



**GOSHEN REDEVELOPMENT COMMISSION  
AGENDA FOR THE REGULAR MEETING OF March 12, 2019**

The Goshen Redevelopment Commission will meet on March 12, 2019 at 3:00 p.m. in the City Court Room/ Council Chambers at the Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana.

**1. CALL TO ORDER/ROLL CALL**

**2. APPROVAL OF MINUTES**

**Regular Meeting Minutes – 2/12/19**

**Special Meeting Minutes – 2/21/19**

**3. PRESENTATION – Scott Sivan, Millrace Townhomes, LLC**

**Resolution 15-2019 – Approve and Authorize Execution of Purchase Agreement with Millrace Townhomes, LLC**

**4. NEW BUSINESS**

**Resolution 12-2019 – Resolution of the Goshen Redevelopment Commission Authorizing Tax Increment Expenditures and Approving Loan Agreement and Trust Agreement**

**Resolution 13-2019 – Approve Amendment #2 to the Agreement with JPR for Design and Survey of 3<sup>rd</sup> Street, Jefferson Street and River Race Drive Modifications**

**Resolution 14-2019 – Approve Request from Goshen Engineering to Advertise for Bids for River Race Parking Lot**

**UPDATE – 102 East Kercher Road**

**4. APPROVAL OF REGISTER OF CLAIMS**

**5. MONTHLY REDEVELOPMENT STAFF REPORT**

**6. OPEN FORUM**

The open forum is for the general discussion of items that are not otherwise on the agenda. The public will also be given the opportunity at this time to present or comment on items that are not on the agenda.

**7. ANNOUNCEMENTS**

Next Regular Meeting – April 9, 2019 at 3:00 p.m.

**8. EXECUTIVE SESSION**

Pursuant to the provisions of the Open Door Law and Indiana Code § 5-14-1.5-6.1(b)(2)(D), the Goshen Redevelopment Commission will meet in executive session at the conclusion of the regular meeting for discussion of strategy with respect to the purchase or lease of real property.

# **GOSHEN REDEVELOPMENT COMMISSION**

## **Minutes for the Regular Meeting of February 12, 2019**

The Goshen Redevelopment Commission met in a regular meeting on February 12, 2019 at 3:00 p.m. in the City Court Room/Council Chambers at the Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana.

### **CALL TO ORDER/ROLL CALL**

The meeting was called to order by President Thomas Stump. On call of the roll, the members of the Goshen Redevelopment Commission were shown to be present or absent as follows:

Present: Brian Garber, Andrea Johnson, Brian Krider, Thomas Stump and Vince Turner

Absent: Amanda Qualls

### **APPROVAL OF MINUTES**

A motion was made by Commissioner Turner and seconded by Commissioner Johnson to approve the minutes of the January 15, 2019 regular meeting.

The motion was adopted unanimously.

(.41)Commissioner Stump introduced Brian Garber the City Council appointment to the Redevelopment Commission.

### **NEW BUSINESS**

(2:50) Discussion – Goshen Theater Loan – Larry Barks, City Attorney, there are still a few issues to be worked out but wanted to discuss where we are at with the loan agreement. The \$850,000 that was committed to the theater was originally going to be paid from the River Race TIF, but a preferred method is thru a loan agreement with the loan being forgiven after a period of time as long as certain standards are met. Terms of the agreement and issues that are currently still being worked out were presented to the commission.

(9:40) Doug Nisley, Goshen Theater Manager, said it is hard to say exactly what type of events will be held at the theater. One of the items in the agreement state that 75% of events need to be private. He would like to see that number around 50% for the first 5 years.

(14:32) Mr. Nisley and Ms. Burgess answered questions from the commission about the events at the theater.

(34:00) Discussion among commission members about the percentage of public vs private events and possible competition with private businesses.

(37:37) Councilman Adam Sharf, Goshen, thanked the commission for raising the issue of competition with private businesses since he and his wife have similar businesses. Mr. Sharf stated that it does cut the other way and that bringing the River Bend Film Festival in and venue like his can benefit from that.

