



AGENDA

December 18, 2023

**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): 2339 888 6989
Meeting password: qwJuAWQp753**

**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: 23398886989@mishawaka.webex.com

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of December 04, 2023

5. Petitions, Communications, Remonstrance and Memorial

A letter from the Board of Zoning Appeals regarding their recommendation from their December 12, 2023 meeting.

A letter from the City Plan Commission regarding their recommendation from their December 12, 2023 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2023-57	Rezone from C-1 General Commercial to C-4 Automobile Oriented -411 W. McKinley
P.O. No. 2023-58	Rezone from C-1 General Commercial to R-1 Single Family Residential - 617 E. Grove Street
P.O. No. 2023-59	Authorizing Issuance of Economic Development Tax Increment Revenue Bonds - Grandview Phase III Project

8. Resolutions

R2023-28	Use Variance to allow 4 Storage Containers - 5514 Grape Road (Hobby Lobby)
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9. Ordinances on Second Reading

P.O. No.2023-54	Rezone from I-2 Heavy Industrial to C-4 Automobile Oriented Commercial - 1213 E. Jefferson Blvd. (Assigned to Land Use Planning Committee)
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10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

R2023-29	Honoring 2 nd District Councilmen Mike Bellovich for his years of service
R2023-30	Honoring 5 th District Councilmen Mike Compton for his years of service
R2023-31	Honoring Councilwoman-At-Large Maggie DeMaegd for her years of service

Merry Christmas & Happy New Year

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An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook page, 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>

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by emailing: dblock@mishawaka.in.gov or calling 574-258-1616.

Download Council Packet Link:

<https://mishawaka.in.gov/government/elected-appointed-officials/common-council/council-agendas-minutes/>

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

Deborah S. Block, IAMC, CMO, 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

December 4, 2023

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, December 4, 2023 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

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.

Clerk Block called the roll.

Roll Call.

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

Minutes for the Regular Meeting on November 20, 2023 were approved as received from the Clerk's Office.

Clerk Block read the following appeal and petitions by title.

- | | |
|---------------------------|---|
| Appeal No. 2023-29 | Use Variance to allow 4 Storage Containers – 5514 Grape Road (Hobby Lobby) |
| Appeal No. 2023-25 | Rezone from C-1 General Commercial to C-4 Automobile Oriented – 411 W. McKinley |
| Appeal No. 2023-26 | Rezone from C-1 General Commercial to R-1 Single Family Residential – 617 E. Grove Street |

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

PROPOSED ORDINANCE NO. 2023-54

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 THE CITY OF MISHAWAKA, INDIANA

**Rezone from I-2 Heavy Industrial to C-4 Automobile Oriented Commercial – 1213 E.
Jefferson Blvd.**

Mr. Emmons reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried, and Clerk Block polled the Council on the Committee Report.

Motion passed by unanimous roll call vote (summary: Yes = 7).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Compton, Mr. Hixenbaugh. The committee report passed 7-0.

Mr. Compton made a motion to postpone the second reading and public hearing on **PROPOSED ORDINANCE NO. 2023-54** to the next regularly scheduled council meeting to give the petitioner the opportunity to present. Mr. Banicki seconded the motion and Clerk Block polled the Council on the motion.

Motion passed by unanimous roll call vote (summary: Yes = 7).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Compton, Mr. Hixenbaugh. The motion passed 7-0 and the second reading and public hearing on **PROPOSED ORDINANCE NO. 2023-54** was postponed to the next regularly scheduled council meeting on Monday November 18, 2023.

PROPOSED ORDINANCE NO. 2023-55

**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 THE CITY OF
MISHAWAKA, INDIANA**

**Rezone from C-1 to C-9 Auto & Vehicle Sales for the expansion of Gage Auto – 3813
Lincolnway East**

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried, and Clerk Block polled the Council on the Committee Report.

Motion passed by unanimous roll call vote (summary: Yes = 7).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Compton, Mr. Hixenbaugh. The committee report passed 7-0.

Angela Smith, Danch, Harner & Associates Inc., spoke in favor of **PROPOSED ORDINANCE NO. 2023-55**. Mrs. Smith stated their company had acquired the lot next door in order to expand Gage Auto further. She stated they would keep cars off the street and show more cars in this lot. She stated they would also be making improvements to the landscaping of the property.

Mr. Hixenbaugh asked if there was any reason to be concerned about issues that occurred in the past. Mrs. Smith stated there would be no issues.

Question was called for at 7:11PM for **PROPOSED ORDINANCE NO. 2023-55. Motion passed by unanimous roll call vote (summary: Yes = 7).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5876.**

NEW BUSINESS

Mr. Hixenbaugh announced that there would be changes to various meeting dates for the Mishawaka Common Council in 2024. Mr. Hixenbaugh stated those date changes would be January 2nd changed to January 8th, January 15th changed to January 22nd, April 1st changed to April 8th, April 15th changed to April 22nd, September 3rd changed to September 9th and September 16th changed to September 23rd if passed by the council. The chair entertained a motion to make those meeting date changes in 2024. Mr. Banicki made the motion and with a second from Mr. Banicki, Clerk Block polled the Council on the motion.

Motion passed by unanimous roll call vote (summary: Yes = 7).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Compton, Mr. Hixenbaugh. The motion passed 7-0 and the meeting dates were changed.

Mr. Mammolenti made a reminder that there would be no Twin Branch Neighborhood Watch meeting in December and the first meeting of 2024 would be on January 17th.

ADJOURNMENT 7:14PM

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

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



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

Deborah S. Block, IAC, MMC

DEC 13 2023

City Clerk
Mishawaka, IN

December 13, 2023

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
December 12, 2023, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above date at which time the following Use Variances was considered:

APPEAL #23-39 An appeal submitted by Mullan Associates Limited Partnership (Hobby Lobby) requesting a Use Variance for **5514 Grape Road, Mishawaka, IN**, to allow for up to four storage containers subject to installing an 8' vinyl fence in a gray, and providing landscaping screening (mix of deciduous and evergreens) from 20' south of the drive, a distance of 120' to the south, and three (3) deciduous trees north of the internal drive.

The Board, with a vote of 4-0, recommended approval.

Respectfully,

Donna M Burkart, Administrative Planner
Secretary, Board of Zoning Appeals

STAFF REPORT

Location: 5514 Grape Road (Hobby Lobby)

Date: December 12, 2023

Appeal: 23-39

Prepared By: CH

GENERAL INFORMATION

Applicants: Mullan Associates Limited Partnership (Hobby Lobby)/Spears Lamb – MHA, PLLC

Status: Property Owner (Tenant)/Architect

Request: Use Variance for up to four outside storage containers
Developmental Variance for an increase in fence height to 8'

Zoning Classification: C-2 Shopping Center Commercial

Lot Size: 7.95 Acres

Applicable Regulations: Section 137-326 C-2 Uses
Section 137-42 (4) Board of Zoning Appeals

SPECIAL INFORMATION

Area Development Pattern: North: C-2 Shopping Center Commercial (Firehouse Subs building)
South: C-4 Automobile Oriented Commercial (Gurley Leap)
East: C-2 Shopping Center Commercial (Homegoods, Carters/Oshkosh)
West: C-7 Automobile Oriented Restaurant Commercial (Steak N Shake & Taco Bell)

Thoroughfare: Grape Road and Douglas Road

School District: South Bend Community School Corporation

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the area at the corner of Grape and Douglas as General Commercial.

ANALYSIS

Hobby Lobby is located in the Wilshire Plaza shopping center at the corner of Grape Road and Douglas Road. The business has been there since 1998. Starting in November of 2022, two storage containers were seen via Google Street View. The containers do not appear on our spring 2023 aerial photography, however, the most recent Google Street View (June 2023) shows them again, this time a total of four. When we took site photos, there was only one.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial.

Previously, storage containers have been approved at Big Lots and Dunham's in the Town & Country shopping center, and Dick's Sporting Goods in Princess City Plaza.

The Appellant is requesting to have a maximum of four storage containers on the west side of the building facing Grape Road, around the existing trash compactor (blue). The storage containers would be used for additional inventory, for example, at this time of year, they are storing Christmas trees.

In an attempt to screen the site from the traveling public along Grape Road, the Appellant has agreed to install an 8' vinyl fence in a color to match the building on the west side of the containers and install a row of evergreens. The fence would keep a 37' drive aisle open for vehicles to access the area south of the building. The row of evergreens (specked as Spartan Junipers or similar) will start 20' south of the drive off of Grape Road and extend 120' (approximately 15 trees).

The Planning Staff recommends the gray color of fence. The Planning Staff recommends three deciduous trees in the area to the immediate north of the internal drive to help block the view for southbound Grape Road traffic. Instead of a screen of evergreens, Staff would like some deciduous trees along Grape Road as well. A revised landscaping plan will need to be provided prior to the issuance of any permits.

The minimum size of all required landscape plant materials, at the time of planting, including replacement trees and shrubs, shall be as follows: Deciduous shade (overstory) trees shall be 2½-inch caliper at six inches above the ground. Evergreen trees shall be at least six feet in height.

If the variance is approved, an Improvement Location Permit will need to be issued before the installation of the fence and landscaping.

All pertinent City departments have reviewed and approved the request.

RECOMMENDATION

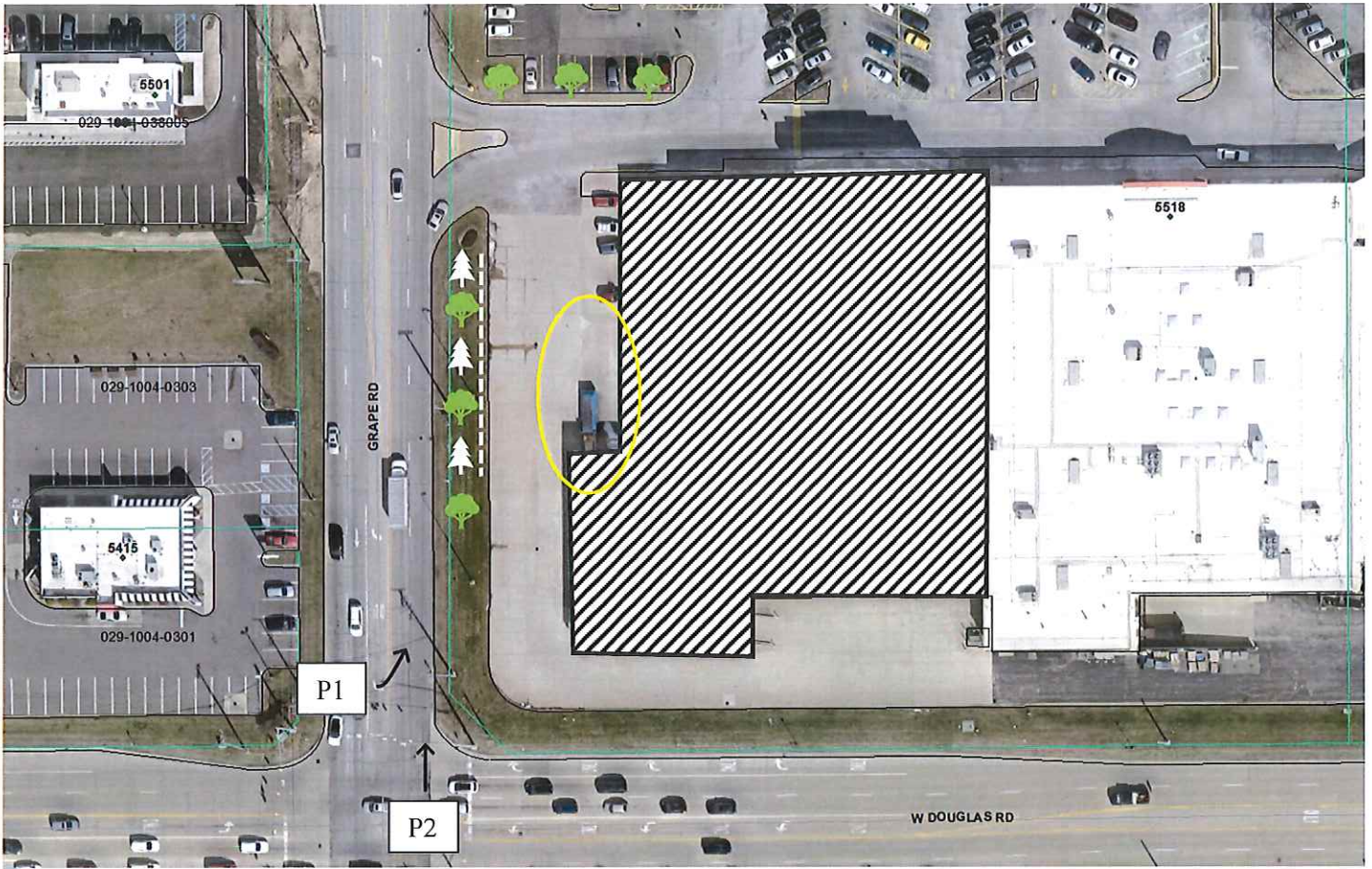
The Staff recommends in favor of Appeal 23-29, a Use Variance to allow outside storage in four containers for property located at 5514 Grape Road, subject to installing an 8' vinyl fence in a gray, and providing landscaping screening (mix of deciduous and evergreens) from 20' south of the drive, a distance of 120' to the south, and three (3) deciduous trees north of the internal drive.

This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with proper buffering, the proposed use will have little to no additional impact on the adjacent commercial uses.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because a fence and landscaping is being added to help screen the view of the containers.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Site Plan, Location Map



Hatched Area = Hobby Lobby tenant space
Yellow Circle = area of outdoor storage (4 storage containers)
Dashed Line = landscaping



P1. View of existing containers while turning north onto Grape Road from eastbound Douglas Road



P2. June 2023 Google Street View



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

December 13, 2023

Deborah S. Block, IAMC, MMC

DEC 13 2023

City Clerk
Mishawaka, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
December 12, 2023, Public Hearing

Honorable Members:

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

PETITION #23-25 A request submitted by Good Oil Company, Inc requesting to rezone property at 411 W McKinley, Mishawaka, IN from C-1 General Commercial to C-4 Automobile Oriented Commercial.

The Commission, with a vote of 6-0, recommended approval.

PETITION #23-26 A request submitted by Felix Martinez and Bernardin Cazares requesting to rezone property at 617 East Grove Street from C-1 General Commercial to R-1 Single Family Residential.

The Commission, with a vote of 6-0, recommended approval.

Respectfully,

Donna M Burkart

Donna Burkart, Administrative Planner
Secretary, Plan Commission

STAFF REPORT

Location: 411 W. McKinley Avenue

Date: Dec. 12, 2023

Petition: 23- 25

Prepared By: DJS

GENERAL INFORMATION

Applicant: Good Oil Company Inc. / Baldwin Realty LLC / Fritz Engineering Services

Status: Property Owner / Contingent Developer / Civil Engineering Consultant

Request: To rezone from C-1 General Commercial to C-4 Automobile Oriented Commercial to allow for the construction of a Take 5 Oil Change – a quick service drive-thru oil change business.

Zoning Classification: C-1 General Commercial District

Lot Size: 0.87 acres

Applicable Regulations: Section 137-379 thru 137-380 / C-4 Automobile Oriented Commercial District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Automobile Oriented Commercial (Automatic Car Wash Facility / John's Auto Spa), C-1 General Commercial (Multi-Tenant Commercial / Starbuck's & Oak Street Health), & (Multi-Tenant Office Building - Bank / PNC Financial Services Group & Insurance / The Sanders Agency Inc.)

South: R-1 Single Family Residential (Residential) & S-1 Extensive Open Space (Public Utility / Mishawaka Electric Substation)

East: C-4 Automobile Oriented Commercial (Convenience Store & Filling Station / Marathon, & Automobile Repair / Liberty Auto Service)

West: C-1 General Commercial (Two-Tenant Commercial Building / Armed Forces Career Center & Olive Health Center)

Thoroughfare: W. McKinley Avenue & Liberty Drive

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the expense of the developer

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners, Good Oil Company Inc. and Baldwin Realty LLC, are requesting to rezone property at 411 W. McKinley Avenue from C-1 General Commercial to C-4 Automobile Oriented Commercial to allow for the construction of Take 5 Oil – a quick service drive-thru oil change business.

The 0.87 acre site, which includes a vacant commercial building, consists of one parcel of property (Tax Parcel 016-2056-1903.01) at the southwest corner of W. McKinley Avenue and Liberty Drive. The building, most recently occupied by Mutual Bank, has been a bank since being constructed in 1974. Adjacent land uses include John's Auto Spa and multi-tenant buildings (Starbucks & Oak Street Health, and PNC Financial Services Group & The Sanders Agency Inc.) to the north; a multi-tenant commercial building (Armed Forces Career Center & Olive Health Center) to the west; single-family residential houses and Mishawaka Electric utility substation to the south; and a Marathon convenience store/gas station and Liberty Auto Service to the east. With the proposed redevelopment of the property, the building and majority of the improvements will be razed.

Per the preliminary site plan, the contingent developer is proposing to construct a one-story 1,760 sq. ft. building with three (3) drive-thru service bays, a twelve (12) space parking lot, and other required infrastructure (utilities, a stormwater collection system, landscaping, etc.).

Access to the site will be provided solely from W. Russ Avenue to the south utilizing the two (2) existing curb cuts/drives. Both drives will allow for unrestricted turning movements to and from W. Russ Avenue. The property currently has one access from W. McKinley Avenue which will be removed. Due to the high traffic volumes on W. McKinley Avenue and proximity to the intersection, maintaining an unrestricted access on W. McKinley was not desired and would likely be a safety hazard for vehicles entering and exiting the property.

Based on 5.5 parking spaces per 1,000 sq. ft. of gross floor area, a total of ten (10) parking spaces are required for the proposed 1,760 sq. ft. building. The preliminary site plan shows that twelve (12) spaces will be provided within a new parking area west of the building and an existing parking row between the access drives on W. Russ Avenue. The access drives and a small portion of the existing paved parking area will be maintained. If the existing parking area is less than the required 10' pavement setback from the Liberty Avenue right-of-way, a developmental variance shall be submitted for review and approval by the Board of Zoning Appeals.

Landscaping and screening shall comply with the commercial landscaping and C-4 Automobile Oriented Commercial District requirements.

Except for the potential pavement setback variance as noted above, the conceptual site plan shows the intent to comply with the height, area and developmental regulations for the C-4 Automobile Oriented Commercial District. If additional variances or a design review waiver for the proposed building materials or colors are required, the Board of Zoning Appeals and/or the Plan Commission shall be petitioned when the final site plan is submitted.

With this petition, the property owner and contingent developer are only seeking to establish the proper zoning required for the proposed use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, soil erosion control, landscaping, and all other required improvements pertinent to the proposed development.

Since the property is currently zoned for general commercial uses and located along the McKinley Avenue commercial corridor, the Staff supports the request for rezoning. The proposed quick service drive-thru oil change business is not out of character and is compatible with the existing adjacent land uses. Two of the four corners of the W. McKinley Avenue and Liberty Drive intersection are zoned to the C-4 District and are occupied by an automatic car wash facility, convenience store/gas station, and automobile repair business. Furthermore, the proposed use is consistent with the historical commercial use of the property and recommended use per the comprehensive plan.

The rezoning petition and preliminary site plan have been routed to all applicable City Departments for review and comment. All departments have reviewed and approved the request.

The Electric Department commented that they should be contacted to discuss electric service needs.

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

The Engineering Department had no comments related to the rezoning petition but provided the following comments to be addressed with the final site plan:

1. The pathway (sidewalk) on the west side of Liberty Drive shall be concrete and not asphalt per Engineering standards.
2. There appears to not be adequate space to provide the required full right turn south bound travel lane on Liberty Drive due to existing utilities.
3. If floor drains are installed, they shall be routed to an oil/sediment water separator.
4. Stormwater management shall be stored on site for 100 year, 24 hour storm event.

