This comment is applicable to the future Final Site Plan and not specific to the proposed zoning amendment.

The Water Department commented that the water service layout will need to be provided and to contact them regarding water service, metering, or backflow needs. This comment is applicable to the future Final Site Plan and not specific to the proposed zoning amendment.

The Building and Fire Departments have reviewed and approved the request without comment.

RECOMMENDATION

Staff recommends **approval** to amend a part of the N. Main Street Planned Unit Development (PUD) to allow a restaurant with drive-thru facilities, a reduction in the required number of parking spaces, and the use of fiber cement board as an appropriate architectural material.

All other C-7 Auto Oriented Restaurant Commercial District height, area, and development regulations shall remain applicable to the property.

This recommendation is based upon the following findings of fact:

1. Existing Conditions – The subject property is currently occupied by an existing dine-in only restaurant. Adjacent uses include a restaurant with drive-thru and hotel to the north, a multi-family residential apartment complex to the east, a restaurant with drive-thru to the south, and a multi-tenant commercial building and two restaurants with drive-thru facilities to the west.
2. Character of Buildings in Area – Buildings along N. Main Street between Douglas Road and Indian Ridge Boulevard include a hotel, a bank, several restaurants with drive-thru facilities, a food distribution business, an optometrist, an office, a car wash/lube/detailing business, a home improvement retailer, and an office supply business.
3. The most desirable/highest and best use – The requested PUD amendment will allow a restaurant with drive-thru facilities to be constructed on the property which is not currently permitted. Continued commercial or restaurant use, including the proposed auto-oriented restaurant, is the most desirable and best use along this part of the heavily travelled N. Main Street corridor.
4. Conservation of property values – The proposed amendment should not be injurious to property values in the surrounding area. A 7' high solid screening fence is required along the east property line adjacent to the residentially zoned apartment complex.
5. Comprehensive Plan – The property was identified as service commercial in the Mishawaka 2000 Comprehensive Plan. The restaurant with drive-thru use is reasonable consistent with that guided use.

ATTACHMENTS

Aerial, Photographs, Petition, Site Plan, Building Elevations & Photographs Showing Building Materials, Location Map



Aerial Photograph
5540 N. Main Street
Current Dine-In Restaurant (Windy City Gyros)



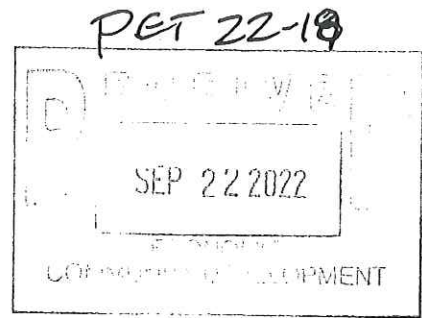
P1. Looking easterly toward the existing restaurant (Windy City Gyros) from the western access drive.



P2. Looking southerly toward the existing building from the property to the north (Arby's).



P3. Looking northwesterly toward the rear of the existing building from the property to the south (Culver's).



DATE: September 19, 2022

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION FOR PUD AMENDMENT – 5540 North Main Street

The undersigned Jinder Food Services Inc. respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

A PARCEL OF LAND BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 28; THENCE NORTH 0 DEGREES 06 MINUTES 19 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 28, A DISTANCE OF 596.36 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 0 DEGREES 06 MINUTES 19 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 80.00 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 58 SECONDS WEST, A DISTANCE OF 372.32 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET; THENCE SOUTH 20 DEGREES 00 MINUTES 16 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET, A DISTANCE OF 85.12 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 58 SECONDS EAST, A DISTANCE OF 401.74 FEET TO THE PLACE OF BEGINNING.

5540 North Main Street, Mishawaka, Indiana, 46544
County Parcel ID: 029-1002-038413

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for Restaurant-use (Windy City Gyros/Mancino's Italian Eatery).

Petitioner(s) desire said real estate to be amended to allow for a Drive-Through Restaurant-use/Coffee Shop based on the C-7 Zoning District with the following requested modification:

- 1. Required parking spaces for this use to be reduced from 15 spaces per 1,000 square feet of gross floor area to 13 spaces per 1,000 square feet of gross floor area.***

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the herein described parcel of land located in the City of Mishawaka.

Jinder Food Services Inc. - Owner

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Petition.doc

an appropriate ordinance be enacted amending the PUD of the herein described parcel of land located in the City of Mishawaka.



Jinder Food Services Inc. - Owner

Net Lease Acquisitions LLC
Owner Under Contract

CONTACT PERSON:

Mark Huonder – Net Lease Acquisitions LLC
1000 Forest Park Blvd., Suite 401
Fort Worth, TX 76610
(651) 357-5723
mh@netleaseproperties.com



Net Lease Acquisitions LLC

Owner Under Contract

CONTACT PERSON:

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1000 Forest Park Blvd., Suite 401

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(651) 357-5723

mh@netleaseproperties.com

C-1

C-1

C-1

W INDIAN RIDGE BLVD



S-2

S-2

S-2

PET 22-18

S-2

R-3

TIMBERLAND DR

N MAIN ST

S.R. 23

S-2

S-2

S-2

S-2

OSAGE LAKE DR

GRAPE RD

Location Map

PET 22-18

JINDER FOOD SERVICES, INC. &
NET LEASE ACQUISITIONS LLC

5540 N. MAIN STREET

PUD AMENDMENT FOR A
RESTAURANT WITH DRIVE-THRU,
REDUCED PARKING &
FIBER CEMENT BOARD

E DOUGLAS RD

C-1