(39:33) Mayor Jeremy Stutsman, in 2015 Regional Cities got started and Mayor Kauffman signed the paperwork committing the city to the 20 percent. He reminded the commission that were are not here

today or next month to decide if we give money, it is how to give the money. Want to make sure we are moving forward since a long term commitment has been made. Really important project for the city of Goshen.

**Election of Secretary** – Commissioner Turner nominated Commissioner Andrea Johnson for Secretary of the Goshen Redevelopment Commission and Commissioner Krider seconded it. There being no objections, Commissioner Johnson was elected as Secretary of the Goshen Redevelopment Commission for the 2019 calendar year.

**Resolution 07-2019** – Award Bid and Authorize Payment to INDOT for Kercher Road Construction Phase 2 Dierdorff Road to US33

(42:24) Leslie Biek, City Traffic Engineer, the bids were received for Kercher Road Phase 2 from Dierdorff Road to US 33. The estimate was over \$4.5 million and favorable bids were received with Rieth Riley being the lowest at just over \$3.7 million. INDOT handles all construction related to Rieth Riley and the invoice has not been received for the 20%, which will be \$751,600.00. We are asking for the approval for the payment to INDOT. Construction is set for 2019.

A motion was made by Commissioner Turner and seconded by Commissioner Johnson to approve Resolution 07-2019.

The motion was adopted unanimously.

**Resolution 08-2019**– Approve Amendment to the Agreement with JPR for Design and Survey for 3<sup>rd</sup> Street, Jefferson Street and River Race Drive Modifications.

(45:03) Leslie Biek, Traffic Engineer, last year a contract was entered into with JPR to do survey work and bid documents for the 3<sup>rd</sup> Street, Jefferson Street and River Race Drive Modifications. JPR did phase 1 last year and phase 2 is to extend River Race Drive farther north, add pervious pavers, sidewalk and storm improvements for the River Arts development. Part of the design will impact the parking at Crowder Law Offices so this amendment is for the survey of the parking lot on private property and the survey of the city's parking lot on the southwest corner of 3<sup>rd</sup> Street and Washington Street to see if we can offset some of the parking impact by extending parking and designating those spots to Crowder Law Office.

A motion was made by Commissioner Johnson and seconded by Commissioner Turner to approve Resolution 08-2019

The motion was adopted unanimously.

**Res. 09-2019** – Authorize Acceptance and Execution of Purchase Agreement of 102 East Kercher Road

(49:16) Becky Hutsell, Redevelopment Project Manager, at last month's meeting the commission approved the listing agreement with Patty Miller of Century 21. The property has been listed and we have received one offer and per the original agreement if it met 2 qualifications, full asking price and conventional mortgage or cash. This offer is for full purchase price however, they are requesting to utilize a VA loan which is not what was previously approved. The proposed buyers have agreed to put \$5,000 above and beyond the listing price for repairs that are needed. Agreeing to close or before April 30, 2019. Requesting approval from the commission to move forward with this.

(50:50)Larry Barkes, City Attorney, if the VA loan requires repairs in excess of \$5,000, both parties can void the agreement.

A motion was made by Commissioner Turner and seconded by Commissioner Johnson to approve Resolution 09-2019.

The motion was adopted unanimously.

### **APPROVAL OF REGISTER OF CLAIMS**

A motion was made by Commissioner Garber Johnson and seconded by Commissioner Turner to approve payment of the Register of Claims totaling \$526,638.32

The motion was adopted unanimously.

### **MONTHLY REDEVELOPMENT STAFF REPORT**

Mark Brinson. Community Development Director, updated the commission about the townhome project. Negotiating final terms with Insite Development and the plan is to present it to the commission in March. Mr. Sivan will be here to give an overview of the project.

Becky Hutsell, Redevelopment Project Manager, updated the commission on the status of the Hawks building project. Goal is to be under full construction by March.

### **OPEN FORUM**

No one from the Commission or the public spoke during the open forum.

### **ANNOUNCEMENTS**

It was announced that the next regular meeting is scheduled for March 12, 2019 at 3:00 p.m.