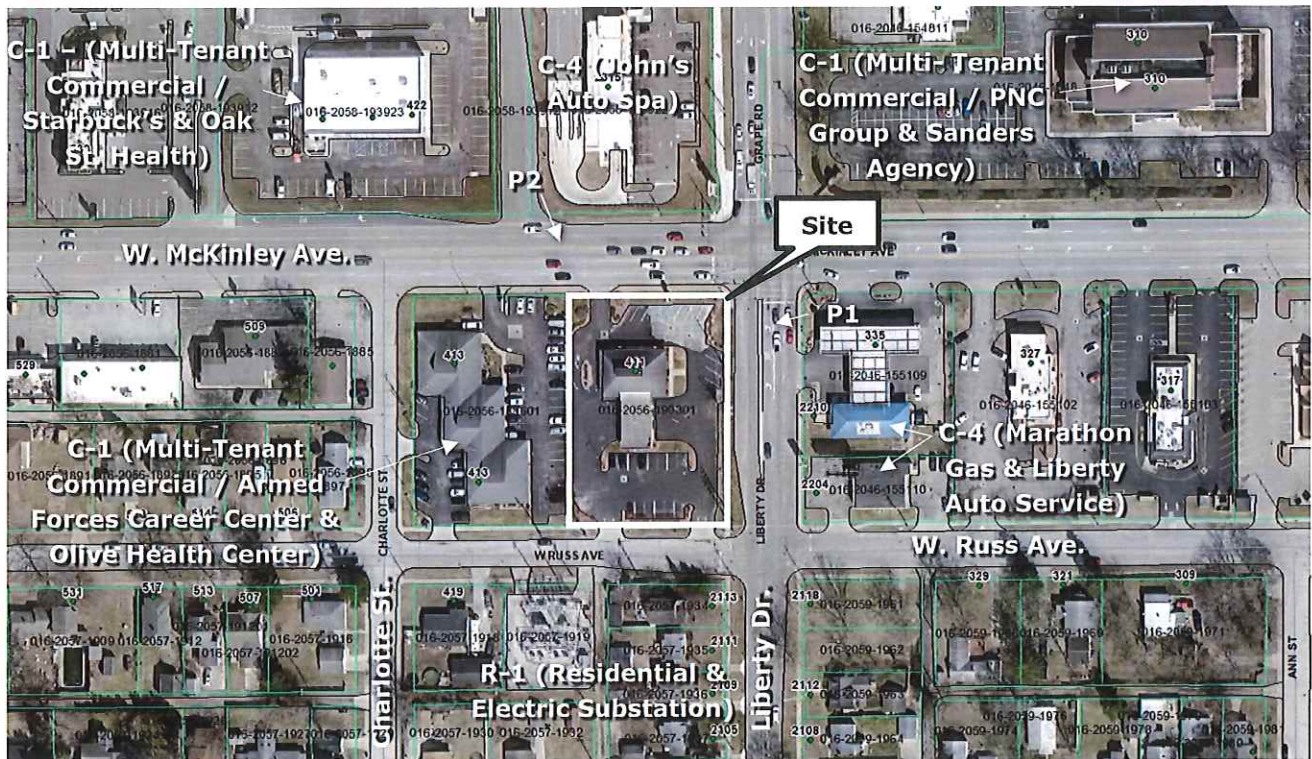
RECOMMENDATION

Staff recommends Petition 23-25 to rezone 0.87 acres of property located at 411 W. McKinley Avenue from C-1 General Commercial to C-4 Automobile Oriented Commercial for a Take 5 Oil Change - a quick service drive-thru oil change business - be forwarded to the Common Council with a **favorable** recommendation. This recommendation is based on the following findings of fact:

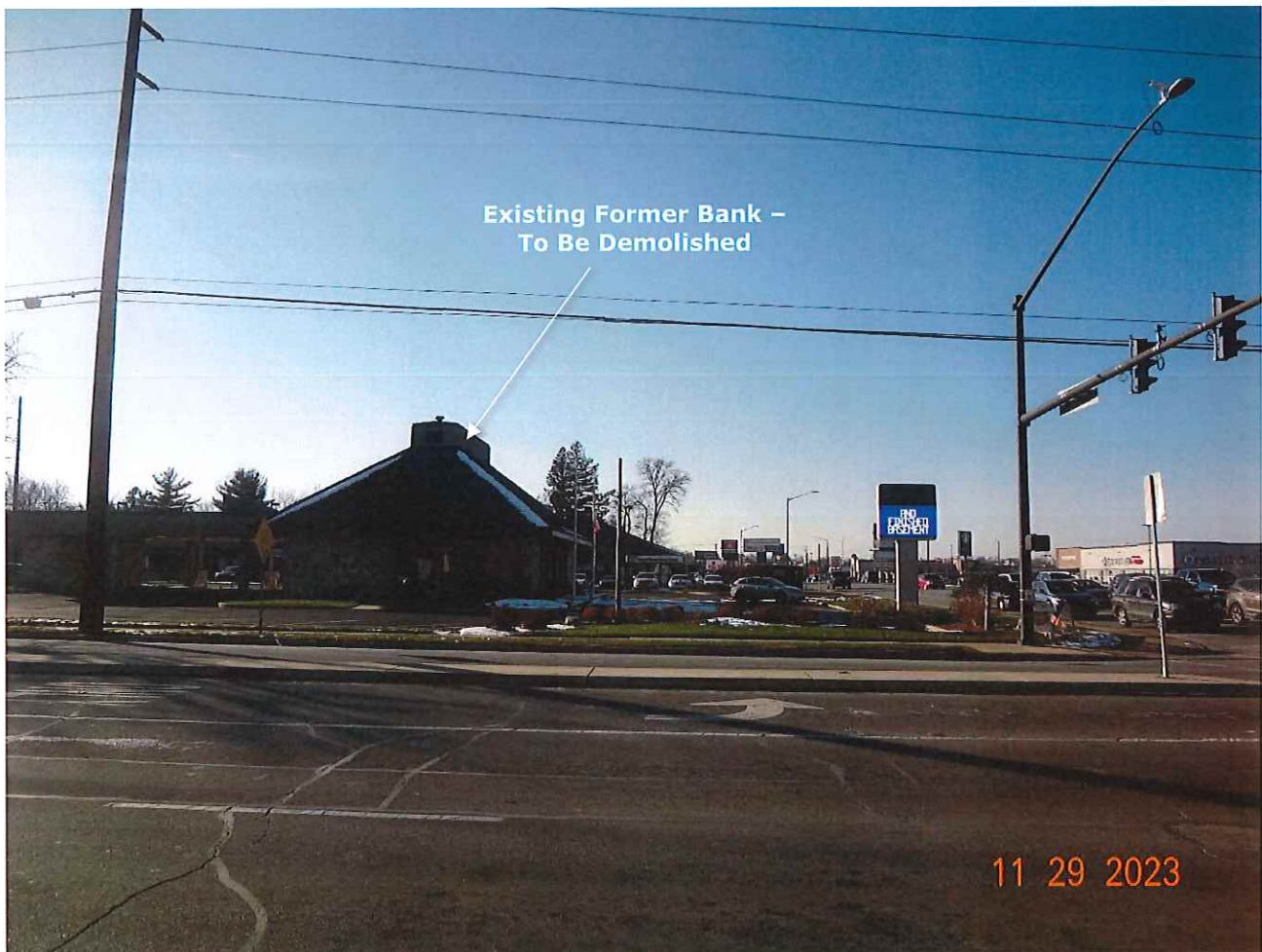
1. Existing Conditions – The subject property, which consists of a vacant commercial structure (formerly a bank), is located at the southwest corner of W. McKinley Avenue and Liberty Drive. McKinley Avenue is a highly travelled corridor providing major east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automatic car wash facility and multi-tenant commercial buildings to the north; a two-tenant commercial building to the west; single-family residential houses and an electric utility substation to the south; and a convenience store/gas station and automobile repair business to the east.
2. Character of Buildings – The character of the buildings in the area varies from single and multi-tenant commercial buildings predominantly along W. McKinley Avenue to single-family residential houses to the south.
3. The most desirable/highest and best use – Because of the property’s location along W. McKinley Avenue, a highly travelled roadway, and the adjacent existing commercial zoning and development, the most desirable use of the property is commercial.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the area. The property is currently zoned for commercial use, formerly a bank, with the adjacent properties occupied by several automobile oriented commercial uses. The proposed quick-service oil change business and other permitted C-4 Automobile Oriented Commercial uses are compatible with the adjacent existing uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within the property and along a majority of the McKinley Avenue corridor. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Site Photographs, Petition, Preliminary Site Plan, Location Map



Aerial Photograph – 411 W. McKinley Avenue
Proposed Take 5 Oil – Quick-Service Oil Change Business



P1. Looking westerly from the southeast corner of W. McKinley Ave. & Liberty Dr. toward the property.



P2. Looking southeasterly from the access drive west of John's Auto Spa toward the property.

STAFF REPORT

Location: 617 E Grove Street

Date: Dec. 12, 2023

Petition: 23 26

Prepared By: DMB

GENERAL INFORMATION

Applicant: Felix Martinez & Bernardin Cazares

Status: Property Owners

Request: Rezone from C-1 General Commercial District to R-1 Single Family Residential

Zoning Classification: C-1 General Commercial District

Lot Size: 0.07 acres

Applicable Regulations: Sec. 137-164 Residential R-1 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential District
South: C-1 General Commercial District (single-family home)
East: C-4 Automobile Oriented Commercial District
West: R-1 Single Family Residential District

Thoroughfare: Southwest corner of E Grove Street and N Cedar Street

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners are requesting to rezone 617 E Grove Street from C-1 General Commercial District to R-1 Single Family Residential District. The property is located on the southwest corner of E Grove Street and N Cedar Street. The neighborhood is a mix of residential and commercial uses along N Cedar Street.

The Petitioners purchased the property in June 2023 and intend to use as their residence. Built in 1929 as a single-family residence, the front of the house facing N Cedar Street, has been used as a shoe repair business in most recent years. The business has been abandoned and any signage referencing the shoe repair business has been removed. In addition, any equipment inside the home has been removed.

Prior to the 1980's residential uses were permitted in commercial zoned districts. Around 1986 the Zoning Ordinance was amended to prohibit residential uses in certain districts.

Pertinent City Departments have reviewed and approved the request.

RECOMMENDATION

The Planning Department recommends **approval** of Petition #23-26 to rezone 617 E Grove Street from C-1 General Commercial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

1. There are commercial uses located along N Cedar Street & E Mishawaka Avenue and residential uses to the north and further west of the property and rezoning the property to R-1 would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;
3. Because the parcel is located in an area with adjacent residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;
4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,
5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with other residential uses in the area.

AERIAL, PHOTOGRAPHS, PETITION, LOCATION MAP



Aerial



Looking west from N Cedar Street



617 E Grove Street – looking south from E Grove Street

This is NOT a fill-in form. It is to be used merely as a GUIDE in preparing your petition.

DATE:

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 (type names(s) of the titleholder(s) of record) 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:

(Give accurate and complete legal description. Tax key numbers and shortened legals alone are not acceptable. Also give the common address or a definitive common location.)

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 District. Said property is (State the existing use of the real estate).

Petitioner(s) desire said real estate to be rezoned to R-1 District. Petitioner(s) further state that they intend to utilize said land for (State the proposed use for the property/ reason for the rezoning).

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.

X Signature(s) of Property Owner(s)

Typewritten name also

Felix Martinez

X Signature(s) of Property Owner(s)

Typewritten name also

Bernardin CALZADAS

CONTACT PERSON:

NAME

FELIX MARTINEZ

ADDRESS

PHONE NUMBER

FAX

EMAIL

901 W FOURTH ST

MISHAWAKA IN 46544

(269) 579-0330

Daxx500@icloud.com

DATE:11/21/23

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 FELIX MARTINEZ AND BERNARDIN CAZARES 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:

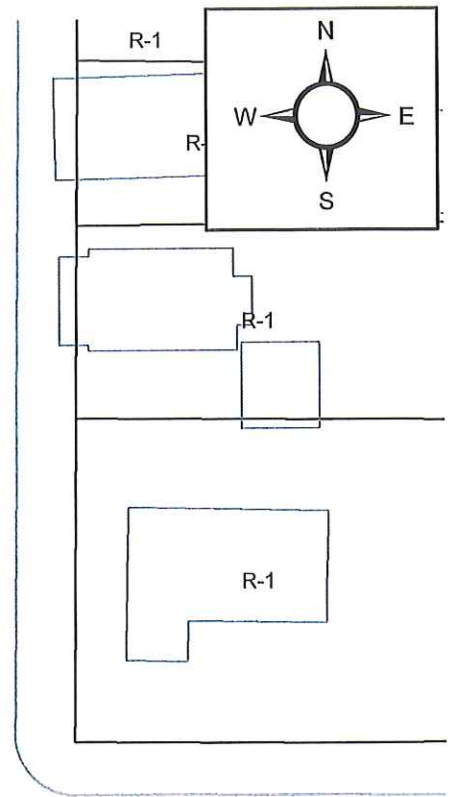
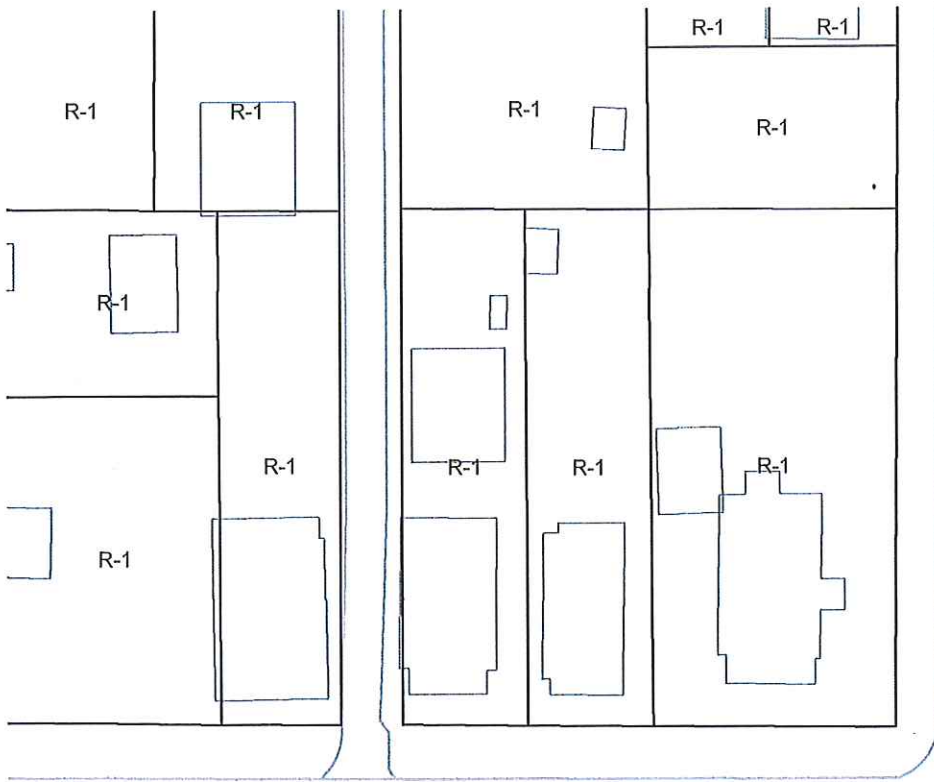
LOT NUMBERED FORTY-FIVE (45) AS SHOWN ON THE RECORDED PLAT OF G.W.R. FOWLER'S FIRST ADDITION TO THE TOWN, NOW CITY OF MISHAWAKA, EXCEPTING THEREFROM A PARCEL OF LAND EIGHTY-FIVE (85) FEET IN LENGTH, NORTH AND SOUTH, TAKEN OFF OF AND FROM THE ENTIRE WIDTH OF THE SOUTH END THEREOF.

COMMONLY KNOWN AS 617 E GROVE

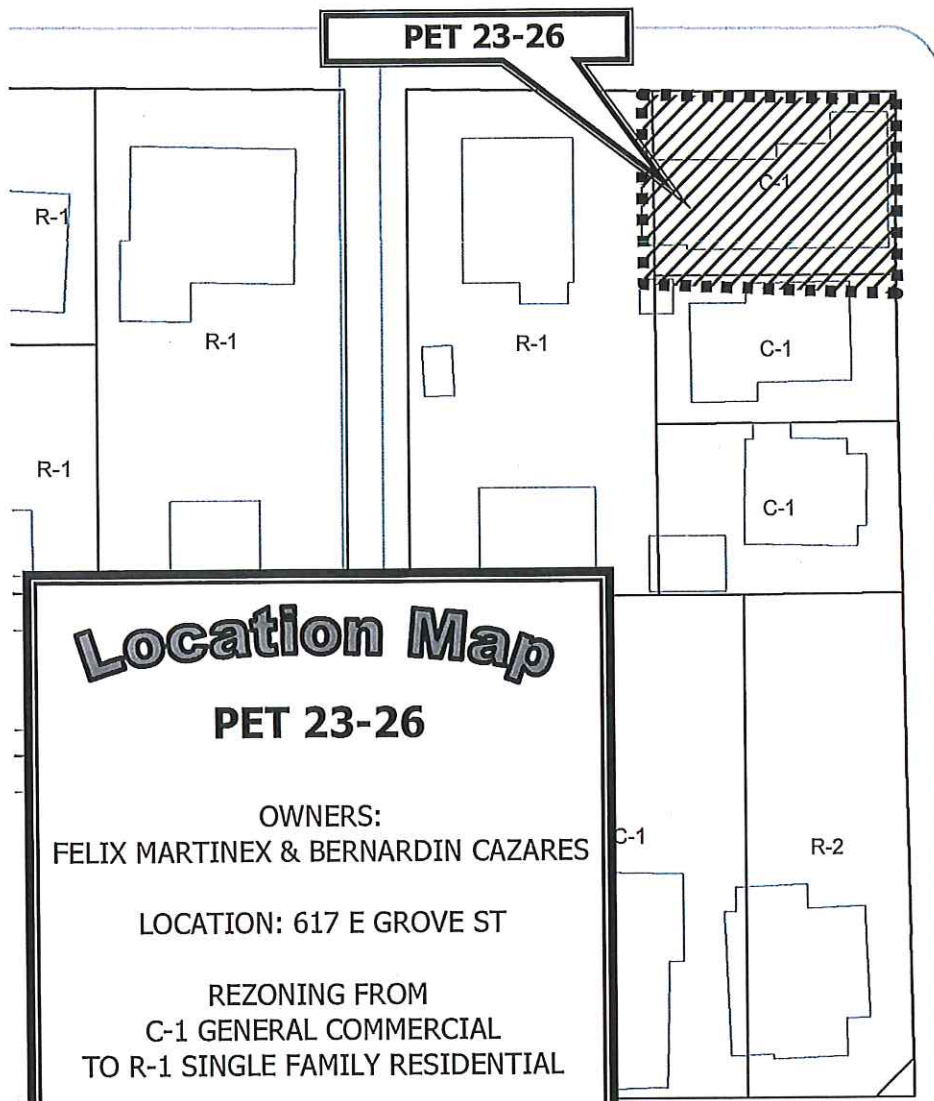
Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 General Commercial District. Said property is a home that previously operated a shoe repair store out of the front.

Petitioner(s) desire said real estate to be rezoned to R-1 Single Family District. Petitioner(s) further state that they intend to utilize said land for exclusively as a single family dwelling.

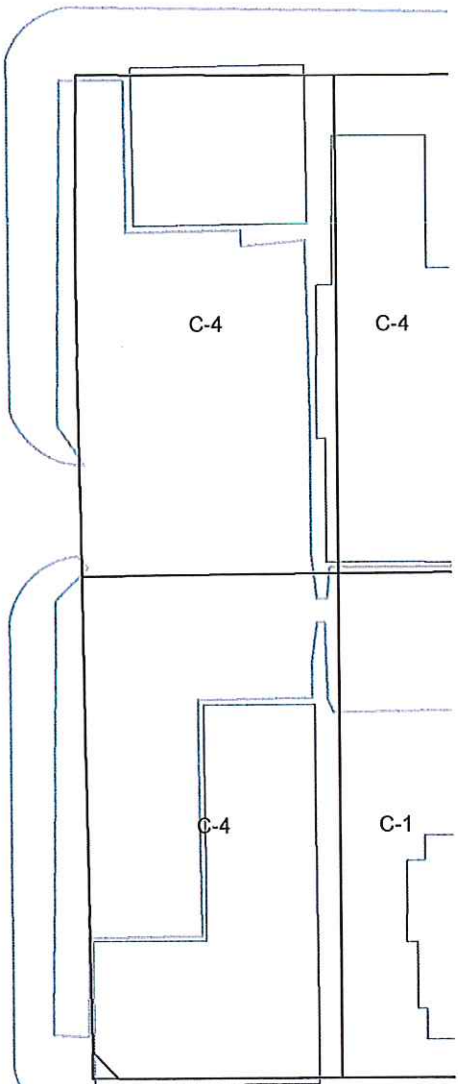
Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.



E GROVE ST



N CEDAR ST



Location Map

PET 23-26

OWNERS:
FELIX MARTINEX & BERNARDIN CAZARES

LOCATION: 617 E GROVE ST

REZONING FROM
C-1 GENERAL COMMERCIAL
TO R-1 SINGLE FAMILY RESIDENTIAL

1st Reading
2nd Reading
Passed
Failed
Continued To

PETITION 23-25

Deborah S. Block, IAMC, MMC

CITY OF MISHAWAKA, INDIANA

DEC 13 2023

PROPOSED ORDINANCE NO. 2023-57

City Clerk
Mishawaka, IN

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, Penn Township, St. Joseph County, State of Indiana, to-wit:

A PARCEL LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, SAID PARCEL BEING LOTS 1-5 AND A 14 FEET VACATED ALLEY LYING WEST OF SAID LOT 1-5, ALSO PART OF LOTS 6 AND 7 AND THE VACATED 14 FOOT ALLEY LYING BETWEEN SAID LOTS AND BEING MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 89 DEGREES 07 MINUTES 01 SECONDS WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET, A DISTANCE OF 162.98 FEET (REC. 163.19 FEET) THENCE NORTH 00 DEGREES 02 MINUTES 04 SECONDS EAST, A DISTANCE OF 233.15 FEET (REC. NORTH 0 DEGREES 1 MINUTES 37 SECONDS EAST 234.01 FEET) TO THE SOUTH RIGHT-OF-WAY LINE OF MCKINLEY AVENUE; THENCE NORTH 89 DEGREES 12 MINUTES 31 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 155.24 FEET; THENCE SOUTH 34 DEGREES 37 MINUTES 39 SECONDS EAST, A DISTANCE OF 13.36 FEET (REC. SOUTH 34 DEGREES 27 MINUTES 52 SECONDS EAST, 13.40 FEET) TO THE WEST RIGHT-OF-WAY LINE OF LIBERTY DRIVE; THENCE SOUTH 00 DEGREES 01 MINUTES 07 SECONDS EAST ALONG THE SAID WEST RIGHT-OF-WAY LINE LIBERTY DRIVE, A DISTANCE OF 221.74 FEET TO THE POINT OF BEGINNING. CONTAINING 0.87 ACRES, MORE OR LESS.

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as C-4 Automobile Oriented Commercial District designated in "The Zoning Ordinance of 1966" as amended.

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

1. Existing Conditions – The subject property, which consists of a vacant commercial structure (formerly a bank), is located at the southwest corner of W. McKinley Avenue and Liberty Drive. McKinley Avenue is a highly travelled corridor providing major east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automatic car wash facility and multi-tenant commercial buildings to the north; a two-tenant commercial building to the west; single-family residential houses and an electric utility

Proposed Ordinance No: _____

Ordinance No: _____

substation to the south; and a convenience store/gas station and automobile repair business to the east.

2. Character of Buildings – The character of the buildings in the area varies from single and multi-tenant commercial buildings predominantly along W. McKinley Avenue to single-family residential houses to the south.
3. The most desirable/highest and best use – Because of the property's location along W. McKinley Avenue, a highly travelled roadway, and the adjacent existing commercial zoning and development, the most desirable use of the property is commercial.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the area. The property is currently zoned for commercial use, formerly a bank, with the adjacent properties occupied by several automobile oriented commercial uses. The proposed quick-service oil change business and other permitted C-4 Automobile Oriented Commercial uses are compatible with the adjacent existing uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within the property and along a majority of the McKinley Avenue corridor. 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 _____, 2023, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock ____M.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock ____M.

David A. Wood, Mayor

STAFF REPORT

Location: 411 W. McKinley Avenue

Date: Dec. 12, 2023

Petition: 23- 25

Prepared By: DJS

GENERAL INFORMATION

Applicant: Good Oil Company Inc. / Baldwin Realty LLC / Fritz Engineering Services

Status: Property Owner / Contingent Developer / Civil Engineering Consultant

Request: To rezone from C-1 General Commercial to C-4 Automobile Oriented Commercial to allow for the construction of a Take 5 Oil Change – a quick service drive-thru oil change business.

Zoning Classification: C-1 General Commercial District

Lot Size: 0.87 acres

Applicable Regulations: Section 137-379 thru 137-380 / C-4 Automobile Oriented Commercial District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Automobile Oriented Commercial (Automatic Car Wash Facility / John's Auto Spa), C-1 General Commercial (Multi-Tenant Commercial / Starbuck's & Oak Street Health), & (Multi-Tenant Office Building - Bank / PNC Financial Services Group & Insurance / The Sanders Agency Inc.)

South: R-1 Single Family Residential (Residential) & S-1 Extensive Open Space (Public Utility / Mishawaka Electric Substation)

East: C-4 Automobile Oriented Commercial (Convenience Store & Filling Station / Marathon, & Automobile Repair / Liberty Auto Service)

West: C-1 General Commercial (Two-Tenant Commercial Building / Armed Forces Career Center & Olive Health Center)

Thoroughfare: W. McKinley Avenue & Liberty Drive

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the expense of the developer

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners, Good Oil Company Inc. and Baldwin Realty LLC, are requesting to rezone property at 411 W. McKinley Avenue from C-1 General Commercial to C-4 Automobile Oriented Commercial to allow for the construction of Take 5 Oil – a quick service drive-thru oil change business.

The 0.87 acre site, which includes a vacant commercial building, consists of one parcel of property (Tax Parcel 016-2056-1903.01) at the southwest corner of W. McKinley Avenue and Liberty Drive. The building, most recently occupied by Mutual Bank, has been a bank since being constructed in 1974. Adjacent land uses include John's Auto Spa and multi-tenant buildings (Starbucks & Oak Street Health, and PNC Financial Services Group & The Sanders Agency Inc.) to the north; a multi-tenant commercial building (Armed Forces Career Center & Olive Health Center) to the west; single-family residential houses and Mishawaka Electric utility substation to the south; and a Marathon convenience store/gas station and Liberty Auto Service to the east. With the proposed redevelopment of the property, the building and majority of the improvements will be razed.

Per the preliminary site plan, the contingent developer is proposing to construct a one-story 1,760 sq. ft. building with three (3) drive-thru service bays, a twelve (12) space parking lot, and other required infrastructure (utilities, a stormwater collection system, landscaping, etc.).

Access to the site will be provided solely from W. Russ Avenue to the south utilizing the two (2) existing curb cuts/drives. Both drives will allow for unrestricted turning movements to and from W. Russ Avenue. The property currently has one access from W. McKinley Avenue which will be removed. Due to the high traffic volumes on W. McKinley Avenue and proximity to the intersection, maintaining an unrestricted access on W. McKinley was not desired and would likely be a safety hazard for vehicles entering and exiting the property.

Based on 5.5 parking spaces per 1,000 sq. ft. of gross floor area, a total of ten (10) parking spaces are required for the proposed 1,760 sq. ft. building. The preliminary site plan shows that twelve (12) spaces will be provided within a new parking area west of the building and an existing parking row between the access drives on W. Russ Avenue. The access drives and a small portion of the existing paved parking area will be maintained. If the existing parking area is less than the required 10' pavement setback from the Liberty Avenue right-of-way, a developmental variance shall be submitted for review and approval by the Board of Zoning Appeals.

Landscaping and screening shall comply with the commercial landscaping and C-4 Automobile Oriented Commercial District requirements.

Except for the potential pavement setback variance as noted above, the conceptual site plan shows the intent to comply with the height, area and developmental regulations for the C-4 Automobile Oriented Commercial District. If additional variances or a design review waiver for the proposed building materials or colors are required, the Board of Zoning Appeals and/or the Plan Commission shall be petitioned when the final site plan is submitted.

With this petition, the property owner and contingent developer are only seeking to establish the proper zoning required for the proposed use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, soil erosion control, landscaping, and all other required improvements pertinent to the proposed development.

Since the property is currently zoned for general commercial uses and located along the McKinley Avenue commercial corridor, the Staff supports the request for rezoning. The proposed quick service drive-thru oil change business is not out of character and is compatible with the existing adjacent land uses. Two of the four corners of the W. McKinley Avenue and Liberty Drive intersection are zoned to the C-4 District and are occupied by an automatic car wash facility, convenience store/gas station, and automobile repair business. Furthermore, the proposed use is consistent with the historical commercial use of the property and recommended use per the comprehensive plan.

The rezoning petition and preliminary site plan have been routed to all applicable City Departments for review and comment. All departments have reviewed and approved the request.

The Electric Department commented that they should be contacted to discuss electric service needs.

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

The Engineering Department had no comments related to the rezoning petition but provided the following comments to be addressed with the final site plan:

1. The pathway (sidewalk) on the west side of Liberty Drive shall be concrete and not asphalt per Engineering standards.
2. There appears to not be adequate space to provide the required full right turn south bound travel lane on Liberty Drive due to existing utilities.
3. If floor drains are installed, they shall be routed to an oil/sediment water separator.
4. Stormwater management shall be stored on site for 100 year, 24 hour storm event.

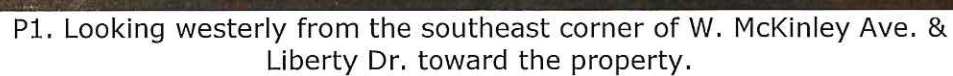
RECOMMENDATION

Staff recommends Petition 23-25 to rezone 0.87 acres of property located at 411 W. McKinley Avenue from C-1 General Commercial to C-4 Automobile Oriented Commercial for a Take 5 Oil Change - a quick service drive-thru oil change business - be forwarded to the Common Council with a **favorable** recommendation. This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property, which consists of a vacant commercial structure (formerly a bank), is located at the southwest corner of W. McKinley Avenue and Liberty Drive. McKinley Avenue is a highly travelled corridor providing major east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automatic car wash facility and multi-tenant commercial buildings to the north; a two-tenant commercial building to the west; single-family residential houses and an electric utility substation to the south; and a convenience store/gas station and automobile repair business to the east.
2. Character of Buildings – The character of the buildings in the area varies from single and multi-tenant commercial buildings predominantly along W. McKinley Avenue to single-family residential houses to the south.
3. The most desirable/highest and best use – Because of the property’s location along W. McKinley Avenue, a highly travelled roadway, and the adjacent existing commercial zoning and development, the most desirable use of the property is commercial.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the area. The property is currently zoned for commercial use, formerly a bank, with the adjacent properties occupied by several automobile oriented commercial uses. The proposed quick-service oil change business and other permitted C-4 Automobile Oriented Commercial uses are compatible with the adjacent existing uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within the property and along a majority of the McKinley Avenue corridor. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Site Photographs, Petition, Preliminary Site Plan, Location Map





P2. Looking southeasterly from the access drive west of John's Auto Spa toward the property.

November 16, 2023

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

Deborah S. Block, AMC, MMC

NOV 27 2023

City Clerk
Mishawaka, IN

Pet 23-25
Received

NOV 21 2023

Planning and
Community Development

RE: PETITION TO REZONE

The undersigned, GOOD OIL COMPANY, 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 LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, SAID PARCEL BEING LOTS 1-5 AND A 14 FEET VACATED ALLEY LYING WEST OF SAID LOT 1-5, ALSO PART OF LOTS 6 AND 7 AND THE VACATED 14 FOOT ALLEY LYING BETWEEN SAID LOTS AND BEING MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 89 DEGREES 07 MINUTES 01 SECONDS WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET, A DISTANCE OF 162.98 FEET (REC. 163.19 FEET) THENCE NORTH 00 DEGREES 02 MINUTES 04 SECONDS EAST, A DISTANCE OF 233.15 FEET (REC. NORTH 0 DEGREES 1 MINUTES 37 SECONDS EAST 234.01 FEET) TO THE SOUTH RIGHT-OF-WAY LINE OF MCKINLEY AVENUE; THENCE NORTH 89 DEGREES 12 MINUTES 31 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 155.24 FEET; THENCE SOUTH 34 DEGREES 37 MINUTES 39 SECONDS EAST, A DISTANCE OF 13.36 FEET (REC. SOUTH 34 DEGREES 27 MINUTES 52 SECONDS EAST, 13.40 FEET) TO THE WEST RIGHT-OF-WAY LINE OF LIBERTY DRIVE; THENCE SOUTH 00 DEGREES 01 MINUTES 07 SECONDS EAST ALONG THE SAID WEST RIGHT-OF-WAY LINE LIBERTY DRIVE, A DISTANCE OF 221.74 FEET TO THE POINT OF BEGINNING. CONTAINING 0.87 ACRES, MORE OR LESS.

411 W. MCKINLEY AVE., MISHAWAKA, IN 46545

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 District. Said property is currently a vacant retail bank.

Petitioner(s) desire said real estate to be rezoned to C-4 District. Petitioner(s) further state that they intend to utilize said land for a drive-thru oil change facility.

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.

Signature(s) of Property Owner(s)


Nicole K. Earp, CEO

Signature(s) of Property Owner(s)

CONTACT PERSON:

NAME: RON MUDRICK
ADDRESS: 1201 N US HWY 35 WINAMAC, IN 46996
PHONE NUMBER: (574) 225-0612
EMAIL: RMUDRICK@GOODOILCOMPANY.COM

DEVELOPER / MAIN CONTACT:
ANDY MORRISON
BALDWIN REALTY LLC
4351 CHASE CIRCLE
ZIONSVILLE, IN 46077
(574) 361-7501
ANDY@REALTY-BALDWIN.COM

1st Reading
2nd Reading
Passed
Failed
Continued To

PETITION 23-26

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2023-58

ORDINANCE NO. _____

Deborah S. Block, IAMC, MMC

DEC 13 2023

City Clerk
Mishawaka, IN

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, Penn Township, St. Joseph County, State of Indiana, to-wit:

LOT NUMBERED FORTY-FIVE (45) AS SHOWN ON THE RECORDED PLAT OF G.W.R. FOWLER'S FIRST ADDITION TO THE TOWN, NOW CITY OF MISHAWAKA, EXCEPTING THEREFROM A PARCEL OF LAND EIGHTY-FIVE (85) FEET IN LENGTH, NORTH AND SOUTH, TAKEN OFF OF AND FROM THE ENTIRE WIDTH OF THE SOUTH END THEREOF.

COMMONLY KNOWN AS 617 E GROVE

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as R-1 Single Family Residential District designated in "The Zoning Ordinance of 1966" as amended.

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

1. There are commercial uses located along N Cedar Street & E Mishawaka Avenue and residential uses to the north and further west of the property and rezoning the property to R-1 would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;

Proposed Ordinance No: _____

Ordinance No: _____

3. Because the parcel is located in an area with adjacent residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;
4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,
5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with other residential uses in the area.

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 _____, 2023, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock ____M.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock ____M.

David A. Wood, Mayor

STAFF REPORT

Location: 617 E Grove Street

Date: Dec. 12, 2023

Petition: 23 26

Prepared By: DMB

GENERAL INFORMATION

Applicant: Felix Martinez & Bernardin Cazares

Status: Property Owners

Request: Rezone from C-1 General Commercial District to R-1 Single Family Residential

Zoning Classification: C-1 General Commercial District

Lot Size: 0.07 acres

Applicable Regulations: Sec. 137-164 Residential R-1 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential District
South: C-1 General Commercial District (single-family home)
East: C-4 Automobile Oriented Commercial District
West: R-1 Single Family Residential District

Thoroughfare: Southwest corner of E Grove Street and N Cedar Street

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners are requesting to rezone 617 E Grove Street from C-1 General Commercial District to R-1 Single Family Residential District. The property is located on the southwest corner of E Grove Street and N Cedar Street. The neighborhood is a mix of residential and commercial uses along N Cedar Street.

The Petitioners purchased the property in June 2023 and intend to use as their residence. Built in 1929 as a single-family residence, the front of the house facing N Cedar Street, has been used as a shoe repair business in most recent years. The business has been abandoned and any signage referencing the shoe repair business has been removed. In addition, any equipment inside the home has been removed.

Prior to the 1980's residential uses were permitted in commercial zoned districts. Around 1986 the Zoning Ordinance was amended to prohibit residential uses in certain districts.

Pertinent City Departments have reviewed and approved the request.

RECOMMENDATION

The Planning Department recommends **approval** of Petition #23-26 to rezone 617 E Grove Street from C-1 General Commercial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

1. There are commercial uses located along N Cedar Street & E Mishawaka Avenue and residential uses to the north and further west of the property and rezoning the property to R-1 would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;
3. Because the parcel is located in an area with adjacent residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;
4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,
5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with other residential uses in the area.

AERIAL, PHOTOGRAPHS, PETITION, LOCATION MAP



Aerial



Looking west from N Cedar Street



617 E Grove Street – looking south from E Grove Street

This is NOT a fill-in form. It is to be used merely as a GUIDE in preparing your petition.

DATE:

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 (type names(s) of the titleholder(s) of record) 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:

(Give accurate and complete legal description. Tax key numbers and shortened legals alone are not acceptable. Also give the common address or a definitive common location.)

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 District. Said property is (State the existing use of the real estate).

Petitioner(s) desire said real estate to be rezoned to R-1 District. Petitioner(s) further state that they intend to utilize said land for (State the proposed use for the property/ reason for the rezoning).

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.

X Signature(s) of Property Owner(s)

Typewritten name also

Felix Martinez

X Signature(s) of Property Owner(s)

Typewritten name also

Bernardin CALAROS

CONTACT PERSON:

NAME

FELIX MARTINEZ

ADDRESS

PHONE NUMBER

FAX

EMAIL

901 W FOURTH ST

MISHAWAKA IN 46544

(269) 579-0330

Daxx500@icloud.com

DATE:11/21/23

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City of Mishawaka, Indiana

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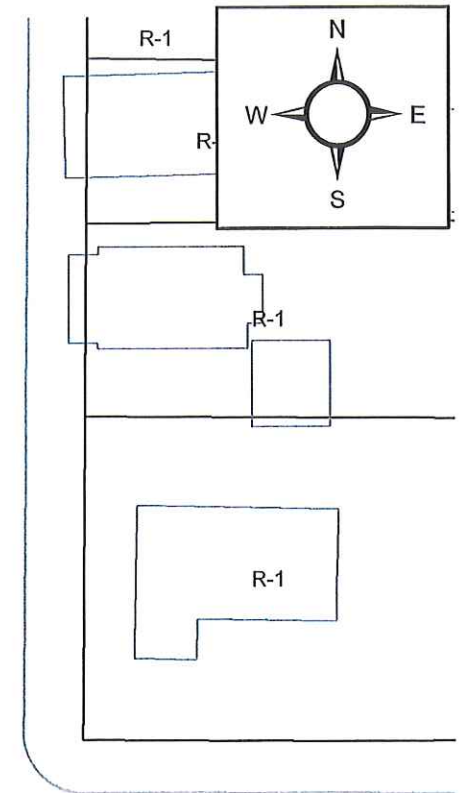
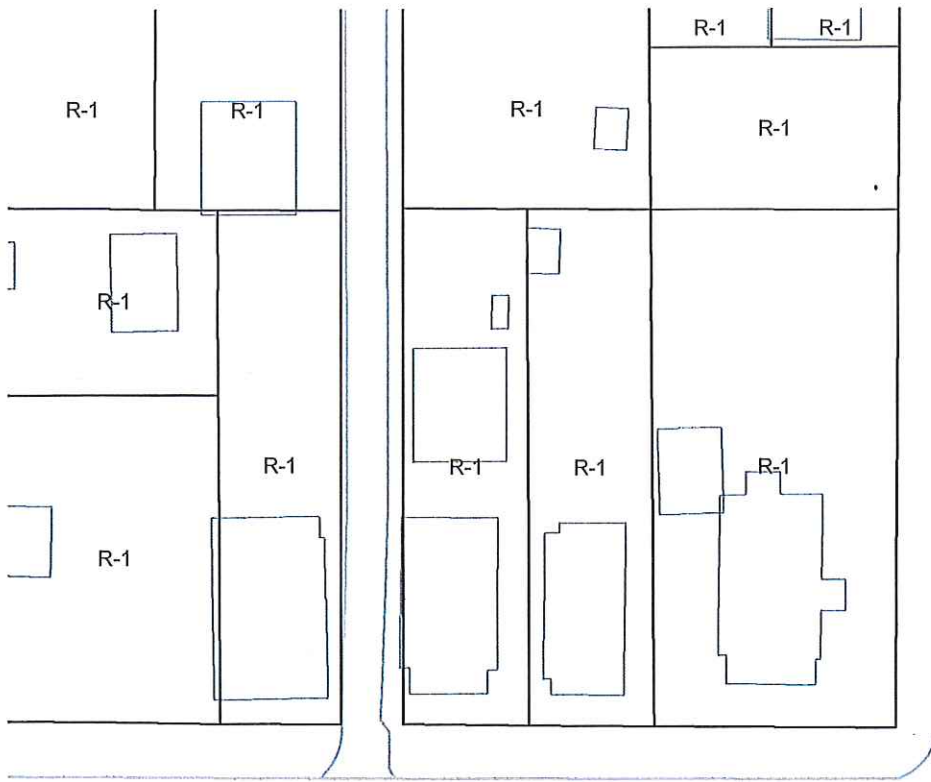
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Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of C-1 General Commercial District. Said property is a home that previously operated a shoe repair store out of the front.

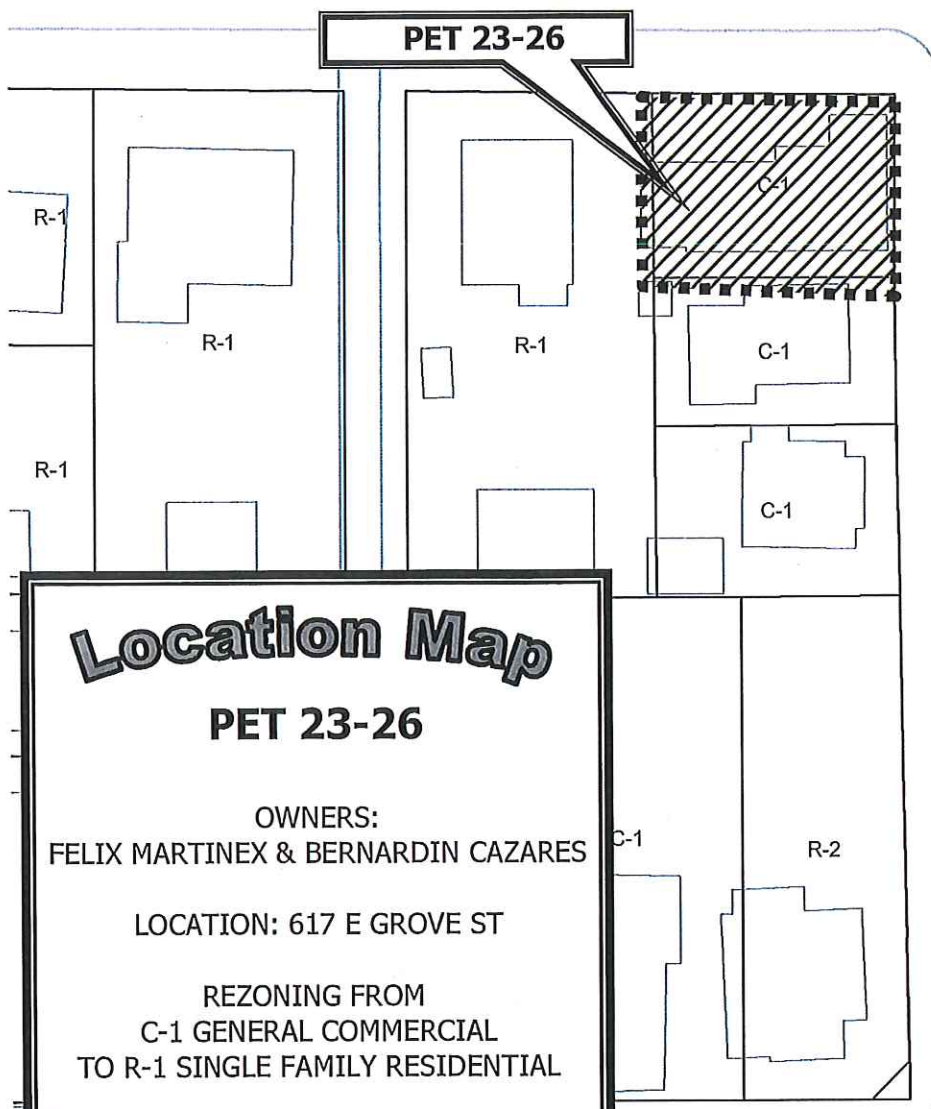
Petitioner(s) desire said real estate to be rezoned to R-1 Single Family District. Petitioner(s) further state that they intend to utilize said land for exclusively as a single family dwelling.

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.

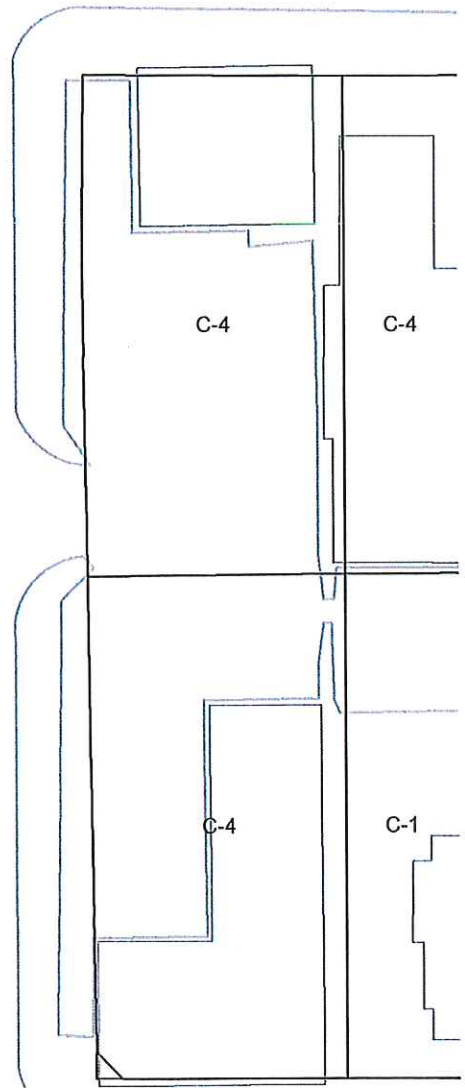


E GROVE ST

PET 23-26



N CEDAR ST



Location Map

PET 23-26

OWNERS:
FELIX MARTINEX & BERNARDIN CAZARES

LOCATION: 617 E GROVE ST

REZONING FROM
C-1 GENERAL COMMERCIAL
TO R-1 SINGLE FAMILY RESIDENTIAL

NOV 27 2023

City Clerk
Mishawaka, IN

DATE:11/21/23

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

Ref 23-200

RE: PETITION TO REZONE

The undersigned FELIX MARTINEZ AND BERNARDIN CAZARES 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:

LOT NUMBERED FORTY-FIVE (45) AS SHOWN ON THE RECORDED PLAT OF G.W.R. FOWLER'S FIRST ADDITION TO THE TOWN, NOW CITY OF MISHAWAKA, EXCEPTING THEREFROM A PARCEL OF LAND EIGHTY-FIVE (85) FEET IN LENGTH, NORTH AND SOUTH, TAKEN OFF OF AND FROM THE ENTIRE WIDTH OF THE SOUTH END THEREOF.

COMMONLY KNOWN AS 617 E GROVE

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. Said property is a home that previously operated a shoe repair store out of the front.

Petitioner(s) desire said real estate to be rezoned to R-1 Single Family District. Petitioner(s) further state that they intend to utilize said land for exclusively as a single family dwelling.

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.