### **ADJOURNMENT**

A motion was made by Commissioner Krider and seconded by Commissioner Krider to adjourn the regular meeting,

The regular meeting was adjourned at 3:54 p.m.

**APPROVED** on March 12, 2019.

### **GOSHEN REDEVELOPMENT COMMISSION**

---

Thomas W. Stump, President

---

Andrea Johnson, Secretary

# **GOSHEN REDEVELOPMENT COMMISSION**

## **Minutes for the Special Meeting of February 21, 2019**

The Goshen Redevelopment Commission met in a special meeting on February 21, 2019 at 3:00 p.m. in the City Court Room/Council Chambers at the Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana.

### **CALL TO ORDER/ROLL CALL**

The meeting was called to order by President Thomas Stump. On call of the roll, the members of the Goshen Redevelopment Commission were shown to be present or absent as follows:

Present: Andrea Johnson, Brian Krider and Thomas Stump

Absent: Brian Garber and Vince Turner

### **NEW BUSINESS**

#### **Resolution 10-2019 – Approve Purchase Agreement for 65693 State Road 15**

Mark Brinson, Community Development Director, explained that purpose of acquiring this property is based on a preliminary design of the next phase of Waterford Mills Parkway project. The concern is that the route will have to be shifted north and additional right of way will be needed. The purchase price will be based on the average of two appraisals but not to exceed \$159,000, the current listing price.

A motion was made by Commissioner Johnson and seconded by Commissioner Krider to approve Resolution 10-2019.

The motion was adopted unanimously.

#### **Resolution 11-2019 – Approve and Authorize Execution of Agreement between Redevelopment Commission and Goshen Theater, Inc.**

(6:00) Mark Brinson, Community Development Director, stated that there are two elements to this agreement, the \$850,000 that was committed to renovations and a description of the scope of work attached to the agreement. Under the current proposal one half or \$425,000 is forgiven upon completion of that work and \$85,000 per year will be forgiven after the renovation work is completed. A provision is included that states the theater be maintained as a public venue at least 51% of the time. The second element is the \$150,000 loan to the theater board to purchase the theater and under the terms of this agreement it would forgive \$30,000 per year after renovations are complete. The loan forgiveness date is December 31, 2045.

(9:05) Everett Thomas, Chair of Goshen Theater Board, and Co-Chair of the Capital Campaign with Joanna King of JoJo's Pretzels, we have been working on this for 18 months. There is some background to this match of Regional Cities. They have agreed to pay 20% of the construction costs which is \$4.2 million if the City of Goshen matches it. When the commission committed to this 2-3 years ago, we have been proceeding with our construction and architects with DJ Construction as the contractor. This is part of a mix of funding that was pretty complex to start with. Mr. Thomas showed the commission members a pie chart showing the donation information. The largest amount of contributions of this

campaign is more than 2 million in private donations. It illustrates the extent of support from the public. The Community Foundation of Elkhart County said in December 2016 that if you raise 2 million in private donations, no government money, we will give you a match of 1 million dollars. We starting working on it in August 2017 with a deadline of December 2017. We didn't quite get there and they gave us until March 31. We were at about \$1.2 million and an anonymous donor donated \$750,000 and that got us close enough. Mr. Thomas handed out renderings of the theater. Mr. Thomas offered to answer any questions. Construction will start after the River Bend Festival in May 2019.

(13:23) Anna Wiebe, Owner of Blank Space at 109 East Lincoln Avenue, stated that she is great supporter of the theater project and have been following the progression of this since it first landed on community ears. Really excited of the possibilities a venue in town can present. I sat on the task force for the River Bend Festival and as a business owner I have benefited from calibration on events that have been hosted at the theater. Blank Space is a small meeting space for up to 40 people and we primarily make our money from renting out the space for private events. Been following with interest of the ratio of open to public and events hosted for private because this is the main source of my business as well. The one concern that I would like to have on public record is that as a for profit entity working along a nonprofit entity in the community that the pricing structure they would implement would be in competition with exiting venues. And as nonprofit there wouldn't be incentive to undercut the pricing that already exists because other business owners have spent time thinking about how to run our business and how to bolster the bottom line. How to compete with a nonprofit that has different incentives. Hope we can all work competitively and nicely not to undercut existing pricing structures and smaller businesses that are trying to make a go of it as well.

(16:10) Commissioner Stump told Ms. Wiebe that this was discussed at the last meeting a little bit and Doug Nisley, who did the financial planning, and Everett Thomas was here. Mr. Nisley was particularly aware of that situation.

(16:32) Everett Thomas responded that he appreciates the concern and actually we are concerned about that also. There are other uses for the theater that are available elsewhere in town. We would like to believe that our niche is different. We see the theater generating business for restaurants and businesses downtown it has been proved that more of these kind venues in town the more everybody profits from them. We think long term it will be helping the entire culture downtown.

(18:38) Commissioner Krider stated that he would be more comfortable with 60-65% of public events for two reasons. He agrees with Blank Space that it will bring business downtown, and second he believes the taxpayer needs to have more of an interest in it if they are going to receive that amount of tax dollars.

(22:10) Discussion among commission members regarding the percentages.

(25:00) Everett Thomas said he could only think of 3 events that were not public and he does not think 60-65% is a problem.

A motion was made by Commissioner Krider to change Page 2, paragraph 4 from 51% to 60% and Page 3, paragraph 3 from 51% to 60% and seconded by Commissioner Johnson to amend Resolution 11-2019.

A motion was made by Commissioner Johnson and seconded by Commissioner Krider to approve Resolution 11-2019 as amended.

The motion was adopted unanimously.

**OPEN FORUM**

No one from the Commission or the public spoke during the open forum.

**ANNOUNCEMENTS**

It was announced that the next regular meeting is scheduled for March 12, 2019 at 3:00 p.m.

**ADJOURNMENT**

A motion to adjourn the Special Meeting by Commissioner Johnson and seconded by Commissioner Krider.

The special meeting was adjourned at 3:30 p.m.

**APPROVED** on March 12, 2019.

**GOSHEN REDEVELOPMENT COMMISSION**

---

Thomas W. Stump, President

---

Andrea Johnson, Secretary

**RESOLUTION NO. 12-2019**

**RESOLUTION OF THE GOSHEN REDEVELOPMENT  
COMMISSION AUTHORIZING TAX INCREMENT  
EXPENDITURES AND APPROVING LOAN AGREEMENT  
AND TRUST AGREEMENT**

WHEREAS, the Goshen ("City") Redevelopment Commission ("Commission") has created, consolidated and enlarged the Consolidated River Race/US 33 Economic Development Area ("Area") and an allocation area coterminous with the Area known as the Consolidated River Race/US 33 Allocation Area ("Allocation Area") and adopted an economic development plan, as amended ("Plan") for the Area;

WHEREAS, the Commission has determined that the hereinafter defined Project is included in the current Plan because the Plan, as written and as attached as Exhibit A, includes the Project and the use of the hereinafter defined TIF Revenues to finance the Project is an appropriate use of TIF Revenues under the Plan;

WHEREAS, the construction of the Project by the Goshen Theater, Inc. ("Borrower") in the Area will: (i) assist in the retention and expansion of significant business enterprise in the Area; (ii) bring additional capital investment to the Area; (iii) be of public utility and benefit; and (iv) strengthen the economic well-being of the Area and encourage additional growth in the Area;

WHEREAS, the Commission is authorized to enter into an agreement with the Borrower to provide the incentives that will induce the Borrower to complete the Project and continue future operations in the Area, thus strengthening the economic well-being of the Area and encouraging additional growth;

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

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

WHEREAS, issuing the City's Taxable Economic Development Revenue Note, Series 2019 ("Series 2019 Note"), entering into the hereinafter defined Loan Agreement and loaning the proceeds of the Series 2019 Note to the Borrower to induce them to renovate the Project and continue future operations in the Area fosters and encourages economic development, promotes the use of the Project property in a manner that best serves the interest of the City and its citizens, promotes significant opportunities for gainful employment and helps retain and expand significant business enterprises in the City;