X Signature(s) of Property Owner(s)
Felix Martinez

Typewritten name also
Felix Martinez

X Signature(s) of Property Owner(s)
Bernardin Cazares

Typewritten name also
Bernardin CAZARES

CONTACT PERSON:

NAME *FELIX MARTINEZ*
ADDRESS
PHONE NUMBER *901 W FOURTH ST*
FAX *MISHAWAKA IN 46844*
EMAIL *(269) 579-0330*
Daxx1500@icloud.com

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

DEC 12 2023

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-59
ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF
MISHAWAKA, INDIANA, TAXABLE ECONOMIC DEVELOPMENT TAX
INCREMENT REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER
ACTIONS IN RESPECT THERETO IN CONNECTION WITH THE GRANDVIEW
PHASE III PROJECT**

WHEREAS, Indiana Code 36-7-11.9 and 12 (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 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 December 11, 2023, approved and adopted its Resolution No. 2023-12 for the purpose of making additional amendments to the Area for the purpose of expanding and designating within the Area a separate allocation area pursuant to Indiana Code 36-7-14-39 to be known as the “Block 200 Allocation Area” (the “Block 200 Allocation Area”) for purposes of capturing incremental *ad valorem* property taxes levied and collected on all taxable real property located in the Block 200 Allocation Area; and

WHEREAS, Grandview III Development, LLC (the “Company”) intends to undertake the design, construction, and equipping of a mixed-use development known as the Block 200 Project on approximately seven (7) acres of real property located near the intersection of Cleveland Road and Gumwood Road in the City, consisting of a mixed-use project containing approximately 246 apartments, structured parking for approximately 309 vehicles, a contemporary hotel with approximately 125 rooms and additional retail and rooftop hospitality amenities (the “Company Project”); and

WHEREAS, the Company has advised the City, City of Mishawaka Economic Development Commission (the “Economic Development Commission”) and the Redevelopment Commission concerning the Company Project, and has requested that the City authorize and issue its economic development tax increment revenue bonds under the Act, to be designated as the City of Mishawaka, Indiana Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 or such other year in which such obligations shall be issued (Grandview Phase III Project), in one or more series (with such further series or different series designation as determined to be necessary or appropriate) (the “Bonds”), a portion of the net proceeds of such Bonds being used for the purpose of financing a portion of the costs of the Company Project and costs of issuing the Bonds; and

WHEREAS, the Economic Development Commission has rendered a report concerning the proposed financing or refinancing of economic development facilities for the Company; and

WHEREAS, following a public hearing, pursuant to Section 24 of the Act, the Economic Development Commission found that the financing of a portion of the costs of the Company Project complies with the purposes and provisions of the Act and that each such financing will be of benefit to the health and public welfare of the City; and

WHEREAS, the Economic Development Commission has considered whether the financing of the Company Project will have an adverse competitive effect or impact on any similar facility or facility of the same kind already constructed or operating in the corporate boundaries of the City; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide (or be deemed to provide) funds necessary to finance a portion of the costs of the Company Project by issuing the Bonds; and

WHEREAS, the Act provides that such Bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance, and pursuant to a Trust Indenture for Bonds (the “Indenture”), by and between the City and a corporate trustee to be selected by the City, in order to secure funds necessary to provide (or be deemed to provide) for the financing of a portion of the costs of the Company Project in accordance with the terms of a Financing Agreement with the Company (the “Financing Agreement”), by and between the City and the Company with respect to the use (or deemed use) of the proceeds of the Bonds and the completion of the Company Project; and

WHEREAS, no member of the Common Council of the City (the “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

WHEREAS, the forms of the Bonds, the Indenture and the Financing Agreement (collectively, the “Financing Documents”), and a form of this proposed Ordinance were submitted to, and approved by, the Economic Development Commission, which documents were

incorporated by reference in the resolution heretofore adopted by the Economic Development Commission, which resolution has been transmitted to the Common Council in accordance with the Act;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Mishawaka, Indiana, as follows:

Section 1. It is hereby found that the financing of a portion of the economic development facilities for the Company 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 (or deemed use) of the proceeds of the Bonds by the Company for the financing of a portion of the costs of the Company Project, the payment of the Bonds from the Pledged TIF Revenues (as hereinafter defined) and other sources pursuant to 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 Company 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 resolutions, and concludes that the Company 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 Fourteen Million Dollars (\$14,000,000), which Bonds shall mature no later than twenty-five (25) years after the date of issuance of the Bonds, and shall bear interest at a per annum rate not exceeding eight percent (8.0%) per annum (anticipated interest rate: 6.0%). The Bonds may be issued on a draw basis or deemed funded basis wherein credit shall be given in lieu of advances under the Bonds for eligible costs paid by or on behalf of the Company. The Bonds are to be issued for the purpose of procuring funds to (a) pay all or a portion of the cost of acquisition, construction, and equipping of the Company Project, (b) pay capitalized interest on the Bonds (if necessary), (iii) fund a debt service reserve fund (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 lettered and numbered R-1 upward. The Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the Indenture (the "Trust Estate"), which Trust Estate shall consist of the funds and accounts created under the Indenture together with a pledge by the Redevelopment Commission of tax increment finance revenues from the Block 200 Allocation Area, subject to the terms and conditions of a Pledge Agreement between the Redevelopment Commission and the City (the "Pledged TIF Revenues"), and upon such terms and conditions as otherwise provided in

the Financing Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

Section 5. The Mayor and the Clerk of the City (respectively, the “Mayor” and the “Clerk”) are hereby authorized to approve with the advice of counsel, a Bond Purchase Agreement (the “Bond Purchase Agreement”) with the Company or the Company’s designee in a form and substance acceptable to the Mayor and the Clerk to provide for the sale of the Bonds. The Mayor and the Clerk are hereby authorized and directed to execute and deliver the Bond Purchase Agreement in a form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with such acceptance of the form and substance thereof to be conclusively evidenced by their execution thereof.

Section 6. Each of the Mayor and the Clerk 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, the Clerk 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 City, the Clerk and any other officer of the City on the Bonds may be facsimile signatures or electronic signatures. The Mayor, the Clerk 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 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 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. In particular, at the request of the Company, the Mayor, the Clerk 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, in lieu of a Financing Agreement, a Loan Agreement with the Company in such form as such officers shall approve, such approval to be conclusively evidenced by their execution thereof.

Section 7. 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 8. The Common Council does hereby acknowledge and approve the pledge of the Pledged TIF Revenues to the payment of the Bonds of a series pursuant to the Indenture. Pursuant to IC 5-1-14-4, the pledge of the Pledged TIF Revenues pursuant to the Indenture is intended to be binding from the time the pledge is made, with such Pledged TIF Revenues so pledged and thereafter received by the City to be immediately subject to the lien of the pledge without any further act, and the lien of such pledge to be binding against all parties having claims

of any kind, in tort, contract, or otherwise against the City, regardless of whether the parties have notice of any such lien.

Section 9. The Common Council hereby finds that (a) the Company Project and the related financing assistance for the Company Project provided in the Financing Documents are consistent with the economic redevelopment plan for the Area and Allocation Area; (b) the Company would not develop the Company Project without the financing assistance provided in Financing Documents; (c) the Company Project furthers the economic development and redevelopment of the Allocation Area and the Area generally; and (d) the Company Project will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

Section 10. This Ordinance shall be in full force and effect from and after its passage.

PASSED AND ADOPTED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this ____ day of _____, 2024.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED to the Mayor of the City of Mishawaka, Indiana, this ____ day of _____, 2024, at _____ o'clock, _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED, this ____ day of _____, 2024, _____, o'clock, _____.M.

David A. Wood, Mayor

RE: Form of Grandview Project Block 200 Project Bond Ordinance

Ken Prince <kprince@mishawaka.in.gov>

Tue 12/12/2023 3:32 PM

To: Rompola, Randolph <Randy.Rompola@btlaw.com>; Deb Block <dblock@mishawaka.in.gov>; Raven S. Boston <rboston@mishawaka.in.gov>; Michael Hixenbaugh <mhixenbaugh@mishawaka.in.gov>; Pat Hinkle <pat.hinkle@mishawaka.in.gov>
Cc: Faccenda, Philip <Philip.Faccenda@btlaw.com>; Everett, Thomas <Thomas.Everett@btlaw.com>; Gregg Hixenbaugh <gahixenbaugh@mishawaka.in.gov>; Rich Deahl <rdeahl@greatlakescapital.com>; Adlam, Emma <Emma.Adlam@bakertilly.com>; Eckerle, Matt <Matt.Eckerle@bakertilly.com>; Audra Sieradzki <asieradzki@greatlakescapital.com> <asieradzki@greatlakescapital.com>

Deb/Raven/Michael,

Please consider this e-mail also a request that the second reading, hearing, and potential adoption of the Grandview Bond Ordinance not occur until **January 22, 2024**. This is consistent with the planning calendar that was prepared by Barnes & Thornburg. A copy of the calendar which outlines the important dates and actions required for the bond issuance has been attached for your use and reference.

In communicating with President Hixenbaugh, he identified that the new Council may want to hold a separate committee/informational meeting on the project, but that meeting would not be determined until the first Council meeting in January. Pushing the hearing and potential action to the 22nd will potentially provide for time where that meeting could occur between Council meetings if desired.

There will not be consultants attending the meeting this Monday for first reading. Please let me know if there are any questions.

As always, thanks for your continued assistance.

Ken

From: Rompola, Randolph <Randy.Rompola@btlaw.com>**Sent:** Tuesday, December 12, 2023 10:52 AM**To:** Ken Prince <kprince@mishawaka.in.gov>; Deb Block <dblock@mishawaka.in.gov>; Raven S. Boston <rboston@mishawaka.in.gov>; Michael Hixenbaugh <mhixenbaugh@mishawaka.in.gov>; Pat Hinkle <pat.hinkle@mishawaka.in.gov>**Cc:** Faccenda, Philip <Philip.Faccenda@btlaw.com>; Everett, Thomas <Thomas.Everett@btlaw.com>**Subject:** Form of Grandview Project Block 200 Project Bond Ordinance

>>> FROM EXTERNAL SENDER <<<

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Attached is the proposed form of bond ordinance for the Grandview Project Block 200 along with the forms of trust indenture and financing agreement which are approved by the bond ordinance. The ordinance authorizes up to \$14,000,000 of taxable economic development tax increment revenue bonds which would be issued by the City pursuant to the ordinance and the trust indenture and a portion of the bond proceeds (after paying costs of issuance) would be provided to the developer to pay a portion of the project costs. The bonds would be purchased by the developer or by a third party identified by the developer. The bonds would be payable solely from tax increment revenues expected to be generated from the Block 200 Allocation Area which is currently

being established. The bonds would not be a general obligation of the City or the Redevelopment Commission and would not be payable from any source other than the expected Block 200 TIF Revenues.

We are providing the ordinance and forms of trust indenture and financing agreement so that the ordinance may be placed on the Council agenda for first reading at the upcoming Council meeting on Monday, December 18th. Any questions, please let me know. Thanks! Randy

Randolph Rompola | Partner

Barnes & Thornburg LLP

201 S. Main St., Suite 400, South Bend, IN 46601

Direct: (574) 237-1244 | Mobile: (574) 360-8610



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TRUST INDENTURE

BETWEEN

CITY OF MISHAWAKA, INDIANA

AND

as Trustee

Dated as of March 1, 2024

Re:

**NOT TO EXCEED \$14,000,000
CITY OF MISHAWAKA, INDIANA,
TAXABLE ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BONDS,
SERIES 2024 (GRANDVIEW PHASE III PROJECT)**

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TRUST INDENTURE

THIS TRUST INDENTURE (the "Indenture") dated as of the 1st day of March, 2024, by and between the CITY OF MISHAWAKA, INDIANA (the "Issuer"), a municipal corporation organized and existing under the laws of the State of Indiana, and _____, a corporate fiduciary, duly organized, existing and authorized to accept and execute trusts of the character herein set out under the laws of the State of Indiana with a principal corporate trust office in _____, Indiana, as trustee (the "Trustee"),

WITNESSETH:

WHEREAS, for the respective definitions of certain capitalized terms used but not defined in the preamble and granting clauses, reference is made to Article I hereof; and

WHEREAS, Indiana Code 36-7-11.9 and Indiana Code 36-7-12, as supplemented and amended (collectively, the "Act"), authorizes and empowers the Issuer to issue revenue bonds and to provide the proceeds therefrom for the purpose of financing "economic development facilities" as defined in the Act and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, in accordance with the provisions of the Act, the Issuer has induced Grandview III Development, LLC, an Indiana limited liability company (the "Developer"), to proceed with the Project (as defined herein), in the jurisdiction of the Issuer by offering to issue its Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Grandview Phase III Project) (the "Bonds") in the aggregate principal amount of not to exceed Fourteen Million Dollars (\$14,000,000) pursuant to this Indenture and (i) be deemed to make a portion of the proceeds of the Bonds available to the Developer pursuant to the Financing Agreement (as defined herein) for the purpose of paying a portion of the costs of "economic development facilities" consisting of the Project (as defined herein) and (ii) use a portion of the proceeds of the Bonds to pay for the costs of issuance of the Bonds; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of Mishawaka Economic Development Commission (the "Economic Development Commission") held a public hearing on behalf of the Issuer and adopted a resolution finding that the Project and the proposed financing thereof will (i) create and retain opportunities for gainful employment and the creation of business opportunities in the City of Mishawaka, Indiana; (ii) benefit the health and general welfare of the citizens of the City of Mishawaka, Indiana; and (iii) comply with the purposes and provisions of the Act; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Bonds hereunder and pursuant to the Act have been in all respects duly and validly authorized by an ordinance (Ordinance No. _____), duly passed and approved by the Common Council of the City of Mishawaka, Indiana, on _____, 2024;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and premium, if any, and interest on the Bonds (as hereinafter defined) to be issued under this Indenture according to their tenor, purpose and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in said Bonds

contained, and in order to declare the terms and conditions upon which the Bonds are issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Bonds by the holders or obligees thereof, the Issuer has executed and delivered this Indenture, and by these presents does hereby convey, grant, assign, pledge and grant a security interest in, unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular, the property, real and personal hereinafter described (collectively, the "Trust Estate"):

GRANTING CLAUSES

DIVISION I

All right, title and interest of the Issuer in and to the Pledged Revenues; and

DIVISION II

All moneys and securities from time to time held by the Trustee in the Funds and Accounts under the terms of this Indenture (except moneys or Qualified Investments deposited with the Trustee pursuant to Section 10.1 hereof) and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder by the Issuer or by anyone on its behalf, or with their written consent, to the Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Bonds to be issued hereunder and the premium, if any, payable upon redemption or prepayment thereof, and the interest payable thereon, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the equal and ratable benefit and security of all and singular the holders of all Bonds issued hereunder, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond or as between principal and interest, and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, are to be held and disbursed, are as follows:

(End of Preamble and Granting Clauses)

ARTICLE I

DEFINITIONS

Section 1.1 Terms Defined. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Accounts” means the accounts created pursuant to Article IV.

“Act” means, collectively, Indiana Code 36-7-11.9 and 36-7-12, each as amended.

“Affiliate” means an entity or business which directly or indirectly controls, is controlled by or is under common control with, the Developer. For purposes of this provision, “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 an entity, whether through the ownership of voting securities, by contract, or otherwise.

“Allocation Area” means the Block 200 Allocation Area previously established by the Redevelopment Commission pursuant to a declaratory resolution, as confirmed and amended, in accordance with IC 36-7-14-39 for the purposes of capturing incremental *ad valorem* property taxes levied and collected on all taxable real property in such allocation area.

“Annual Fees” means all of the Issuer’s expenses in carrying out and administering the Bonds issued pursuant to this Indenture and shall include, without limiting the generality of the foregoing, legal, accounting, management, consulting and banking services and expenses, fees and expenses of the Trustee and the Registrar and Paying Agent, costs of verifications required hereunder, and any other costs permitted under the Act.

“Authorized Representative” means (a) with respect to the Issuer, (i) the Mayor of the Issuer, (ii) the Controller of the Issuer, or (iii) such other person or persons as the Issuer shall notify the Developer and the Trustee in writing as being an Authorized Representative, with evidence of such authority; and (b) with respect to the Developer, (i) _____, or (ii) such other person or persons as the Developer shall notify the Issuer and the Trustee in writing as being an Authorized Representative, with evidence of such authority.

“Bondholder” means a registered owner or holder of any Bonds.

“Bonds” means the City of Mishawaka, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Grandview Phase III Project), issued in the original aggregate principal amount of not to exceed \$14,000,000.

“Bond Counsel” means Counsel that is nationally recognized in the area of municipal law and matters relating to the exclusion of interest on municipal bonds from gross income under federal tax law.

“Bond Fund” means the Bond Fund created and established pursuant to Section 4.2 of this Indenture.

“Bond Ordinance” means Ordinance No. _____, adopted by the Common Council of the Issuer on _____, 2024, authorizing and approving the issuance and sale of the Bonds and approving the Financing Agreement, this Indenture, and related matters.

“Clerk” means the duly elected Clerk of the Issuer.

“Controller” means the duly appointed Controller of the Issuer.

“Closing” means March __, 2024.

“Costs of Issuance” means items of expense payable or reimbursable directly or indirectly by the Issuer and related to the authorization, sale and issuance of Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing documents, filing and recording fees, initial fees and charges of the Trustee, Registrar and Paying Agent, legal fees and charges, professional consultants’ fees, fees and charges for execution, transportation and safekeeping of Bonds, and other costs, charges and fees in connection with the foregoing and any other costs of a similar nature authorized by the Act.

“Construction Fund” means the Construction Fund created and established pursuant to Section 4.2 of this Indenture.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and approved by the Issuer.

“Developer” means Grandview III Development, LLC, an Indiana limited liability company, or any successor thereto under the Financing Agreement and the Development Agreement.

“Developer Parties” means, with respect to the Project or any portion thereof, the Financing Agreement, the Development Agreement or this Indenture: (a)(i) the Affiliates of the Developer, (ii) developers working under contract with the Developer or any Affiliate of the Developer, (iii) joint owners of the Project or any portion thereof, (iv) joint (or other) venturers with the Developer or any Affiliate of the Developer, and (v) trusts (business or other) established with or for the benefit of the Developer or any Affiliate of the Developer or the Project or any portion thereof, and (b) their successors and assigns.

“Development Agreement” means the Development Agreement, dated _____, 2023, by and among the Issuer, the Redevelopment Commission and the Developer concerning the construction and financing of the Project, the Improvements, and related projects, as may be supplemented or amended from time to time.

“Economic Development Commission” means the City of Mishawaka Economic Development Commission, established and existing pursuant to Indiana Code 36-7-11.9 and 36-7-12, each as amended.

“Electronic Means” means the following communication methods: a portable document (“pdf”) or other replicating image attached to an unsecured email, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or

authentication keys issued by the Trustee or another method or system specified by the Trustee as available for use in connection with its services under this Indenture.

“Event of Default” means any occurrence of an event specified in Section 7.1 hereof.

“Expense Fund” means the Expense Fund created and established pursuant to Section 4.2 of this Indenture.

“Financing Agreement” means the Financing Agreement, dated as of March 1, 2024, by and between the Developer and the Issuer, and all amendments and supplements thereto.

“Funds” means the funds created pursuant to Article IV.

“Governmental Obligations” means (a) United States Treasury Certificates, Notes and Bonds (including State and Local Government Series - “SLGs”); (b) direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities; (c) the interest component of Resolution Funding Corp. strips, which have been stripped by request to the Federal Reserve Bank of New York in book-entry form; (d) pre-refunded municipal obligations rated “AAA” by S&P and “Aaa” by Moody’s; provided, however, if the issue is rated only by S & P (i.e., there is no Moody’s rating), then the pre-refunded bonds must have been pre-refunded with cash, direct United States or United States guaranteed obligations, or AAA rated pre-refunded municipals; and (e) obligations issued by the following agencies, which are backed by the full faith and credit of the United States: (i) United States Export-Import Bank (Eximbank) direct obligations or fully guaranteed certificates of beneficial ownership; (ii) Farmers Home Administration (FmHA) certificates of beneficial ownership; (iii) Federal Financing Bank; (iv) General Services Administration participation certificates; (v) United States Maritime Administration guaranteed Title IX financing; and (vi) United States Department of Housing and Urban Development (HUD) project notes, local authority bonds, new communities debentures - United States government guaranteed debentures, and United States Public Housing Notes and Bonds - United States government guaranteed public housing notes and bonds.

“Indenture” means this instrument as originally executed or as it may from time to time be amended or supplemented pursuant to Article IX hereof.

“Interest Payment Date” means, with respect to the Bonds, each January 15 and July 15, commencing _____ 15, 202__.

“Issuer” or “City” means the City of Mishawaka, Indiana, a municipal corporation organized and validly existing under the laws of the State of Indiana, or any successor to its rights and obligations under the Financing Agreement, the Development Agreement and this Indenture.

“Mayor” means the duly elected Mayor of the Issuer.

“Net Proceeds” means the proceeds from the sale of the Bonds less any discount retained by the Purchaser.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel which opinion is acceptable to the Issuer and the Trustee.

“Opinion of Counsel” or “opinion” means a written opinion of Counsel addressed to the Trustee, for the benefit of the owners of the Bonds, who may (except as otherwise expressly provided in this Indenture) be Counsel to the Issuer.

“Paying Agent” means any bank or trust company at which principal of the Bonds is payable, which initially is _____, in _____, Indiana.

“Pledge Agreement” means the Pledge Agreement, dated March 1, 2024, between the Issuer and the Redevelopment Commission, regarding the Redevelopment Commission’s pledge of Pledged Revenues to the payment of the Bonds.

“Pledge Resolution” means Resolution No. _____, adopted by the Redevelopment Commission on _____, 2024, authorizing and directing the President of the Redevelopment Commission to enter into the Pledge Agreement.

“Pledged Revenues” means the TIF Revenues; which have been pledged by the Redevelopment Commission pursuant to the Pledge Resolution to pay the Bonds pursuant to, and subject to the terms and conditions of, the Pledge Agreement.

“Project” means all or any portion of the project to be undertaken by the Developer or Developer Affiliates which will be located in the Allocation Area, and as more fully described in the Development Agreement.

“Purchaser” means Grandview III Development, LLC, or their successors and assigns.