WHEREAS, the City is loaning the proceeds of the Series 2019 Note to the Borrower pursuant to a Loan Agreement, dated as of March 1, 2019 ("Loan Agreement") between the Borrower and the City for the financing of a portion of economic development facilities consisting of the renovation of the Goshen Theater, together with all necessary appurtenances, related improvements and equipment ("Project") in or physically connected to the Area;

WHEREAS, the Commission will use the property tax proceeds on hand in the allocation fund for the Allocation Area 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 reduced by the credit provided for in IC 36-7-14-39.5 as such statutory provisions exist on the date of the issuance of the Series 2019 Note ("TIF Revenues");

WHEREAS, in order to finance the Project, the Commission has determined that it is in the best interest of the City and its residents to issue the Series 2019 Note in an amount not to exceed \$850,000 and loan the proceeds to the Borrower to fund a portion of the Project; and

WHEREAS, the Borrower will submit written requests as set forth in the Trust Agreement between the Commission, the City and \_\_\_\_\_, as Trustee ("Trustee") dated as of March 1, 2019 ("Trust Agreement") before funds are disbursed to the Borrower by the Trustee.

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

Section 1. The Commission hereby finds that authorizing the use of TIF Revenues in an amount not to exceed \$850,000 to fund the issuance of the Series 2019 Note in order to finance a portion of the Project will help accomplish the Plan for the Area and will promote the economic development of the City and the Area.

Section 2. The Commission hereby irrevocably authorizes the use of TIF Revenues to fund the issuance of the Series 2019 Note in an amount not to exceed \$850,000 for the financing of a portion of the Project pursuant to the Loan Agreement and the Trust Agreement for a term no later than March 22, 2029.

Section 3. The Commission hereby approves the Loan Agreement and the Trust Agreement, and creates the Goshen Theater Project Fund to be held by the Trustee pursuant to the Trust Agreement.

Section 4. This resolution shall be effective upon passage.

Adopted March 12, 2019.

GOSHEN REDEVELOPMENT COMMISSION

---

President

---

Vice President

---

Secretary

---

Member

---

Member

Attest:

---

Secretary

## EXHIBIT A

### Economic Development Plan for the Consolidated River Race/US 33 Economic Development Area and Allocation Area

#### **Purpose and Introduction**

This document is the Economic Development Plan (Plan) for the Consolidated River Race/US 33 Economic Development Area. This Plan is intended to be a single, consolidated plan for the development and/or redevelopment of the Consolidated River Race/US 33 Economic Development Area. The Plan includes new projects and all projects that have not yet been completed from previously approved Plans. The Plan also includes a list of additional parcels of real estate proposed to be acquired and all parcels that have not yet been acquired from previously approved Plans.

#### **Description of Consolidated River Race/US 33 Economic Development Area**

The boundaries of the Consolidated River Race/US 33 Economic Development Area as established by Declaratory Resolution 06-2013 and Confirmatory Resolution 17-2013, and enlarged by Declaratory Resolution 66-2013 and Confirmatory Resolution 80-2013 are not modified as a result of the amendment of this Plan. A map of the Consolidated River Race/US 33 Economic Development Area is attached as Exhibit A.

#### **Plan Objectives**

The Goshen Redevelopment Commission's (Commission) goals are to enhance the economic health and diversity of the City of Goshen by addressing the underutilization of land and the barriers to its development. In particular, it is the goal of this Plan to facilitate and encourage economic development and new private investment and development in the area. The implementation of this Plan is a public and governmental function that cannot be accomplished through the ordinary operation of private enterprise or by regulatory process because of the lack of local public infrastructure improvements and the cost of providing such infrastructure improvements. Further, the Commission finds that the implementation of this Plan will benefit the public health and welfare of the City of Goshen by providing needed local public infrastructure improvements in the area which, in turn, will promote new private development. With this new development, the Plan is designed to attract new or expand existing private business enterprises in the City of Goshen, increase and enhance job opportunities for the gainful employment of the citizens of the City of Goshen and Elkhart County, and increase the City of Goshen's property tax base.

## Plan Description

This Plan is a consolidation of all previously approved Economic Development Plans for the Consolidated River Race/US 33 Economic Development Area, including the Economic Development Plans under the former River Race Corridor Economic Development Area, North US 33 Economic Development Area, and Downtown Economic Development Area. It is the intent of this Plan to retain previously identified projects from previously approved Plans to the extent that such projects have not otherwise been completed. This Plan also identifies additional development and/or redevelopment projects to be undertaken by the Commission.

For each infrastructure project described below, the Commission may fund the costs of real estate acquisition, engineering costs, architectural fees, surveying costs, title fees, design costs, legal costs, accounting costs, financing costs, costs of permits, licenses, approvals or other similar costs in addition to the costs of construction of improvements.

The projects for the Consolidated River Race/US 33 Economic Development Area are set forth below. All new projects as a result of this amendment are designated with a “\*”.

1. \*Renovation or rehabilitation of the Goshen Theater building.
2. \*Construction of a community center and/or amphitheater.
3. \*Demolition of structures and construction of any public infrastructure improvement necessary or desirable to promote development of the former Goshen Inn and Conference Center and former Bread and Chocolate site at 1375 Lincolnway East.
4. \*Demolition of structures and construction of any public infrastructure improvement necessary or desirable to promote development of real estate generally located north of Lincoln Avenue, east of the Elkhart River, south of Pike Street, west of Second Street, south of Clinton Street, and west of Third Street, including the site of the former Elkhart County Jail, including streets, intersection improvements, traffic control devices, bridges, water mains, sewer mains, lift stations, underground utility conduits, public utilities, street lights, sidewalks, bicycle paths, public fire hydrants, storm drainage facilities and landscaping.
5. \*Demolition of structures and construction of any public infrastructure improvement necessary or desirable to promote development of real estate generally located north of Pike Street, south of the railroad, east of Third Street, and west of Main Street, including streets, intersection improvements, traffic control devices, bridges, water mains, sewer mains, lift stations, underground utility conduits, public utilities, street lights, sidewalks, bicycle paths, public fire hydrants, storm drainage facilities and landscaping.
6. \*Demolition of structures and construction of any public infrastructure improvement necessary or desirable to promote development of real estate generally located north of area approximately 200 feet south of Monroe Street, south of Washington Street, east of River Race Drive, and west of Third Street, including streets, intersection improvements, traffic control devices, bridges, water mains, sewer mains, lift stations, underground utility conduits, public

utilities, street lights, sidewalks, bicycle paths, public fire hydrants, storm drainage facilities and landscaping.

7. Construction of pedestrian/bicycle trails. This shall include projects at the following location(s):

- a. \*Northwest Bike Trail generally located from existing trail on Bashor Road and north to commercial area along US 33/Elkhart Road.
- b. \*Connection of Central City Trail to Monroe Street Trail.
- c. \*Plymouth Avenue from Third Street to Indiana Avenue.
- d. Adjacent to US 33/Elkhart Road to the northwestern city limits.
- e. 9th Street from College Avenue to Lincoln Avenue.

8. Construction of sidewalk improvements. This shall include projects at the following location(s):

- a. \*Bashor Road at US 33/Elkhart Road.
- b. \*North side of College Avenue from 9th Street to 11th Street.
- c. Plymouth Avenue from Main Street to US 33/Lincolnway East.
- d. Purl Street from Main Street to 10th Street.
- e. Purl Street from Main Street to River Race Drive.
- f. Plymouth Avenue from Main Street to Third Street.
- g. South side of Lincoln Avenue in the east 100- and 200-blocks.

9. Construction of public parking areas. This shall include projects at the following location(s):

- a. \*North of area approximately 200 feet south of Monroe Street, south of Washington Street, east of River Race Drive, and west of Third Street (depending on development), but specifically including area north of Madison Street and south of Jefferson Street.
- b. \*North of Plymouth Avenue, south of Douglas Street, east of the railroad, and west of 10th Street (depending on potential development).
- c. \*North of Clinton Street, south of Pike Street, east of the Elkhart River, and west of New Street (depending on potential development).
- d. \*North of Pike Street, south of the railroad, east of Third Street, and west of Main Street (depending on potential development).