“Qualified Investments” means any of the following to the extent permitted by law: (i) Governmental Obligations; (ii) money market funds, which may be funds of the Trustee, the assets of which are obligations of or guaranteed by the United States of America and which funds are rated at the time of purchase “AAAm-G” or higher by Standard & Poor’s Ratings Services, Inc. and/or “Aaa” by Moody’s Investors Service, Inc.; (iii) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies: Export-Import Bank, Farmers Home Administration, Federal Financing Bank, Federal Housing Administration, Government National Mortgage Association, Maritime Administration, Public Housing Authorities, Banks for Cooperatives, Federal Farm Credit Banks, Federal Intermediate Credit Bank, Federal Home Loan Bank and Federal Land Bank; (iv) certificates of deposit, savings accounts, deposit accounts or depository receipts of a bank, savings and loan associations and mutual savings banks, including the Trustee, each fully insured by the Federal Deposit Insurance Corporation; (v) bankers’ acceptances, savings accounts, deposit accounts or certificates of deposit of commercial banks or savings and loan associations, including the Trustee, which mature not more than one year after the date of purchase; provided the banks or savings and loan associations (rather than their holding companies) are rated for unsecured debt at the time of purchase of the investments in the two highest full classifications established by Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Services, Inc.; (vi) commercial paper rated at the time of purchase in the single highest full classification by Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Services, Inc. and which matures not more than 270 days after the date of purchase; (vii) investment agreements fully and properly secured at all times by collateral security described in (i), (ii) or (iii) above or issued by entities rated in the single highest full classification by Moody’s

Investors Service and Standard & Poor's Ratings Services, Inc. when such agreement was entered into; and (viii) repurchase agreements with any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (i), (iii) or (iv) above; provided, underlying securities are required by the repurchase agreement to be continuously maintained at a market value not less than the amount so invested.

"Record Date" means the first day of the calendar month containing an Interest Payment Date.

"Redevelopment Commission" means the Redevelopment Commission of the City of Mishawaka, Indiana.

"Registrar" means initially _____, in _____, Indiana, a national banking association organized and existing under the laws of the United States of America or any successor thereto.

"Requisite Bondholders" means the holders of 66-2/3% in aggregate principal amount of all Bonds outstanding under the Indenture, and so long as the Purchaser holds any of the Bonds, the Purchaser acting alone.

"Series of Bonds" or "Bonds of a Series" or "Series" or words of similar meaning means any Series of Bonds authorized by this Indenture or by any Supplemental Indenture.

"State" means the State of Indiana.

"Supplemental Indenture" means an indenture supplemental to or amendatory of this Indenture, executed by the Issuer and the Trustee in accordance with Article IX hereof.

"TIF Revenues" means the property tax proceeds received by the Redevelopment Commission and pledged to the Issuer for payment of the Bonds pursuant to the Pledge Agreement, subject to terms and conditions of the Pledge Agreement, which proceeds are derived from the assessed valuation of real property in the Allocation Area in excess of the assessed valuation described in IC 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of the Indenture. Pursuant to the Pledge Agreement, the Redevelopment Commission has covenanted and agreed that the TIF Revenues are hereby pledged to the payment of the Bonds as set forth in the Pledge Agreement.

"Trustee" means _____, a banking and financial institution incorporated under the laws of the United States, having a corporate trust office in _____, Indiana, and any successor trustee or co-trustee.

"Trust Estate" shall have the meaning assigned to such term in the Granting Clauses of this Indenture.

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

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

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

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

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

(e) Any terms not defined herein but defined in the Financing Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

(g) The word "including" and any variation thereof means "including, without limitation" and must not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) Where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

(End of Article I)

ARTICLE II

THE BONDS

Section 2.1 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The principal amount of the Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.10 hereof) that may be issued is hereby expressly limited to not to exceed Fourteen Million Dollars (\$14,000,000).

Section 2.2 Issuance of Bonds.

(a) The Bonds shall be designated "City of Mishawaka, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Grandview Phase III Project)," and shall have such terms, conditions and characteristics as specified in the form of the Bonds set forth in Section 2.6 hereof. The Bonds shall be originally issuable as fully-registered bonds without coupons in denominations of One Hundred Thousand Dollars (\$100,000) or in integral multiples of \$1,000 in excess thereof and shall be numbered 2024R-1 and upward, or in any other manner acceptable to the Trustee and the Issuer.

(b) The Bonds shall be dated as of the date of their delivery. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The interest on the Bonds shall be payable on each January 15 and July 15, commencing on _____ 15, 202___. The Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (i) such date of authentication shall be subsequent to a Record Date, in which case they shall bear interest from the Interest Payment Date with respect to such Record Date, or (ii) such Bond is authenticated on or prior to _____ 1, 202___, in which case they shall bear interest from the date of delivery of such Bonds.

(c) The Bonds be issued as a single bond with principal installment payments, bearing an interest rate of _____ percent (___%). Principal installment payments shall be as set forth below, subject to adjustment as set forth in Section 2.10 below:

Date	Principal Amount
------	------------------

*Final maturity. Subject to modification pursuant to Section 2.10 hereof.

Section 2.3 Payment of Principal and Interest on the Bonds. The interest on the Bonds, if any, and installment payments of principal (except for the final principal installment and the final interest payment) shall be payable by wire transfer to the person in whose name each Bond is registered as of the Record Date for such Interest Payment Date at each address as it appears on the registration and transfer books maintained by the Registrar or at such other address as is provided to the Trustee, the Registrar and the Paying Agent in writing by such registered owner. The final installment of principal of, and the final interest payment on the Bonds shall be payable upon surrender thereof in any lawful coin or currency of the United States of America, at the designated corporate trust office of the Paying Agent, initially in St. Paul, Minnesota. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day.

Section 2.4 Execution; Limited Obligation. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signatures of the Mayor and attested with the manual or the facsimile signature of its Clerk and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed each of said Bonds. In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof. The Bonds, as to both principal and interest, are not a general obligation or liability of the Issuer, the State of Indiana or of any

political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer payable solely and only from the Trust Estate (including the Pledged Revenues and the funds and accounts held thereunder) pledged and assigned for their payment in accordance with this Indenture. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or the interest on the Bonds. The Bonds do not grant to the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana or the Issuer, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission, or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. Under no circumstances shall the Developer or any Developer Parties be liable for making any payments due under this Indenture or on the Bonds, including any payment of principal of, premium, if any, or interest on the Bonds.

Section 2.5 Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until the certificate of authentication on such Bond substantially in the form set forth in Section 2.6 hereof shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.6 Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form set forth below with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Trustee:

(Form of Bond)

No. 2024R-1

UNITED STATES OF AMERICA

STATE OF INDIANA

ST. JOSEPH COUNTY

CITY OF MISHAWAKA, INDIANA

TAXABLE ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BOND,
SERIES 2024 (GRANDVIEW PHASE III PROJECT)

Interest Rate	Maturity Date	Original Date	Authentication Date
0.00%	_____	_____, 2024	_____, 2024

REGISTERED OWNER:

PRINCIPAL AMOUNT: Not to Exceed _____ Million _____ Hundred _____
Thousand Dollars (\$ _____)

The City of Mishawaka, Indiana (the "Issuer"), a municipal corporation organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from the Trust Estate (as defined in the hereinafter described Indenture) pledged and assigned for the payment hereof, the Principal Amount set forth above in the principal amounts and on the principal installment payment dates set forth in Exhibit A, or so much of the Principal Amount as shall be deemed outstanding as set forth below, unless this Bond shall have previously been called for redemption and payment of the redemption price made or provided for, and to pay interest on the unpaid principal amount hereof in like money, but solely from the Trust Estate, at the Interest Rate per annum set forth above, payable on _____ 15, 202____, and on each January 15 and July 15 thereafter (each, an "Interest Payment Date") until the Principal Amount is paid in full. Interest on this Bond shall be payable from the Interest Payment Date next preceding the date of authentication thereof (the "Interest Date"), except that: (i) if this Bond is authenticated on or prior to _____, 202____, the Interest Date shall be the Original Date specified above; (ii) if this Bond is authenticated on or after the first day of the calendar month which includes an Interest Payment Date (the "Record Date"), the Interest Date shall be such Interest Payment Date; and (iii) if interest on this Bond is in default, the Interest Date shall be the day after the date to which interest hereon has been paid in full.

The deemed outstanding principal amount of the Bonds as of the Authentication Date is \$_____, subject to adjustment as of _____ 1, 202____, as provided in Section 2.10 of the Indenture. Given that (i) the Bonds are subject to partial redemption as provided herein and (ii) upon partial redemption, the owner of the Bonds may determine not to surrender the Bonds for replacement as provided in the Indenture, it is not possible to determine the remaining outstanding principal amount of the Bonds from this Bond.

The principal installment payments and interest (except the final principal installment and the final interest payment) on this Bond are payable by wire transfer to the person in whose name this Bond is registered as of the applicable Record Date, and the final principal installment and the final interest payment shall be payable at the principal office of _____, as trustee (the "Trustee"), in the City of _____, _____, or at the principal office of any successor trustee. This Bond is one of an authorized issue of the Issuer's bonds, designated as the "City of Mishawaka, Indiana, Taxable Economic Development Revenue Bonds, Series 2024 (Grandview Phase III Project)" (hereinbefore and hereinafter referred to as the "Bonds"), which are being issued pursuant to Ordinance No. _____, adopted by the Common Council of the City of Mishawaka, Indiana, on _____, 2024 (the "Bond Ordinance") and under the hereinafter described Indenture in the aggregate principal amount of not to exceed Fourteen Million Dollars (\$14,000,000).

The Bonds are being issued for the purpose of providing funds to (a) finance a portion of the costs of the Project (as defined in the Indenture) and (b) pay the costs of issuance of the Bonds. The Issuer will be deemed to have provided a portion of the proceeds of the Bonds upon the closing thereof to Grandview III Development, LLC, an Indiana limited liability company (the "Developer") or its designee, for the purpose of paying costs of the Project, all pursuant to the Financing Agreement, dated as of March 1, 2024, between the Issuer and the Developer (the "Financing Agreement"), which prescribes certain of the terms and conditions under which such proceeds will be used.

The Bonds are issued under and entitled to the security of a Trust Indenture, dated as of March 1, 2024 (the "Indenture"), duly executed and delivered by the Issuer to the Trustee (the term "Trustee" when used herein referring to said Trustee or its successors), pursuant to which Indenture the Trust Estate, including the Pledged Revenues (as defined in the Indenture) are pledged and assigned by the Issuer to the Trustee as security for the Bonds. The Bonds are special and limited obligations of the Issuer payable solely from and secured exclusively by the Trust Estate, which consists of the Pledged Revenues (as defined in the Indenture), and other funds and accounts assigned by the Indenture. THE OWNER OF THIS BOND, BY ACCEPTANCE OF THIS BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE BOND ORDINANCE, THE INDENTURE, THE FINANCING AGREEMENT, THE PLEDGE AGREEMENT AND THIS BOND.

The Bonds are issuable in registered form without coupons in the denominations of One Hundred Thousand Dollars (\$100,000) or in integral multiples of \$1,000 in thereof. This Bond is transferable by the registered holder hereof in person or by his or her attorney duly authorized in writing at the principal office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond will be issued to the transferee in exchange therefor.

The Issuer and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond is redeemable at the option of the Issuer on any date, on thirty (30) days' notice, in whole or in part, at 100% of face value, without premium, plus accrued interest to the date fixed for redemption.

If fewer than all of the Bonds at the time outstanding are to be called for redemption, the principal installment amounts of Bonds or portions thereof to be redeemed shall be in inverse order of maturity. The Bonds shall be redeemed only in whole multiples of \$1,000, provided that the aggregate outstanding amount of the Bonds following any partial redemption may not be less than \$100,000.

In the event any of the Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds (or principal installments thereof) to be redeemed will be given by mailing a copy of the redemption notice by first-class mail not less than thirty (30) days prior to the date fixed for redemption to the registered owner of the Bonds to be redeemed at the address shown on the registration books (unless waived by any holder); provided, however, that failure to give such notice by mailing, or any defect therein with respect to any registered Bond, shall not affect the validity of any proceedings for the redemption of other Bonds.

Provided funds for the Bonds so called for redemption are on deposit at the place of payment at that time, the Bonds so called for redemption will cease to bear interest on the specified redemption date, and shall no longer be protected by the Indenture except as to such provisions of the Indenture relating to the funds on deposit and shall not be deemed to be outstanding under the provisions of the Indenture.

The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana, or any political subdivision or taxing authority thereof. The Bonds, as to both principal and interest, are not a general obligation or liability of the Issuer, the State of Indiana or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the Trust Estate (including the Pledged Revenues and the funds and accounts held thereunder) pledged and assigned for their payment in accordance with the Indenture. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or the interest on this Bond. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana or the Issuer, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission, or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. Under no circumstances shall the Developer or any Developer Parties (as defined in the

Indenture) be liable for making any payments due under the Indenture or on the Bonds, including any payment of principal of, premium, if any, or interest on the Bonds.

THE OWNER OF THIS BOND, BY ACCEPTANCE OF THIS BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE INDENTURE AND THIS BOND AND ACKNOWLEDGES THAT:

1. It is a sophisticated investor and is familiar with securities such as the Bonds.
2. It is familiar with the Issuer, the City of Mishawaka Redevelopment Commission (“Commission”) and the City of Mishawaka Redevelopment District (“District”); it has received such information concerning the Issuer, the Bonds, the Indenture and the Pledged Revenues as it deems to be necessary in connection with investment in the Bonds. It has received, read and had an opportunity to comment upon and has consented to the provisions of the Indenture, the Bonds and the Financing Agreement. Prior to the purchase of the Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the Issuer concerning the terms and conditions of the Bonds, the tax status of the Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the hereinafter defined Circuit Breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the Issuer possess such information or can acquire it without unreasonable effort or expense. It is not relying on Barnes & Thornburg LLP for information concerning the financial status of the Issuer, the Commission or the District, or the ability of the Issuer or the Commission to honor their financial obligations or other covenants under the Bonds, the Indenture or the Financing Agreement. It understands that the projection of TIF Revenues prepared by Baker Tilly Municipal Advisors, LLC in connection with the issuance of the Bonds has been based on estimates of the investment in real property provided by the Company and the Developer or the Developer Affiliates.
3. It understands that the Commission receipt of the TIF Revenues may be limited by operation of IC 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of the property (“Circuit Breaker”). The Issuer may not increase its property tax levy or borrow money to make up any shortfall due to the application of this tax credit. It further understands that neither the Issuer nor the Commission has the authority to levy a tax to pay the principal of the Bonds.
4. It is acquiring the Bonds for its own account with no present intent to resell; and it will not sell, convey, pledge or otherwise transfer the Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities law.
5. It has investigated the security for the Bonds, to its satisfaction, and it understands that the Bonds are payable solely from the TIF Revenues.
6. It recognizes that: (a) the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein; (b) by rendering such opinions, the attorneys do not become insurers or guarantors of (i) that expression of professional judgment; (ii) the transaction opined upon; or (iii) the future performance of parties

to such transaction; and (c) the rendering of the opinions does not guarantee the outcome of any legal dispute that may arise out of the transaction.

7. It understands that the Issuer has no continuing disclosure obligations with regard to the Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Indenture.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Indenture precedent to and in the issuance of this Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Bond have been duly authorized by the Issuer.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the City of Mishawaka, Indiana, has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Mayor and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its Clerk, all as of the date shown above.

CITY OF MISHAWAKA, INDIANA

(Seal)

By: _____
Mayor

Attest:

Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Indenture.

_____, as Trustee
and Registrar

By: _____
Authorized Officer

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRAN MIN ACT -- _____ Custodian _____
(Cust) (Minor)

under Uniform Transfers to Minors Act, _____
(State)

TEN COM -- as tenants in common
JT TEN -- as joint tenants with right of survivorship and not
as tenants in common

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Please Print or Typewrite Name and Address) the within Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints _____, as attorney to transfer the within Bond on the books kept for registration thereof; with full power of substitution in the premises.

Dated: _____

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Exhibit A

Principal Installment Date Principal Amount

*Final maturity. Subject to modification pursuant to Section 2.10 of the Indenture.

(End of Bond Form)

Section 2.7 Delivery of Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver the Bonds to the Trustee. The Trustee shall authenticate such Bonds and deliver them to the purchasers thereof upon receipt of:

- (a) A copy, duly certified by the Clerk of the Issuer, of the Bond Ordinance authorizing the execution and delivery of the Financing Agreement and this Indenture and the issuance of the Bonds;
- (b) Executed counterparts of the Financing Agreement, the Pledge Agreement and this Indenture;
- (c) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Bonds, to the purchasers thereof;

(d) An Opinion of Bond Counsel to the effect that the Bonds are valid and binding limited obligations of the Issuer enforceable in accordance with their terms, subject to such enforcement limitations customarily contained in such opinions, and bear interest that is exempt from taxation in the State of Indiana for all purposes except the Indiana financial institutions tax; and

(e) Such other documents as shall be required by the purchasers of the Bonds, the Trustee or Bond Counsel.

The proceeds of the Bonds shall be paid over to the Trustee and deposited to the credit of the various funds as hereinafter provided under Section 3.1 hereof.

Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, series and denomination as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it. The Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses in this connection. Any Bond issued pursuant to this Section 2.8 shall be deemed part of the original Series of Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.9 Registration and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee, who is hereby constituted and appointed the registrar of the Issuer. Upon surrender (i) for transfer of any fully registered Bond at the principal office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his or its or her attorney duly authorized in writing or (ii) for replacement for the purpose of establishing the final principal amount of the Bonds if necessary pursuant to Section 2.10 hereof, the Issuer shall execute and the Trustee shall authenticate and deliver (i) with respect to a transfer, in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and the same maturity for a like aggregate principal amount and (ii) with respect to establishing the final principal amount, a new fully registered Bond or Bonds of the same series and the same maturity with the final principal amount pursuant to Section 2.10 hereof. The execution by the Issuer of any fully registered Bond of any denomination shall constitute full and due authorization of such denomination so long as such denomination is authorized pursuant to this Indenture, and the Trustee shall thereby be authorized to authenticate and deliver such registered Bond. The Trustee shall not be required to transfer or exchange any fully registered Bond during the period between the Record Date and any Interest Payment Date of such Bond, nor to transfer or exchange any

Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Bonds.

As to any fully registered Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal thereof or interest thereon, shall be made only to or upon the order of the registered owner thereof or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 2.10 Modification of Not to Exceed Principal Amount of Bonds. Pursuant to the Financing Agreement, the Company shall confirm to the Issuer the deemed amount of proceeds of the Bonds applied to the Project by providing a final written request pursuant to Section 4.4 hereof by not later than _____, 202___. If the sum of such deemed amount of Bond proceeds applied to the Project, when added to the amount paid by the Company at Closing pursuant to Section 3.1 hereof for costs of issuance of the Bonds, is less than \$14,000,000, the Issuer will provide an updated par amount of the Bonds to the Trustee. The notice to the Trustee by the Issuer shall be in the form set forth at Exhibit C and executed by an Authorized Representative of the Issuer. The Trustee shall rely upon such confirmation of the reduced par amount and updated principal installment payment schedule and shall have no duty to confirm the accuracy thereof. The Issuer shall provide notice to the Developer and the registered owner of the Bonds (if not the Developer) of the requirement to surrender the Bonds for replacement pursuant to Section 2.9 hereof. Failure to surrender the Bonds for replacement by the registered owner thereof shall not affect the payment obligations of the Issuer with respect to the final principal amount of the Bonds.

(End of Article II)

ARTICLE III

APPLICATION OF BOND PROCEEDS

Section 3.1 Deposit of Net Proceeds of Bonds. The Issuer shall be deemed to have provided at Closing to the Developer a portion of the proceeds of the Bonds in an amount equal to \$_____ for the Developer to apply to the costs of the Project. The Issuer shall deposit with the Trustee the proceeds received from the sale of the Bonds, which consists of an amount equal to \$_____, and the Trustee shall deposit such amount into the Expense Fund and disbursed therefrom for the purposes described in Section 4.5 hereof. No further deposits shall be required pursuant to this Indenture. The remaining proceeds of the Bonds may be deemed deposited and advanced from time to time at the request of the Company, subject to the approval of the Issuer pursuant to Section 4.4 hereof. The total amount deemed deposited and advanced shall not to exceed \$_____.

(End of Article III)

ARTICLE IV

REVENUES AND FUNDS

Section 4.1 Source of Payment of the Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely and only from the Trust Estate (including the Pledged Revenues and the Funds and Accounts held hereunder), pledged and assigned for their payment in accordance with this Indenture. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 4.2 Creation of Funds. There are hereby created and ordered established the following funds and accounts to be held by the Trustee:

- (a) the Bond Fund; and
- (b) the Expense Fund.

Upon the written request of the Issuer, the Trustee shall establish and maintain hereunder such additional funds, accounts or subaccounts as the Issuer may specify from time to time to the extent that in the judgment of the Trustee the establishment of such funds, accounts or subaccounts are not to the material prejudice of the Trustee or the Bondholders.

Section 4.3 Bond Fund.

(a) Moneys in the Bond Fund shall be applied as provided in this Section 4.3. There shall be deposited in the Bond Fund, at such times prescribed in this Section, (a) the Pledged Revenues and (b) all other moneys received by the Trustee which are required to be deposited or which are accompanied by directions that such moneys are to be deposited into the Bond Fund, in an amount equal to (i) the payment due on the Bonds on the next Interest Payment Date, (ii) any overdue principal and interest on outstanding Bonds, and (iii) all Annual Fees coming due within the next six (6) months with respect to the Bonds, (iv) any unpaid Annual Fees accrued prior thereto.

(b) Subject to the other provisions of this Indenture, the Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit, or cause to be paid to the Trustee for deposit in the Bond Fund for its account, prior to 10:00 a.m., Central time, at least three (3) business days immediately preceding each Interest Payment Date, sufficient sums from revenues and receipts derived from the Pledged Revenues, promptly to meet and pay the amounts required under this Section. Nothing herein should be construed as requiring the Issuer to deposit or cause to be paid to the Trustee for deposit in the Bond Fund funds from any source other than receipts derived from the Pledged Revenues.

(c) In accordance with the terms of the Pledge Agreement and the Bond Ordinance, the Clerk, as the fiscal officer of the Issuer and the Redevelopment Commission, shall set aside the

Pledged Revenues (in the amounts described in this Section) and transfer such Pledged Revenues to the Trustee, no later than three (3) business days prior to January 15 and August 15 of each year, commencing _____ 15, 202____, for application in accordance with this Indenture. The Trustee is hereby directed to deposit any Pledged Revenues so received into the Bond Fund in the manner prescribed in this Section.

(d) On or before one (1) business day before each Interest Payment Date, commencing _____ 15, 202____, the Trustee shall deposit the Pledged Revenues, so received from the Issuer, into the Bond Fund, but no more than shall be necessary for the payment of the amounts identified in subsection (a) of this Section 4.3, which amounts shall be applied as follows: (i) *first*, to the payment of principal of and interest on the Bonds on the immediately succeeding Interest Payment Date; (ii) *second*, to the payment of Annual Fees coming due within the next six (6) months; (iii) *third*, to the payment of any overdue principal and interest on outstanding Bonds, with interest continuing to accrue on such overdue amounts at the stated rate on such Bonds until paid; and (iv) *fourth*, to redeem outstanding Bonds in accordance with Section 5.1 hereof, or to be released and returned to the Issuer and used for any other purpose permitted by the Act.