10. Construction of road improvements. This shall include projects at the following location(s):

- a. \*Lincoln Avenue from railroad to eastern city limits.
- b. \*River Race Drive from Jefferson Street to Washington Street, including east/west alleys extending to Third Street.
- c. \*Steury Avenue.
- d. 9th Street from College Avenue to Purl Street.
- e. Logan Street.

11. Construction of intersection improvements. This shall include projects at the following location(s):

- a. 10th Street and College Avenue.
  - b. 9th Street and New York Street.
  - c. 9th Street and Burdick Street.
  - d. 9th Street and Jackson Street.
  - e. 9th Street and Reynolds Street.
  - f. 10th Street and Reynolds Street.
12. Alter Chicago Avenues access to US 33/Elkhart Road.
  13. Modify Beaver Lane railroad crossing.
  14. Reconfigure 10th Street and College Avenue as gateways into Goshen College.
  15. Create a Quiet Zone from Goshen College to downtown, including the construction of gates and safety measures along Norfolk Southern Marion Line railroad.
  16. Installation or repair of street lights or other lighting needed for safety or security in public right-of-way.
  17. Engineer and construct repairs to the Mill Race that are necessary to stabilize the race, to alter the water flow through the race and to improve the aesthetics of the race, race banks and the surrounding area to complement the overall development of the area. This includes the construction of new areas to reduce silt deposits in the Mill Race.
  18. Landscaping projects on publically-owned real estate, including planting trees, bushes and flowers, installing planters, and removal of existing landscaping.
  19. Improve streetscape along 9th Street from College Avenue to Lincoln Avenue.
  20. Purchase and demolition of all billboards, specifically including billboards adjacent to US 33/Elkhart Road from the corporate limits of the City of Goshen on the north and Reliance Road on the south.
  21. Construction of a visitor information center and installation of related signage in the downtown.
  22. Construction of public parks on publically-owned real estate.
  23. \*Construction or installation of trailhead improvements near Powerhouse, including canoe launch.
  24. Construction of a water tower within the Consolidated Economic Development Area or, to the extent permitted by Indiana law, serving the Consolidated Economic Development Area.
  25. Construction of water mains where there are no existing water mains or where additional water mains are needed to improve water quality or pressure.

26. Replacement of water mains where the water mains are in need of replacement because of age, size, condition or obsolescence.
27. Construction of sewer mains and lift stations where there are no sewer mains.
28. Replacement of sewer mains or lift stations that are in need of replacement due to age, size, condition or obsolescence.
29. Construction of stormwater retention facilities, stormwater detention facilities and stormwater mains where there are not such facilities or where such facilities are inadequate because of age, size, condition or obsolescence. This shall include projects at the following location(s):
  - a. \*Along 9th Street corridor.
  - b. Near Steury Avenue and East Lincoln Avenue.
30. Construction or repair of public streets, sidewalks and curbs.
31. Installation of information technology infrastructure where no such infrastructure exists or the existing infrastructure is inadequate due to age, size, condition or obsolescence.
32. Burying of power or utility lines.
33. Conduct environmental assessments of the real estate that the Commission seeks to acquire.
34. Remediate any contamination on the real estate acquired so that the real estate is suitable for the Commission's intended uses.
35. Improvement of real estate owned by Redevelopment within the Consolidated River Race/US 33 Economic Development Area.

LOAN AGREEMENT

BETWEEN

Goshen THEATER, INC.