(e) All moneys in the Bond Fund shall be used by the Trustee solely to pay the principal of, premium, if any, and interest on the Bonds as the same becomes due at maturity, on principal installment payment dates, or upon redemption, together with the Annual Fees described in subsection (a), in that sequence or order of priority described in subsection (d) above, and, thereafter, as otherwise set forth in this Indenture. If necessary, the Trustee shall transmit such funds to the Paying Agent for any series of Bonds in sufficient time to insure that such interest will be paid as it becomes due.

Section 4.4 Expense Fund. The Trustee shall deposit into the Expense Fund the moneys required to be deposited therein pursuant to the provisions of Article III hereof. The Trustee shall pay Costs of Issuance set forth in Exhibit A, by check or wire transfer, at closing to the entities listed. Execution of this Indenture shall be authorization for these payments. The Trustee may disburse any remaining funds held in the Expense Fund upon receipt of invoices or requisitions certified by an Authorized Representative of the Issuer to pay Costs of Issuance for the Bonds or to reimburse the Issuer for amounts previously advanced for such costs. In making disbursements from the Expense Fund, the Trustee may rely upon such certifications and invoices without further investigation. Any amounts remaining in the Expense Fund sixty (60) days after the issuance of the Bonds will be transferred to the Bond Fund to be used to pay debt service on the Bonds, at which time the Expense Fund may, at the direction of the Issuer, be closed.

Section 4.5 Deemed Purchase of the Bonds and Deemed Advance of Proceeds. In addition to the amounts deposited pursuant to Section 3.1 hereof (and without duplication thereof), the Bond Purchaser shall be deemed to have purchased the Bonds in the same principal amount of **[(i) the amount of interest payable on each Interest Payment Date from _____ 15, 2024, through and including _____ 15, 2026, and (ii)]** the amount of the Costs of Construction set forth in a written request approved by the Issuer and signed by the Authorized Representative of the Bond Purchaser. The Trustee shall record upon receipt by the Trustee of the written request approved by the Issuer and signed by the Authorized Representative of the Bond Purchaser, in substantially the form of Exhibit B:

- (i) stating that the costs of an aggregate amount set forth in such written request has been made or incurred and were necessary for the construction or equipping of the Project and were made or incurred in accordance with the construction contracts, plans and specifications, or purchase contracts therefor then in effect or that the amounts set forth in such written request are for allowable Costs of Construction;
- (ii) stating that the amount paid or to be paid, as set forth in such written request, is reasonable and represents a part of the amount payable for the Costs of Construction during construction of the Project or the costs of equipping the Project all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;
- (iii) stating that no part of such costs was included in any written request previously filed with the Trustee under the provisions hereof;
- (iv) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act; and
- (v) stating a recap of vendors and the amount paid and/or to be paid to each and copies of invoices paid and/or to be paid with copies of checks used for any previously made payment and, if a vendor is an unincorporated entity, the taxpayer identification number for such vendor.

(1) Such amounts, upon compliance with this Section 4.4 shall be deemed to have been disbursed to the Company to pay Costs of Construction. The Trustee may rely fully on any such request delivered pursuant to this Section and is not be required to make any investigation in connection therewith. The final deemed disbursement shall occur not later than _____, 202__. If the amount of deemed disbursements (coupled with the amount paid by the Developer for costs of issuance of the Bonds pursuant to Section 3.1 hereof) is less than \$14,000,000, the par amount of the Bonds shall be reduced pursuant to Section 2.10 hereof.

Section 4.6 Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture shall be trust funds under the terms hereof and shall not be subject to lien or attachment of any creditor of the Issuer or of the Developer. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.7 Investment. Moneys on deposit in the Funds and Accounts established in this Article IV shall be invested as provided in Section 6.7 hereof.

(End of Article IV)

ARTICLE V

REDEMPTION OF BONDS BEFORE MATURITY

Section 5.1 Redemption Dates and Prices for the Bonds. The Bonds are redeemable at the option of the Issuer on any date on thirty (30) days' notice, in whole or in part, at 100% of face value, without premium, plus accrued interest to the date fixed for redemption.

Section 5.2 Notice of Redemption. In the case of redemption of Bonds pursuant to Section 5.1, notice of the call for any such redemption identifying the Bonds, or portions of fully registered Bonds, to be redeemed shall be given by the Trustee by mailing a copy of the redemption notice by first-class mail not less than thirty (30) days prior to the date fixed for redemption, to the registered owner of each Bond to be redeemed at the address shown on the registration books (unless waived by any holder). Any notice of redemption required under this section shall identify the Bonds to be redeemed including the complete name of the Bonds, the interest rate, the issue date, the maturity date, and certificate numbers (and, in the case of a partial redemption, the respective principal installment amounts to be called) and shall state (i) the date fixed for redemption, (ii) the redemption price, (iii) the address of the corporate trust office of the Trustee at which the Bonds must be surrendered together with the name and telephone number of a person to contact from the office of the Trustee, (iv) any condition precedent to such redemption, (v) that on the date fixed for redemption, and upon the satisfaction of any condition precedent described in the notice, the redemption price will be due and payable upon each such Bond or portion thereof and that interest on the Bonds called for redemption ceases to accrue on the date fixed for redemption, and (vi) that if such condition precedent is not satisfied, such notice of redemption is rescinded and of no force and effect, and the principal and premium, if any, shall continue to bear interest on and after the date fixed for redemption at the interest rate borne by the Bond; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Bond shall not affect the validity of any proceedings for the redemption of other Bonds.

On and after the redemption date specified in the aforesaid notice, such Bonds, or portions thereof, thus called shall not bear interest, shall no longer be protected by this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture, and the holders thereof shall have the right only to receive the redemption price thereof plus accrued interest thereon to the date fixed for redemption.

Section 5.3 Cancellation. All Bonds which have been redeemed in whole shall be surrendered for payment and thereafter canceled and cremated or otherwise destroyed by the Trustee in accordance with its document retention policy and shall not be reissued, and a counterpart of the certificate of cremation or other destruction evidencing such cremation or other destruction shall be furnished by the Trustee to the Issuer upon request of the Issuer.

Section 5.4 Redemption Payments. Prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of the Bonds or portions thereof called, together with accrued interest thereon to the redemption date. Upon the giving of notice and the deposit of funds for redemption, interest on the Bonds thus called shall no longer accrue after the date fixed for redemption. No payment shall be made by the Trustee upon any Bond that has been redeemed in whole until such

Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.8 hereof with respect to any mutilated, lost, stolen or destroyed Bond.

Section 5.5 Partial Redemption of Bonds. If fewer than all of the Bonds at the time outstanding are to be called for redemption, principal installment amounts to be redeemed shall be redeemed in inverse order of maturity. The Bonds shall be redeemed only in whole multiples of \$1,000, provided that the aggregate outstanding amount of the Bonds following any partial redemption may not be less than \$100,000. The Trustee shall call for redemption in accordance with the foregoing provisions as much of the principal installments as will, as nearly as practicable, exhaust the moneys available therefor.

(End of Article V)

ARTICLE VI

GENERAL COVENANTS

Section 6.1 Payment of Principal and Interest. The Issuer covenants that it will promptly pay the principal of and premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds, according to the true intent and meaning thereof. The principal of and interest on the Bonds are payable solely and only from the Trust Estate (consisting of Funds and Accounts held under the Indenture and the Pledged Revenues), which are hereby specifically pledged and assigned to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer. **The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof. The Bonds, as to both principal and interest, are not a general obligation or liability of the Issuer, the State of Indiana or of any political subdivision or taxing authority thereof, but are special limited obligations of the Issuer and are payable solely and only from the Trust Estate (consisting of Funds and Accounts held under the Indenture and the Pledged Revenues) pledged and assigned for their payment in accordance with this Indenture. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or the interest on the Bonds. The Bonds do not grant to the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana or the Issuer, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds, the Financing Agreement, the Development Agreement or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. Under no circumstances shall the Developer or any Developer Parties be liable for making any payments due under this Indenture or on the Bonds, including any payment of principal of, premium, if any, or interest on the Bonds.**

Section 6.2 Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. The Issuer represents that it is duly authorized under the constitution and laws of the State of Indiana to issue the Bonds authorized hereby and to execute this Indenture, and to pledge and assign the Pledged Revenues in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands

of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the tenor thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3 Instruments of Further Assurance. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee, the Trust Estate pledged hereby to the payment of the principal of and interest on the Bonds.

Section 6.4 Filing of Indenture and Security Instruments. The Issuer shall cause this Indenture and all supplements thereto as well as such other security instruments, financing statements and all supplements thereto and other instruments as may be required from time to time to be filed in such manner and in such places as may be required by law in order to fully preserve and protect the lien hereof and the security of the holders and owners of the Bonds and the rights of the Trustee hereunder. This section shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor parties thereto.

Section 6.5 List of Bondholders. The Trustee will keep on file at the principal office of the Trustee a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the holders and/or owners (or a designated representative thereof) of twenty-five percent (25%) or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

Section 6.6 [RESERVED]

Section 6.7 Investment of Funds. All moneys held by the Trustee in any Fund or Account established by this Indenture may, at the written direction of the Issuer, be invested in Qualified Investments to the extent permitted by law. The Trustee may conclusively rely upon the Issuer's written investment direction as to both the suitability and legality of the directed investments, and such written direction shall be deemed to be a certification to the Trustee that such directed investments constitute Qualified Investments. In the absence of written investment direction of the Issuer, the Trustee shall hold moneys in the funds and accounts hereunder uninvested in cash, with no liability for interest. For so long as the Trustee has complied with the written investment direction of the Issuer, the Trustee shall not be liable for any investment losses. All such investments shall at all times be a part of the fund or account in which the moneys used to acquire such investments had been deposited, and all income derived from the investment of moneys on deposit in such fund shall be deposited in or credited to and any loss resulting from such investment will be charged to the corresponding Fund from which such investment was made. Investments of moneys in the respective funds or accounts must be made so as to assure preservation of principal. Moneys in any fund or account shall be invested in Qualified Investments with a maturity date, or a redemption date determined by the Issuer at the Issuer's option, which shall coincide as nearly as practicable with times at which moneys in such funds or

accounts will be required for the purposes thereof. The Trustee shall sell and reduce to cash a sufficient amount of such investments in the respective fund or account whenever the cash balance therein is insufficient to pay the amounts contemplated to be paid therefrom at the time those amounts are to be paid and the Trustee shall not be liable or responsible for any loss resulting from such investments. The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for investments. Neither the Trustee nor the Issuer shall be liable or responsible for any loss resulting from any investment. All such investments shall be held by or under the control of the Trustee or the Issuer, as applicable, and any income resulting therefrom shall be applied in the manner specified in this Indenture. The Developer shall not be authorized or entitled to direct, or obligated to make, investments of Bond proceeds or any other funds held under this Indenture. Although the Issuer recognizes that it may obtain a broker confirmation at no additional cost, the Issuer hereby agrees that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any Fund or Account if no activity occurred in such Fund or Account during such month. Where the Issuer has directed the Trustee to reinvest the interest, principal or sales proceeds due with respect to an investment held in a fund or account hereunder, the Trustee may, in its discretion, credit such fund or account with such money before actual receipt thereof and may advance funds to purchase the directed investment in anticipation of actual receipt of such moneys. Any such crediting shall be provisional in nature, and the Trustee shall be authorized to reverse such crediting in the event that it does not receive good funds with respect thereto. Nothing in this Indenture shall constitute a waiver of any of the Trustee's rights as a securities intermediary under Uniform Commercial Code § 9-206.

Section 6.8 Non-presentment of Bonds. In the event any Bond shall not be presented for payment when the final principal installment thereof becomes due, or at the date fixed for full redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to the Trustee for the benefit of the holder or holders thereof, all liability of the Issuer to the holder thereof for the payment of such Bond (or such portion of such Bond as is redeemed) shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds for five (5) years without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his or her part under this Indenture or on, or with respect to, such redeemed Bond or portion thereof.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds within five (5) years after the date on which the same shall become due shall be repaid by the Trustee to the Issuer, and thereafter Bondholders shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 6.9 Destruction of Bonds. Whenever any outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture or upon payment of the entire principal amount or interest represented thereby or for replacement pursuant to Section 2.8 or 2.9 hereof, such Bond shall be cancelled and destroyed by the Trustee and, upon request, a counterpart of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer.

(End of Article VI)

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1 Events of Default. The occurrence and continuance of any of the following events shall constitute an "Event of Default" hereunder:

(a) Payment of any amount payable on the Bonds shall not be made when the same is due and payable, whether at the stated maturity thereof or upon proceedings for the redemption thereof (unless such proceeding for redemption shall be conditioned upon the satisfaction of a condition precedent and such condition precedent shall not have been satisfied at the time such payment is due and payable); or

(b) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereof on the part of the Issuer to be performed, and such default shall continue for sixty (60) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the holders of all of the Bonds then outstanding hereunder; or

(c) The Issuer shall fail to apply collected Pledged Revenues as required by Article IV of this Indenture, or the Redevelopment Commission shall fail to comply with the terms, conditions, and provisions of the Pledge Agreement; or

(d) The Issuer or the Redevelopment Commission: (1) admits in writing its inability to pay its debts generally as they become due; (2) files a petition in bankruptcy; (3) makes an assignment for the benefit of its creditors; or (4) consents to or fails to contest the appointment of a receiver or trustee for itself or of the whole or any substantial part of the Pledged Revenues;

(e) (1) The Issuer or the Redevelopment Commission is adjudged insolvent by a court of competent jurisdiction; (2) the Issuer or the Redevelopment Commission, on a petition in bankruptcy filed against the Issuer, is adjudged a bankrupt; or (3) an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Issuer or the Redevelopment Commission, a receiver or trustee of the Issuer or the Redevelopment Commission or of the whole or any substantial part of the Pledged Revenues, and any of the aforesaid adjudications, orders, judgments or decrees is not vacated, set aside or stayed within sixty (60) days from the date of entry thereof.

Section 7.2 Remedies: Rights of Bondholders.

(a) Upon the occurrence of an Event of Default, the Trustee shall notify the owners of all Bonds then Outstanding of such Event of Default by registered or certified mail, and will have the following rights and remedies and/or take the following actions:

(1) The Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of and premium, if any, and interest

on the Bonds then outstanding, or to enforce any obligations of the Issuer hereunder or of the Redevelopment Commission under the Pledge Agreement.

(2) The Trustee may by action at law or suit in equity require the Issuer to account as if it were the trustee of an express trust for the holders of the Bonds and may take such action as the Trustee, being advised by counsel, deems necessary or appropriate and to be in the best interest of the Bondholders.

(3) Upon the filing of a suit or other commencement of judicial proceedings to enforce any rights of the Trustee and of the Bondholders under the Indenture, the Trustee will be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues, issues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

(b) If an Event of Default shall have occurred, upon the request of the holders of 25% or more in aggregate principal amount of all Bonds then outstanding hereunder or the Purchaser and if indemnified as provided in Section 8.1(j) hereof, the Trustee shall, except as otherwise provided above, be obligated to exercise one or more of the rights, remedies and powers conferred by this Section as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

(c) No right or remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute. The assertion or employment of any right or remedy shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

(d) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as may be deemed expedient.

(e) No waiver of any Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 7.3 Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Requisite Bondholders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, the method and the place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 7.4 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article VII shall, after payment of the costs

and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer (including, without limitation reasonable attorneys' fees and costs), be deposited into the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of the maturity of the installments of such interest, and if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discriminations or privilege;

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates (or principal installment dates, as appropriate), with interest on such Bonds from the respective dates upon which they become due, and if the amount available shall not be sufficient to pay in full the Bonds (or principal installments thereof) due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege; and

Third: To the payment of the balance, if any, to the Issuer or to whosoever may be lawfully entitled to receive the same upon its written request, or as any court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this Section 7.4, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date, interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining in the Bond Fund shall be paid as provided in Article IV hereof.

Section 7.5 Remedies Vested In Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall be for the equal benefit of the holders of the outstanding Bonds.

Section 7.6 Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for any other remedy hereunder, unless a default has occurred of which the Trustee has been notified or is deemed to have notice as provided in Section 8.1(g) hereof, nor unless also such default shall have become an event of default and the holders of all Bonds then outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 8.1(j) hereof, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his, her or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his, her or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the covenants of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time and place, from the source and in the manner in said Bonds expressed.

Section 7.7 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.8 Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the holders of (1) all the Bonds then outstanding in respect of which default in the payment of principal, premium, if any, or interest exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived without the consent of all Bondholders (a) any event of default in the payment of the principal of any outstanding Bonds at

the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal or premium, if any, when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

(End of Article VII)

ARTICLE VIII

THE TRUSTEE

Section 8.1 Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but no implied covenants or obligations shall be read into this Indenture against the Trustee.

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Developer). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Developer under the Financing Agreement or the Development Agreement; but the Trustee may require of the Issuer full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed. The Trustee shall have no obligation to perform any of the duties of the Issuer or the Developer under the Financing Agreement or the Development Agreement, and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated by it or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed

on behalf of the Issuer by its duly authorized officers as sufficient evidence of the facts therein contained and, prior to the occurrence of a default of which the Trustee has been notified or is deemed to have notice as provided in subsection (g) of this Section 8.1, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer to the effect that an ordinance or resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such ordinance or resolution has been duly adopted and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct; provided, however, that the provisions of this subsection shall not affect the duties of the Trustee hereunder, including the provisions of Article VII hereof.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal of and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding or the Purchaser, and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(j) Before taking any action under this Section 8.1, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct in connection with any action so taken. Such indemnity shall survive the termination of this Indenture.

(k) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received hereunder.

(l) If any Event of Default under this Indenture shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use

the same degree of care as a prudent man would exercise or use in the circumstances in the conduct of his own affairs.

(m) The Trustee agrees to accept and act upon instructions, directions or other communications pursuant to this Indenture sent by Electronic Means; provided, however, that the Issuer shall provide to the Trustee an incumbency certificate listing the Authorized Representatives of the Issuer who are authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. The Issuer shall follow up any instruction or direction delivered by Electronic Means by immediately mailing the original documents to the Trustee; provided, the Trustee may accept and act upon the instruction or direction delivered by Electronic Means prior to receipt of such original documents and the failure of the Issuer to deliver such original documents shall not affect the validity of the instruction or direction delivered by Electronic Means. If the Issuer elects to give the Trustee instructions, direction or communication by Electronic Means and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reasonable reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees to assume all risks arising out of the use of such Electronic Means to submit instructions, directions and other communication to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 8.2 Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Upon an event of default, but only upon an event of default, the Trustee shall have a right of payment prior to payment on account of interest on or principal of any Bond for the foregoing advances, fees, costs and expenses incurred. If the Trustee renders any service hereunder not provided for in this Indenture, or the Trustee is made a party to or intervenes in any litigation pertaining to this Indenture or institutes interpleader proceedings relative hereto, the Trustee shall be compensated reasonably by the Issuer for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties, and expenses, including out-of-pocket and incidental expenses and legal fees occasioned thereby.

Section 8.3 Notice to Bondholders if Default Occurs. If an event of default occurs of which the Trustee is by Section 8.1(g) hereof required to take notice or if notice of an event of default be given as in said Section 8.1(g) provided, then the Trustee shall give written notice thereof by registered or certified mail to the last known holders of all Bonds then outstanding shown by the list of Bondholders required by the terms of this Indenture to be kept at the office of the Trustee.

Section 8.4 Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of holders of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 8.1(j) hereof, shall do so if requested in writing by the Requisite Bondholders. The rights and obligations of the Trustee under this Section 8.4 are subject to the approval of a court of competent jurisdiction.

Section 8.5 Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, *ipso facto*, shall be and become a successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.6 Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer and by registered or certified mail to each registered owner of Bonds then outstanding as shown by the list of Bondholders required by this Indenture to be kept at the office of the Trustee. Such resignation shall take effect at the end of such thirty (30) days (provided that a successor Trustee or temporary Trustee shall have been appointed), or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer in accordance with Section 8.8 hereof. Such notice to the Issuer may be served personally or sent by registered or certified mail.

Section 8.7 Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by a majority in aggregate principal amount of the Bondholders and may also be removed by the Issuer (unless an event of default, as defined in Section 7.1 has occurred) by an instrument in writing delivered to the Trustee and signed by the Issuer.

Section 8.8 Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys-in-fact, duly authorized, a copy of which will be delivered personally or sent by registered mail to the Issuer; provided, nevertheless, that in case of such vacancy, the Issuer, by an instrument executed by one of its duly authorized officers, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to the provisions of this Section 8.8 shall be a trust company or bank, having a reported capital and surplus of not less than Fifty Million Dollars (\$50,000,000), if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 8.9 Concerning Any Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an

instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article VIII, shall be filed by the successor Trustee in each office, if any, where the Indenture shall have been filed.

Section 8.10 Trustee Protected in Relying Upon Resolutions, etc. Subject to the conditions contained herein, the resolutions, ordinances, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

(End of Article VIII)

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of, or notice to, any of the Bondholders enter into an indenture or indentures supplemental to this Indenture, as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture; or
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them; or
- (c) To subject to this Indenture additional revenues, properties or collateral; or
- (d) To modify, amend or supplement this Indenture in such manner as required to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and, if they so determine, to add to the Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute; or
- (e) To achieve compliance with this Indenture with any applicable federal securities or tax law; or
- (f) To make any other change in this Indenture which, in the judgment of the Issuer, in its sole discretion, is not to the prejudice of the Trustee, the Developer, or the Bondholders and which, in the judgment of the Trustee, in its sole discretion, is not to the prejudice of the Trustee.

Section 9.2 Supplemental Indentures Requiring Consent of Bondholders. Exclusive of Supplemental Indentures covered by Section 9.1 hereof, and subject to the terms and provisions contained in this Section 9.2, and not otherwise, the Requisite Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing contained in this Section 9.2 shall permit, or be construed as permitting, (a) an extension of the stated maturity date or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, or reduction of any premium payable on the redemption of, any Bonds issuer hereunder, without the consent of the holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required with respect to any principal installment payment applicable to any Bonds without the consent of the holders of all the Bonds which would be affected by the action to be taken, or (c) the creation of any lien prior to the lien of this Indenture without the consent of the holders of all the Bonds at the time outstanding, or (d) a reduction in the aforesaid aggregate principal amount of Bonds the holders of which are required to consent to any such Supplemental Indenture, without the consent of the holders of all

the Bonds at the time outstanding which would be affected by the action to be taken, or (e) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond over any other Bond without the consent of the holders of all the Bonds at the time outstanding.

Section 9.3 Indenture Supplement; Opinion. Before entering into any supplement to this Indenture pursuant to this Article IX, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Bond Counsel stating that such supplement is authorized or permitted by this Indenture and will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms.

(End of Article IX)

ARTICLE X

MISCELLANEOUS

Section 10.1 Satisfaction and Discharge. All rights and obligations of the Issuer under this Indenture shall terminate, and such instruments shall cease to be of further effect, and the Trustee shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Issuer any moneys and investments in all funds established hereunder (except moneys or investments held by the Trustee for the payment of principal of or interest on the Bonds) when:

(a) All fees and expenses of the Trustee shall have been paid;

(b) The Issuer shall have performed all of its covenants and promises in this Indenture;
and

(c) All Bonds theretofore authenticated and delivered (i) have become due and payable, or (ii) are to be retired or called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee at the expense of the Issuer, or (iii) have been delivered to the Trustee canceled or for cancellation; and, in the case of (i) and (ii) above, there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Bonds and prior to the redemption date or maturity date thereof, as the case may be.

Notwithstanding the foregoing, none of the Bonds may be advance refunded if such advance refunding is not permitted by the laws of the State of Indiana.

Section 10.2 Defeasance of Bonds. Any Bond shall be deemed to be paid and no longer outstanding within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal and interest of and premium, if any, on such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) cash sufficient to make such payment, (2) non-callable Governmental Obligations, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment, or (3) a combination of cash and such non-callable Governmental Obligations, and (b) all necessary and proper fees, compensation, indemnities and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 5.2 of this Indenture, or if the Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Issuer shall have given the Trustee in form satisfactory to the Trustee irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, that the deposit required by the preceding paragraph has been made with the Trustee and that the Bonds are deemed to have been paid in accordance with this Section 10.2 and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on said Bonds, plus interest thereon to the due date thereof; or (b) the maturity of such Bonds.

All moneys so deposited with the Trustee as provided in this Section 10.2 may also be invested and reinvested, at the written direction of the Issuer, in Governmental Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Governmental Obligations in the hands of the Trustee pursuant to this Section 10.2 which is not required for the payment of principal of the Bonds and interest and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Section 10.2, all moneys or Governmental Obligations set aside and held in trust pursuant to the provisions of this Section 10.2 for the payment of Bonds (including premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the premium thereon, if any) with respect to which such moneys or Governmental Obligations have been so set aside in trust.

Anything in Article IX hereof to the contrary notwithstanding, if moneys or Governmental Obligations have been deposited or set aside with the Trustee pursuant to this Section 10.2 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 10.2 shall be made without the consent of the Owner of each Bond affected thereby.

The right to register the transfer of or to exchange Bonds shall survive the discharge of this Indenture.

Section 10.3 Application of Trust Money. All money or investments deposited with or held by the Trustee pursuant to Section 10.1 or Section 10.2 hereof shall be held in trust for the holders of such Bonds and applied by it, in accordance with the provisions of the Bonds and this Indenture, to the payment, either directly or through the Trustee, to the persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee; but such money or obligations need not be segregated from other funds except to the extent required by law.

Section 10.4 Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Bondholders may

be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing; provided, however, that wherever this Indenture requires that any such consent or other action be taken by the holders of a specified percentage, fraction or majority of the Bonds outstanding, any such Bonds held by or for the account of the Issuer shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met. For all other purposes, Bonds held by or for the account of the Issuer shall be deemed to be outstanding hereunder. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by delivery and the amounts and numbers of such Bonds and the date of the holding of the same, may be proved by a certificate executed by any trust company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such banker, as the property of such party, the Bonds therein mentioned if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a bank, bankers or trust company, before taking any action based on such ownership. In lieu of the foregoing, the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

Section 10.5 Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Developer and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Developer and the holders of the Bonds as herein provided.

Section 10.6 Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The

invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 10.7 Notices. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, or deposited with a national overnight delivery company with delivery fees prepaid, with proper address as indicated below. The Issuer, the Developer and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Mishawaka, Indiana
Attention: Mayor
100 Lincolnway West
Mishawaka, Indiana 46544

To the Developer: Grandview III Development, LLC
c/o Great Lakes Capital Management, LLC
7410 Aspect Drive, Suite 100
Granger, Indiana 46530

To the Trustee: _____

Attention: _____

All notices, approvals, consents, requests and any communications to the Trustee hereunder must be in writing in English and must be in the form of a document that is signed manually or by way of an electronic signature (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other electronic signature provider acceptable to the Trustee). Electronic signatures believed by the Trustee to comply with the E-SIGN ACT of 2000 or other applicable law shall be deemed original signatures for all purposes. If the Issuer or the Developer chooses to use electronic signatures to sign documents delivered to the Trustee, the Issuer and the Developer, as applicable, agrees to assume all risks arising out of its use of electronic signatures, including without limitation the risk of the Trustee acting on an unauthorized document and the risk of interception or misuse by third parties. Notwithstanding the foregoing, the Trustee may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any document signed via electronic signature.

Section 10.8 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.9 Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 10.10 Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future members, officers, directors, agents, attorneys or employees of the Issuer, or any incorporators, members, officers, directors, agents, attorneys, employees or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, members, officers, directors, agents, attorneys, employees or trustees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and issuance of such Bonds.

Section 10.11 Payments or Performance Due on Saturdays, Sundays and Holidays. Except as specifically provided herein, if the last day for making any payment of principal of, redemption price or interest on any Bonds or taking any action, including, without limitation, exercising any remedy, under this Indenture shall be a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then such payment may be made, or such action may be taken, on the next succeeding business day, and, if so made or taken, shall have the same force and effect as if made or taken on the date fixed for payment, redemption or performance as if made on the date otherwise required by this Indenture. The amount of any payment due under this Indenture shall not be affected because payment is made on a date other than the date specified in this Indenture pursuant to this section.

(End of Article X)

IN WITNESS WHEREOF, the City of Mishawaka, Indiana, has caused these presents to be signed in its name and behalf by the Mayor and attested by its Clerk, and to evidence its acceptance of the trusts hereby created, _____, with a corporate trust office located in _____, Indiana, has caused these presents to be signed in its name and behalf by, and the same to be attested by, its duly authorized officers, all as of the day and year first above written.

CITY OF MISHAWAKA, INDIANA

By: _____
Mayor

ATTEST:

Clerk

[ISSUER'S SIGNATURE PAGE TO TRUST INDENTURE]

_____, as Trustee

By: _____

Printed: _____

Title: _____

[TRUSTEE'S SIGNATURE PAGE TO TRUST INDENTURE]

EXHIBIT A

COSTS OF ISSUANCE

TOTAL

\$ _____

EXHIBIT B

Form of Written Request

Attn: _____

This written request (this "Written Request") is submitted pursuant to the provisions of Section 4.4 of that certain Trust Indenture dated as of March 1, 2024 (the "Indenture"), between the City of Mishawaka, Indiana (the "Issuer"), and _____, as trustee (the "Trustee"). The terms used herein have the same meanings as when used in the Indenture except where the context otherwise requires.

Grandview III Development, LLC (the "Bond Purchaser"), hereby requests that on _____, 20__, the Trustee to credit the Bond Purchaser for the purchase of the Bonds in the aggregate amount indicated in the attached Credit Request Schedule, for advances, payments and expenditures made by Grandview III Development, LLC, an Indiana limited liability company (the "Company") in connection with the items listed in the Credit Request Schedule.

In support of this Written Request, the Company states as follows:

(a) Each item for which credit against the purchase price of the Bonds is requested hereunder is properly so creditable in accordance with the terms and conditions of the Indenture and none of those items has formed the basis for any credit request heretofore made to the Trustee;

(b) Each such item is or was necessary in connection with the acquisition, construction, equipping or improvement of the property comprising the Project, as defined in the Indenture;

(c) This statement and all exhibits hereto, including the Credit Request Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto; and

(d) This statement constitutes the approval of the Company of each credit request hereby made and authorized.

In accordance with the provisions of the Indenture, each of the Bond Purchaser, the Company, and the Issuer has caused this Written Request to be signed on its behalf this _____ day of _____, 20__.

GRANDVIEW III DEVELOPMENT, LLC

By: _____

Printed: _____

Title: _____

APPROVED:

CITY OF MISHAWAKA, INDIANA

Authorized Representative

CREDIT REQUEST SCHEDULE

Vendors

Amount Paid/to be Paid

[Vendor TIN]

[Attach copies of invoices paid and/or to be paid with copies of checks used for any previously made payment]

EXHIBIT C

BOND PRINCIPAL AMOUNT NOTICE

Attention: _____

Re: Notice Regarding Final Principal Amount of the Bonds

Pursuant to Section 2.10 of the Trust Indenture, dated as of March 1, 2024 (the "Indenture"), between the City of Mishawaka, Indiana (the "Issuer"), and _____, Indiana, as trustee (the "Trustee"), the undersigned, as an Authorized Representative of the Issuer, hereby confirms that the final principal amount of the Bonds is \$_____, reduced in accordance with Section 2.10 of the Indenture and that the Issuer is providing the attached bond with the corrected par amount and principal installment schedule at Exhibit A thereto for substitution in accordance with Section 2.9 of the Indenture.

Any terms not otherwise defined herein shall have the meaning ascribed thereto in the Indenture.

IN WITNESS WHEREOF, an Authorized Representative of the Issuer has set his hand as of the _____ day of _____, 202__.

CITY OF MISHAWAKA, INDIANA

By: _____

Printed Name: _____

Title: _____

FINANCING AGREEMENT

between

[GRANDVIEW III DEVELOPMENT, LLC]

and

CITY OF MISHAWAKA, INDIANA

Dated as of March 1, 2024

Re:

**Not to Exceed \$14,000,000
City of Mishawaka, Indiana,
Taxable Economic Development Tax Increment Revenue Bonds, Series 2024
(Grandview Phase III Project)**

PAGE

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FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of March 1, 2024 (the "Financing Agreement") between GRANDVIEW III DEVELOPMENT, LLC, an Indiana limited liability company (the "Company"), and the CITY OF MISHAWAKA, INDIANA (the "Issuer" or "City"), a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "State").

RECITALS

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the "Act"), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of Mishawaka Economic Development Commission (the "Economic Development Commission") held a public hearing regarding the Project (as defined herein), and, upon finding that the Project and the proposed financing of the acquisition, construction, equipping, installation and improvement thereof (i) will create or retain employment opportunities in the City, (ii) will benefit the health and general welfare of the citizens of the City and the State, and (iii) will comply with the purposes and provisions of the Act, the Economic Development Commission adopted a resolution, and the Common Council of the Issuer adopted an ordinance, approving the proposed financing for the Project; and

WHEREAS, the Issuer intends to issue its City of Mishawaka, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Grandview Phase III Project), in the aggregate principal amount not to exceed \$14,000,000 (the "Bonds"), pursuant to a Trust Indenture, dated as of March 1, 2024 (the "Indenture"), by and between the Issuer and _____, as trustee (the "Trustee"), for the purpose of providing funds to pay a portion of the costs of the Project and costs related to the issuance of the Bonds; and

WHEREAS, this Financing Agreement provides for the deemed use of a portion of the Bonds by the Company for the purpose of paying a portion of the costs of the Project (as defined herein); and

WHEREAS, the Bonds issued under the Indenture will be payable solely from the Trust Estate, which includes the Pledged Revenues (each as defined in the Indenture).

In consideration of the premises, the representations, warranties and commitments given by the Company to the Issuer, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Issuer hereby further covenant and agree as follows:

(end of recitals)

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. Capitalized terms used in this Financing Agreement that are not otherwise defined herein, shall have the meanings provided for such terms in the Indenture. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“Act” means, collectively, Indiana Code 36-7-11.9 and 36-7-12.

“Affiliate” means an entity or business which directly or indirectly controls, is controlled by or is under common control with, the Company. For purposes of this provision, “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 an entity, whether through the ownership of voting securities, by contract, or otherwise.

“Bondholder” or “owner of a Bond” or any similar term means the owner of any Bond.

“Bond Fund” means the Bond Fund to be created and established by Section 4.2 of the Indenture.

“Bond Ordinance” means Ordinance No. _____, adopted by the Common Council of the Issuer, on _____, 2024, authorizing and approving the issuance and sale of the Bonds and approving this Financing Agreement, the Indenture, and related matters.

“Bond Proceeds” means an amount equal to not to exceed \$14,000,000 to be provided for out of the proceeds (or deemed proceeds) of the Bonds, a portion of which will be made available or deemed to be made available to the Company pursuant to the terms of this Financing Agreement, the Development Agreement and the Indenture, to pay for Eligible Costs.

“Bonds” means the City of Mishawaka, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Grandview Phase III Project), dated March __, 2024, issued pursuant to the Indenture in an aggregate principal amount of not to exceed \$14,000,000, for the purpose of (i) being deemed to pay a portion of the costs of the Project and (ii) paying costs related to the issuance thereof.

“Closing” means March __, 2024.

“Company” means Grandview III Development, LLC, an Indiana limited liability company, together with each of its successors and assigns under Sections 3.2 and 6.4 hereof.

“Developer Parties” means, with respect to the Project or any portion thereof or this Financing Agreement: (a)(i) any Affiliate, (ii) companies working under contract with the Company or any Affiliate, (iii) joint owners of the Project or any portion thereof, (iv) joint (or other) venturers with the Company or any Affiliate and (v) trusts (business or other) established with or for the benefit of the Company or any Affiliate or the Project or any portion thereof, and (b) their successors and assigns.

“Development Agreement” means the Economic Development Agreement, dated _____, 2023, by and among the Issuer, the Redevelopment Commission and the Company, as may be amended or supplemented from time to time.

“Economic Development Commission” means the City of Mishawaka Economic Development Commission.

“Facilities” means all or a portion of the Project financed or deemed financed with Bond Proceeds, together with all investment earnings thereon.

“Indenture” means the Trust Indenture, dated as of March 1, 2024, by and between the Issuer and the Trustee, together with all amendments and supplements thereto, authorizing and securing the Bonds.

“Issuer” or “City” means the City of Mishawaka, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

“Project” means all or any portion of the Project as such term is defined in the Development Agreement. The Project will be located in the Consolidated Area Improvement Project, Block 200 Allocation Area, and will conform to the parameters, requirements and descriptions thereof set forth in the Development Agreement.

“Project Fund” means the Project Fund established by Section 4.2 of the Indenture.

“Redevelopment Commission” means the City of Mishawaka Redevelopment Commission.

“State” means the State of Indiana.

“Trustee” means initially _____, in Indianapolis, Indiana, or any successor trustee serving in such capacity under the Indenture.

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

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

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

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

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

(e) Any terms not defined herein but defined in the Indenture shall have the same meaning herein.

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

(g) The word “including” and any variation thereof means “including, without limitation” and must not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) Where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

(End of Article I)

ARTICLE II

REPRESENTATIONS; USE OF BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized pursuant to the Bond Ordinance to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Subject to the terms of this Financing Agreement, the Issuer shall issue the Bonds pursuant to the Bond Ordinance in the aggregate principal amount of not to exceed \$14,000,000, in order to pay the costs of issuance incurred by the Issuer in connection with the issuance of the Bonds and deemed to pay a portion of the costs of the Project, all for the purpose of creating or retaining employment opportunities in the City and benefiting the health and general welfare of the citizens of the City and the State.

Section 2.2. Representations by Company. The Company represents and warrants that:

(a) It is an Indiana limited liability company validly existing under the laws of the State and authorized to transact business in the State, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) The provision of financial assistance to be made available to it under this Financing Agreement and in accordance with the Development Agreement from the Bond Proceeds, and the commitments therefor made by the Issuer, have induced the Company to undertake the Project, and such Project is expected to create and preserve jobs and employment opportunities within the boundaries of the City.

(c) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Company's Articles of Organization or Operating Agreement, or any restriction or any agreement or instrument to which the Company is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Company to perform its obligations hereunder) any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement, except as may be set forth in this Financing Agreement.

(d) There are no actions, suits or proceedings pending, or, to the knowledge of the Company, threatened, before any court, administrative agency or arbitrator which, individually or

in the aggregate, might result in any material adverse change in the financial condition of the Company or might impair the ability of the Company to perform its obligations under this Financing Agreement or the Development Agreement.

(End of Article II)

ARTICLE III

PARTICULAR COVENANTS OF THE COMPANY

Section 3.1. Maintenance of Existence. The Company agrees that it will maintain its existence as an Indiana limited liability company, that it will not, prior to the completion of the Project, dissolve or otherwise dispose of all or substantially all of its assets, that it will not consolidate with or merge into another entity, or permit one or more other entities to consolidate or merge with it, and that it will not sell or transfer any ownership interests in the Company in any manner that would result in a change of control of the Company, unless such other entity or entities

Section 3.2. Development Agreement. The Company agrees to perform all material matters provided by the Development Agreement to be performed by the Company and to comply with all material provisions of the Development Agreement applicable to the Company, in each case to the extent that a failure to so perform or comply is expressly provided under the terms of the Development Agreement to be a default by the Company or, with the passage of time or the giving of notice, or both, would constitute a default on the part of the Company under the Development Agreement. The Company hereby reconfirms all of Company's covenants in the Development Agreement.

Section 3.3. Payment of Costs of the Improvements Project and Issuance of Bonds. The Company agrees to purchase or cause an affiliate to purchase the Bonds pursuant to a purchase agreement between the Issuer and the Company or said affiliate and the Company or said affiliate shall pay a portion of the purchase price of the Bonds at the Closing in an amount equal to \$_____ for the purpose of funding the costs of issuance of the Bonds and be deemed to have paid the balance of the purchase price of the Bonds (\$_____) so that the purchase price equals the not to exceed par amount of the Bonds of \$14,000,000. The Issuer shall deposit all proceeds received from the sale of the Bonds in the manner specified in Article III of the Indenture, and the Issuer shall maintain such proceeds and funds in the manner specified in Article IV of the Indenture. The Issuer shall pay, as necessary, the costs of the issuance of the Bonds from proceeds of the Bonds allocated for such purposes under the Trust Indenture.

Section 3.4. Completion of the Project.

(a) The Company agrees that it will, within the time period set forth in the Development Agreement, complete the Project consistent with the terms and conditions of the Development Agreement.

(b) A portion of the proceeds of the Bonds in the amount of \$_____ will be deemed to be transferred to the Company at the Closing to pay for costs of the Project. To conform the deemed amount of proceeds applied to the Project, the final principal amount of the Bonds shall be confirmed by the Company to the Issuer by the Company providing evidence of Project expenses in accordance with the Trust Indenture on or before _____, 202__. If such Project expenses provided by the Company to the Issuer are less than \$_____, the par amount of the Bonds shall be correspondingly reduced, and, the Issuer shall notify the Trustee, the Company and the holder of the Bonds (if not the Company) of the reduced par amount of the Bonds in accordance with Section 2.10 of the Indenture. The Company agrees or cause its affiliate, as the Bondholder, to submit the original Bond received at the Closing to the Trustee which Bond

shall be replaced by the Trustee with a new Bond stating the corrected, final aggregate principal amount and principal installment payment schedule attached thereto.

(c) The Company hereby acknowledges receipt of a copy of the Indenture.

Section 3.5. Fees and Expenses of Company. The Company hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel and financial advisory fees, of the Company incurred in connection with this Financing Agreement and the Development Agreement.

(End of Article III)

ARTICLE IV

IMMUNITY

Section 4.1. Extent of Covenants of Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bonds, the Indenture or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Trust Estate (as defined in the Indenture) and as otherwise provided under this Financing Agreement and the Indenture. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

(End of Article IV)

ARTICLE V

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to Financing Agreement. The Company and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable. The Issuer will not limit in any way its ability to exercise its right to amend this Financing Agreement without the prior written consent of the Company.

(End of Article V)

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1. Financing Agreement for Benefit of Parties Hereto. Nothing in this Financing Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns, any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Financing Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, and their successors and assigns. Notwithstanding anything in this Financing Agreement to the contrary, the Trustee under the Indenture is not a party to this Financing Agreement, nor is the Trustee entitled to any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof. The Issuer will not assign this Financing Agreement to the Trustee or any other person or entity without the prior written consent of the Company.

Section 6.2. Severability. In case any one or more of the provisions contained in this Financing Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 6.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given when received or upon first refusal thereof, or when mailed by certified mail, postage prepaid, or when sent by nationally recognized overnight courier with proper address as indicated below. The Issuer and the Company may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Mishawaka, Indiana
 Attention: Mayor
 100 Lincolnway West
 Mishawaka, Indiana 46544

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

To the Company: Grandview III Development, LLC
 c/o Great Lakes Capital Management, LLC
 7410 Aspect Drive, Suite 100
 Granger, Indiana 46530

Section 6.4. Successors and Assigns.

(a) Subject to Section 6.1 hereof, whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Company, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

(b) The Company may assign this Financing Agreement or any of its rights or obligations under this Financing Agreement only upon the same terms and conditions governing the assignment of the Development Agreement in accordance therewith.

Section 6.5. Counterparts. This Financing Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Financing Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 6.6. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with, the laws of the State of Indiana.

(End of Article VI)

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, all as of the date first above written.

GRANDVIEW III DEVELOPMENT, LLC, an
Indiana limited liability company

By: _____

Printed Name: _____

Title: _____

[SIGNATURE PAGE OF FINANCING AGREEMENT]

CITY OF MISHAWAKA, INDIANA

Mayor

Attest:

Clerk

[SIGNATURE PAGE OF FINANCING AGREEMENT]

DEC 13 2023

City Clerk
Mishawaka, IN

APPEAL #23-39

RESOLUTION NO. 2023-28

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

5514 Grape Road (Hobby Lobby)

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located **5514 Grape Road, Mishawaka, Indiana (Hobby Lobby)**, more particularly known and described as follows:

PARCEL 1: A PARCEL OF LAND BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOW: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST; THENCE NORTH 89°57'05" EAST 40.00 FEET; THENCE NORTH 0°00'00" WEST 40.00 FEET TO THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF GRAPE ROAD AND THE NORTH RIGHT OF WAY LINE OF DOUGLAS ROAD, SAID INTERSECTION POINT BEING THE POINT OF BEGINNING OF THIS PARCEL; THENCE NORTH 00°00'00" WEST ALONG THE EAST RIGHT OF WAY LINE OF GRAPE ROAD 597.60 FEET; THENCE NORTH 4°23'55" EAST ALONG THE EAST RIGHT OF WAY OF GRAPE ROAD 115.45 FEET; THENCE NORTH 89°57'05" EAST 480.54 FEET; THENCE SOUTH 0°02'55" EAST 712.70 FEET TO THE NORTH RIGHT OF WAY LINE OF DOUGLAS ROAD; THENCE SOUTH 89°57'05" WEST ALONG SAID RIGHT OF WAY LINE 490.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM A PARCEL OF LAND IN THE SOUTHEAST QUARTER (114) OF SECTION TWENTY-EIGHT (28), TOWNSHIP THIRTY-EIGHT (38) NORTH, RANGE THREE (3) EAST, CITY OF MISHAWAKA, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (114) OF SAID SECTION 28, THENCE NORTH 89 DEGREES 57 MINUTES 05 SECONDS EAST ALONG THE SOUTH LINE OF SAID SECTION 40.00 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 40.00 FEET TO THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF GRAPE ROAD AND THE NORTH RIGHT-OF-WAY LINE OF DOUGLAS ROAD, SAID INTERSECTION POINT BEING THE POINT OF BEGINNING OF THIS PARCEL; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST RIGHT-OF-WAY LINE OF GRAPE ROAD 35.00 FEET; THENCE SOUTH 45 DEGREES 01 MINUTES 27.5 SECONDS EAST 49.48 FEET TO THE NORTH RIGHT-OF-WAY LINE OF DOUGLAS ROAD; THENCE SOUTH 89 DEGREES 57 MINUTES 05 SECONDS WEST ALONG SAID NORTH RIGHT-OF-WAY LINE 35.00 FEET TO THE POINT OF BEGINNING.

The Use Variance will for up to four outside storage containers subject to installing an 8' vinyl fence in a gray, and providing landscaping screening (mix of deciduous and evergreens) from 20' south of the drive, a distance of 120' to the south, and three (3) deciduous trees north of the internal drive.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

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

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with proper buffering, the proposed use will have little to no additional impact on the adjacent commercial uses.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because a fence and landscaping is being added to help screen the view of the containers.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023,
at _____ o'clock ____m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at
_____ o'clock ____m.

David A. Wood, Mayor

STAFF REPORT

Location: 5514 Grape Road (Hobby Lobby)

Date: December 12, 2023

Appeal: 23-39

Prepared By: CH

GENERAL INFORMATION

Applicants: Mullan Associates Limited Partnership (Hobby Lobby)/Spears Lamb – MHA, PLLC

Status: Property Owner (Tenant)/Architect

Request: Use Variance for up to four outside storage containers
Developmental Variance for an increase in fence height to 8'

Zoning Classification: C-2 Shopping Center Commercial

Lot Size: 7.95 Acres

Applicable Regulations: Section 137-326 C-2 Uses
Section 137-42 (4) Board of Zoning Appeals

SPECIAL INFORMATION

Area Development Pattern: North: C-2 Shopping Center Commercial (Firehouse Subs building)
South: C-4 Automobile Oriented Commercial (Gurley Leep)
East: C-2 Shopping Center Commercial (Homegoods, Carters/Oshkosh)
West: C-7 Automobile Oriented Restaurant Commercial (Steak N Shake & Taco Bell)

Thoroughfare: Grape Road and Douglas Road

School District: South Bend Community School Corporation

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the area at the corner of Grape and Douglas as General Commercial.

ANALYSIS

Hobby Lobby is located in the Wilshire Plaza shopping center at the corner of Grape Road and Douglas Road. The business has been there since 1998. Starting in November of 2022, two storage containers were seen via Google Street View. The containers do not appear on our spring 2023 aerial photography, however, the most recent Google Street View (June 2023) shows them again, this time a total of four. When we took site photos, there was only one.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial.

Previously, storage containers have been approved at Big Lots and Dunham's in the Town & Country shopping center, and Dick's Sporting Goods in Princess City Plaza.

The Appellant is requesting to have a maximum of four storage containers on the west side of the building facing Grape Road, around the existing trash compactor (blue). The storage containers would be used for additional inventory, for example, at this time of year, they are storing Christmas trees.

In an attempt to screen the site from the traveling public along Grape Road, the Appellant has agreed to install an 8' vinyl fence in a color to match the building on the west side of the containers and install a row of evergreens. The fence would keep a 37' drive aisle open for vehicles to access the area south of the building. The row of evergreens (specked as Spartan Junipers or similar) will start 20' south of the drive off of Grape Road and extend 120' (approximately 15 trees).

The Planning Staff recommends the gray color of fence. The Planning Staff recommends three deciduous trees in the area to the immediate north of the internal drive to help block the view for southbound Grape Road traffic. Instead of a screen of evergreens, Staff would like some deciduous trees along Grape Road as well. A revised landscaping plan will need to be provided prior to the issuance of any permits.

The minimum size of all required landscape plant materials, at the time of planting, including replacement trees and shrubs, shall be as follows: Deciduous shade (overstory) trees shall be 2½-inch caliper at six inches above the ground. Evergreen trees shall be at least six feet in height.

If the variance is approved, an Improvement Location Permit will need to be issued before the installation of the fence and landscaping.

All pertinent City departments have reviewed and approved the request.

RECOMMENDATION

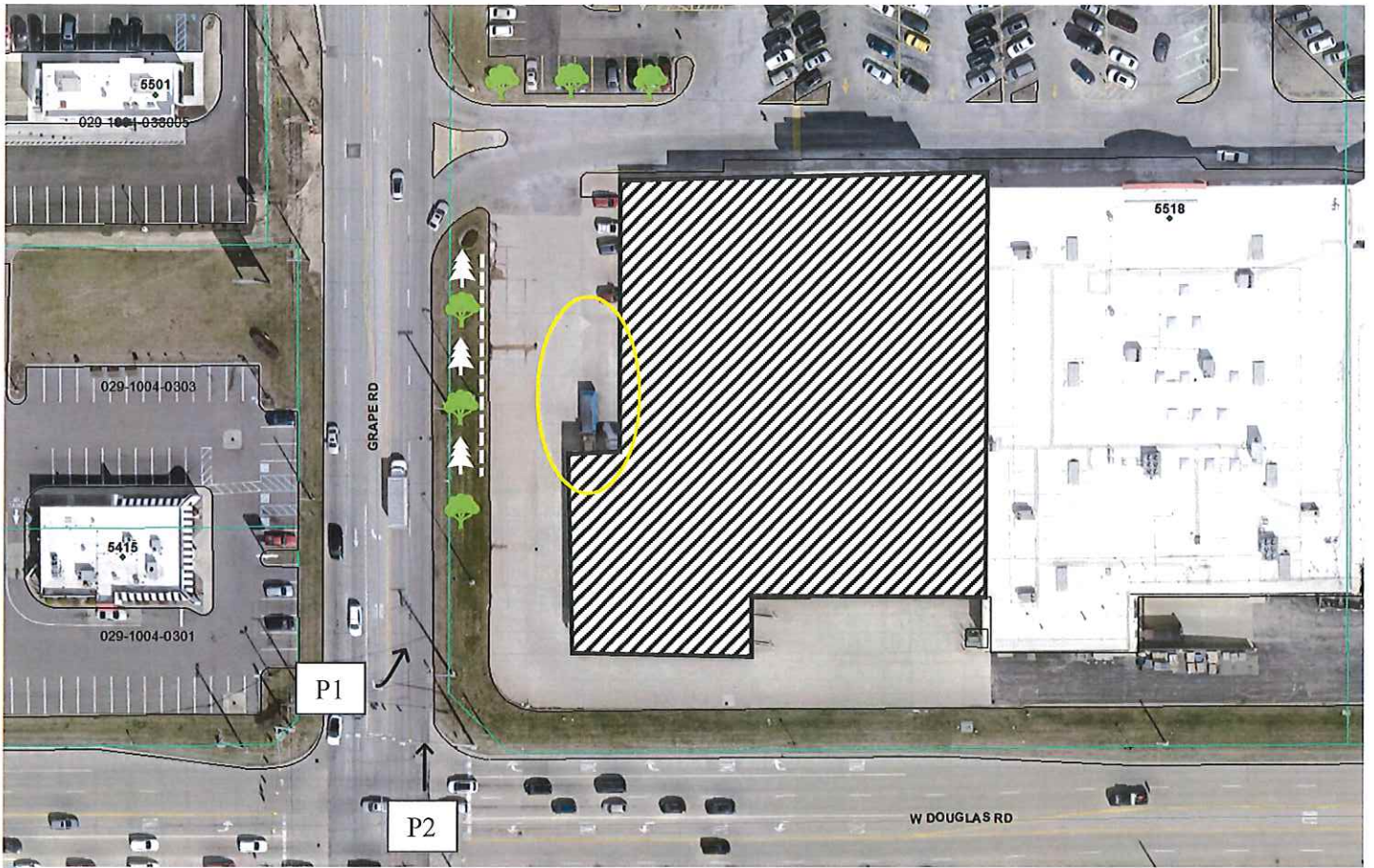
The Staff recommends in favor of Appeal 23-29, a Use Variance to allow outside storage in four containers for property located at 5514 Grape Road, subject to installing an 8' vinyl fence in a gray, and providing landscaping screening (mix of deciduous and evergreens) from 20' south of the drive, a distance of 120' to the south, and three (3) deciduous trees north of the internal drive.

This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with proper buffering, the proposed use will have little to no additional impact on the adjacent commercial uses.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because a fence and landscaping is being added to help screen the view of the containers.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Site Plan, Location Map



Hatched Area = Hobby Lobby tenant space
Yellow Circle = area of outdoor storage (4 storage containers)
Dashed Line = landscaping



P1. View of existing containers while turning north onto Grape Road from eastbound Douglas Road



P2. June 2023 Google Street View

DATE:

11/7/23

TO:

Board of Zoning Appeals
City of Mishawaka, Indiana

AP 23-29
Deborah S. Block, AMC, MMC

NOV 27 2023

City Clerk
Mishawaka, IN

The undersigned appellant respectfully shows the Board:

1. I, **Mullan Associates Limited Partnership**, am the owner of the following described real estate located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

Common Address: 5514 N. Grape Rd. Mishawaka, IN 46545

EXHIBIT A
Shopping Center Legal Description

Legal Description: PARCEL 1: A PARCEL OF LAND BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOW: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST; THENCE NORTH 89°57'05" EAST 40.00 FEET; THENCE NORTH 0°00'00" WEST 40.00 FEET TO THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF GRAPE ROAD AND THE NORTH RIGHT OF WAY LINE OF DOUGLAS ROAD, SAID INTERSECTION POINT BEING THE POINT OF BEGINNING OF THIS PARCEL; THENCE NORTH 00°00'00" WEST ALONG THE EAST RIGHT OF WAY LINE OF GRAPE ROAD 597.60 FEET; THENCE NORTH 4°23'55" EAST ALONG THE EAST RIGHT OF WAY OF GRAPE ROAD 115.45 FEET; THENCE NORTH 89°57'05" EAST 480.54 FEET; THENCE SOUTH 0°02'55" EAST 712.70 FEET TO THE NORTH RIGHT OF WAY LINE OF DOUGLAS ROAD; THENCE SOUTH 89°57'05" WEST ALONG SAID RIGHT OF WAY LINE 490.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM A PARCEL OF LAND IN THE SOUTHEAST QUARTER (1/4) OF SECTION TWENTY-EIGHT (28), TOWNSHIP THIRTY-EIGHT (38) NORTH, RANGE THREE (3) EAST, CITY OF MISHAWAKA, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (1/4) OF SAID SECTION 28, THENCE NORTH 89 DEGREES 57 MINUTES 05 SECONDS EAST ALONG THE SOUTH LINE OF SAID SECTION 40.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 40.00 FEET TO THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF GRAPE ROAD AND THE NORTH RIGHT-OF-WAY LINE OF DOUGLAS ROAD, SAID INTERSECTION POINT BEING THE POINT OF BEGINNING OF THIS PARCEL; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST RIGHT-OF-WAY LINE OF GRAPE ROAD 35.00 FEET; THENCE SOUTH 45 DEGREES 01 MINUTES 27.6 SECONDS EAST 49.48 FEET TO THE NORTH RIGHT-OF-WAY LINE OF DOUGLAS ROAD; THENCE SOUTH 89 DEGREES 57 MINUTES 05 SECONDS WEST ALONG SAID NORTH RIGHT-OF-WAY LINE 35.00 FEET TO THE POINT OF BEGINNING.

2. The above-described real estate presently has a zoning classification of C-2 Shopping center Commercial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: Retail
4. Appellant desires to have 4 permanent exterior storage containers with city approved 8' screening and landscaping.
5. The Zoning Ordinance of the City of Mishawaka only allows storage containers in I-2 heavy industrial.
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. Not allowing the use of permanent outdoor storage containers will negatively impact our Tenant Hobby Lobby's business revenue by reducing the amount of product we have available for sale.
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? No, the proposed fencing and landscaping is for concealment purposes only and poses no threats or hazards to the community.
 - (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? No, the variance will not adversely affect the area adjacent to the property. The fencing to be used along with the landscaping along Grape Road

will aesthetically conceal the storage containers while still leaving adequate space for traffic flow from the front to the back of building and vice versa along the west side of the building.

- (3) Does the need for the variance arise from some condition peculiar to the property involved? *Yes, due to an unanticipated higher sales volume, Hobby Lobby has need of a larger amount of stock at this location. The indoor storage space has proven to be too small making the use of outdoor storage containers a necessity.*
- (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, without the outside storage containers, Hobby Lobby's ability to offer an adequate product supply would be greatly reduced, affecting our revenue and profitability at this location.*
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *No, the plan identifies this intersection as General Commercial. The approval of this variance is consistent with the goals and objectives of the Comprehensive Plan by helping Hobby Lobby to continue to operate profitably and providing tax revenue to the city of Mishawaka.*

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

MULLAN ASSOCIATES LIMITED PARTNERSHIP

By: Sparks, Inc., General Partner

By: 
Paul R. Biser, CFO

CONTACT PERSON:

Name: Paul R. Biser
Address: 2330 W. Joppa Rd, Suite 210, Lutherville, MD 21093
Day Phone Number: (410) 847-1402
Fax Number: (410) 296-0340
Email: prbiser@mullanel.com

NOV 16 2023

City Clerk
Mishawaka, IN

PETITION 23-22

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2023-54

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, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lots 8-11 except north 5' of each lot for Jefferson Avenue and Lots 28, 29, and the west half of Lot 27 all in Milliken's Proposed.

which real estate is now classified as I-2 Heavy Industrial District shall hereafter be within and a part of that District known as C-4 Automobile Oriented Commercial District designated in "The Zoning Ordinance of 1966" as amended.

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

1. Existing Conditions - This section of East Jefferson Boulevard, is predominately automobile oriented uses, starting with Jordan at Cedar Road and including Victory Auto, Michiana Auto Glass, Top Gear Auto Sales, Fred's Body Shop, and Pilo's Body Shop.
2. Character of Buildings - The character of the buildings along East Jefferson Boulevard are predominantly automobile oriented or contractor's offices.
3. The most desirable/highest and best use - Because the parcel is located near automobile oriented uses, downzoning to the C-4 Automobile Oriented Commercial District on Jefferson Blvd. is a desirable use for this property;
4. Conservation of property values - The proposed rezoning should not be injurious to property values in the surrounding area as the majority of the property is

Proposed Ordinance No: _____

Ordinance No: _____

currently zoned I-2 Heavy Industrial which allows more intensive uses and outside storage; and

5. Comprehensive Plan - The 2000 Mishawaka Comprehensive Plan identifies the area as Industrial, however, it has developed as commercial uses, which were identified along of Jefferson.

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 _____, 2023, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock ____M.

David A. Wood, Mayor

23-22

OCT 27 2023

City Clerk
Mishawaka, IN

DATE:

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

Received

OCT 23 2023

Planning and
Community Development

RE: PETITION TO REZONE

The undersigned Petkov & Sons LLC 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:

Lots 8-11 except north 5' of each lot for Jefferson Avenue in Milliken's
Proposed *Commonly known as 1213 E Jefferson Blvd*

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of I-2 Heavy Industrial District. Said property is *vacant restaurant and overflow parking (former Reggio's)*.

Petitioner(s) desire said real estate to be rezoned to C-4 Automobile Oriented Commercial.

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.

Signature(s) of Property Owner(s)



Grigor Petkov, Petkov and Sons LLC

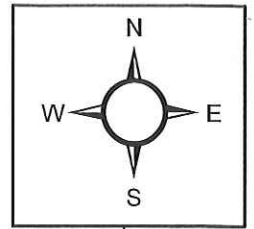
CONTACT PERSON:

NAME: GRIGOR PETKOV

ADDRESS: 1102 E JEFFERSON

PHONE NUMBER: 574-323-7279

EMAIL: GRIGORMPETKOV@YAHOO.COM



N MERRIFIELD AVE

Greg's Automotive

C-4

C-4

C-4

PET 23-22

E JEFFERSON BLVD

Recent Expansion of Greg's Automotive

C-4

C-4

C-4

C-4

C-4

C-4

I-2

R-3

R-3

I-2

I-2

I-2

R-1

R-1

I-2

I-2

I-2

I-2

STANLEY ST

I-2

I-2

S-2

Location Map

PET 23-22

PETKOV & SONS LLC (OWNER)

1213 E. JEFFERSON BLVD.
(FORMER REGGIO'S)

REZONING FROM I-2 HEAVY INDUSTRIAL
TO C-4 AUTOMOBILE ORIENTED COMMERCIAL

I-2

S-2

GLENEAGLE DR

I-2

STAFF REPORT

Location: 1213 E. Jefferson Blvd

Date: November 14 2023

Petition: 23 22

Prepared By: CH

GENERAL INFORMATION

Applicant: Petkov & Sons LLC

Status: Property Owner

Request: Rezone from I-2 Heavy Industrial District to C-4 Automobile Oriented Commercial District

Zoning Classification: I-2 Heavy Industrial

Lot Size: 0.44 acres

Applicable Regulations: Sec. 137-40 Plan Commission;
Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map;
Sec. 137-379 thru 137-380 C-4 Automobile Oriented Commercial District

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Automobile Oriented Commercial (Four Seasons Heating and Cooling)
South: R-1 Single Family Residential and I-2 Heavy Industrial (house)
East: R-3 Multi-Family Residential (Troop Town)
West: C-4 Automobile Oriented Commercial (Greg's Automotive expansion)

Thoroughfare: East Jefferson Boulevard

School District: School City of Mishawaka

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

Comprehensive Plan: Industrial

ANALYSIS

The Petitioners are requesting to rezone the above referenced property from I-2 Heavy Industrial to C-4 Automobile Oriented Commercial. The property was formerly Reggio's Restaurant. The property has been vacant since 2020. The petitioner purchased the property earlier this year. The reason for the change to C-4 Automobile Oriented Commercial District is to allow the expansion of Greg's Autos, currently under construction at the southeast corner of Merrifield and Jefferson.

The petitioner filed a similar petition last month, including two properties on Stanley Street, which had been used as the restaurant's overflow parking, but was withdrawn during the Plan Commission meeting. The immediate need is for the expansion of the car sales and repair business. The property on Stanley may be revisited in the future. However, as long as it is zoned I-2 Heavy Industrial, it CANNOT be used in conjunction with the car sales and repair business.

With this petition the property owner is only seeking to establish the property zoning for the proposed automobile use. If approved, a subdivision to combine all the lots and dedicate easements is required,

and a site plan laying out phases of development will be required prior to the beginning of any construction or issuance of any permits. A detailed final site plan will address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

All pertinent City Departments reviewed and approved the rezoning request. Additional comments may come during the subdivision/site plan processes.

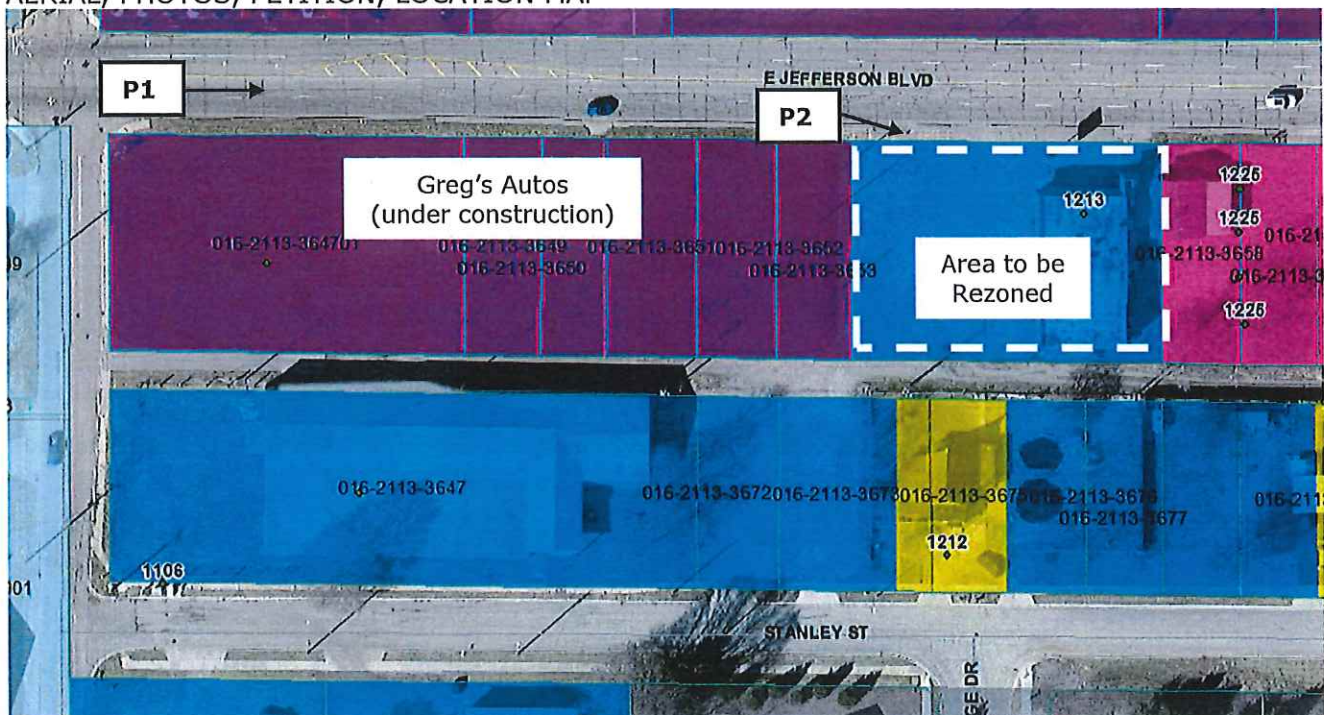
RECOMMENDATION

The Planning Department recommends **in favor** of Petition #23-20 to rezone the property 1213 East Jefferson Boulevard to C-4 Automobile Oriented Commercial. This recommendation is based upon the following findings of fact:

1. Existing Conditions - This section of East Jefferson Boulevard, is predominately automobile oriented uses, starting with Jordan at Cedar Road and including Victory Auto, Michiana Auto Glass, Top Gear Auto Sales, Fred's Body Shop, and Pilo's Body Shop.
2. Character of Buildings - The character of the buildings along East Jefferson Boulevard are predominantly automobile oriented or contractor's offices.
3. The most desirable/highest and best use - Because the parcel is located near automobile oriented uses, downzoning to the C-4 Automobile Oriented Commercial District on Jefferson Blvd. is a desirable use for this property;
4. Conservation of property values - The proposed rezoning should not be injurious to property values in the surrounding area as the majority of the property is currently zoned I-2 Heavy Industrial which allows more intensive uses and outside storage; and
5. Comprehensive Plan - The 2000 Mishawaka Comprehensive Plan identifies the area as Industrial, however, it has developed as commercial uses, which were identified along of Jefferson.

ATTACHMENTS

AERIAL, PHOTOS, PETITION, LOCATION MAP





P1. A view of the Reggio's property from the intersection of Jefferson and Merrifield (showing construction).



P2. A close up of the Reggio's property