AND

CITY OF GOSHEN, INDIANA

Dated as of March 1, 2019



## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS AND EXHIBITS .....	3
Section 1.1. Terms Defined.....	3
Section 1.2. Rules of Interpretation.....	5
Section 1.3. Exhibits .....	5
ARTICLE II. REPRESENTATIONS; LOAN OF TAX INCREMENT .....	6
Section 2.1. Representations by City .....	6
Section 2.2. Representations by Borrower .....	6
Section 2.3. Series 2019 Note .....	7
ARTICLE III. PARTICULAR COVENANTS OF THE BORROWER.....	8
Section 3.1. Forgiveness of Payment of Loan .....	8
Section 3.2. Payment of Notes; Payments Pledged.....	8
Section 3.3. Continuing Existence and Qualification .....	9
Section 3.4. Assignment, Sale or Other Disposition of Project .....	9
Section 3.5. Indemnity .....	10
Section 3.6. Issuance of Substitute Notes .....	10
Section 3.7. Payment of Expenses of Loan.....	10
Section 3.8. Investments .....	10
Section 3.9. Other Amounts Payable by the Borrower .....	10
Section 3.10. Completion of Project .....	11
Section 3.11. Sale, Substitution, or Lease of the Project .....	11
ARTICLE IV. EVENTS OF DEFAULT AND REMEDIES THEREFOR.....	12
Section 4.1. Events of Default.....	12
Section 4.2. Payment of Defaulted Amounts on Demand of Trustee .....	13
Section 4.3. Trustee May Enforce Demand .....	13
Section 4.4. Remedies Cumulative .....	13
Section 4.5. Delay or Omission Not a Waiver .....	14
Section 4.6. Waiver of Extension, Appraisal or Stay Laws .....	14
Section 4.7. Remedies Subject to Provisions of Law.....	14
Section 4.8. Rights of the Trustee .....	14
Section 4.9. Waiver of Events of Default .....	14
ARTICLE V. IMMUNITY .....	16
Section 5.1. Immunity .....	16

ARTICLE VI.	SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT..	17
Section 6.1.	Supplements and Amendments to this Loan Agreement .....	17
ARTICLE VII.	DEFEASANCE.....	18
Section 7.1.	Defeasance .....	18
ARTICLE VIII.	MISCELLANEOUS PROVISIONS.....	19
Section 8.1.	Loan Agreement for Benefit of Parties Hereto .....	19
Section 8.2.	Severability .....	19
Section 8.3.	Limitation on Interest.....	19
Section 8.4.	Addresses for Notice and Demands .....	19
Section 8.5.	Successors and Assigns.....	20
Section 8.6.	Counterparts .....	20
Section 8.7.	Governing Law.....	20
Section 8.8.	Damages .....	20
Section 8.9.	[Third-Party Beneficiary .....	20

## LOAN AGREEMENT

This is a LOAN AGREEMENT dated as of March 1, 2019 ("Loan Agreement") between GOSHEN THEATER, INC., an Indiana Domestic Nonprofit Corporation duly organized and existing and authorized to do business under the laws of the State of Indiana ("Borrower"), and the CITY OF GOSHEN, INDIANA ("City"), a municipal corporation duly organized and validly existing under the laws of the State of Indiana.

### PRELIMINARY STATEMENT

Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, "Act"), has been enacted by the General Assembly of Indiana.

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

The Goshen Redevelopment Commission ("Redevelopment Commission") adopted Declaratory Resolution No. 02-2012 on January 10, 2012, as amended on January 8, 2013, September 10, 2013, April 12, 2016 and July 10, 2018 (collectively, as amended, "Declaratory Resolution") consolidating and enlarging the Consolidated River Race/US 33 Economic Development Area ("Area"), and was confirmed by a Confirmatory Resolution adopted on March 13, 2012, as amended on November 12, 2013, July 12, 2016 and August 14, 2018 (collectively, as amended, "Confirmatory Resolution").

The Declaratory Resolution approved the economic development plan, as amended (collectively, as amended, "Plan") for the Area which Plan contained specific recommendations for economic development in the Area, and the Declaratory Resolution established and enlarged the Consolidated River Race/US 33 Allocation Area in accordance with IC 36-7-14-39 ("Allocation Area") for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Area.

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

In order to induce the Borrower to complete the Project, encourage economic development and promote significant opportunities for gainful employment, the City intends to issue and fund the Taxable Economic Development Revenue Note, Series 2019 in an amount not to exceed \$850,000 pursuant to the provisions of this Loan Agreement, and loan the proceeds of the Series 2019 Note to the Borrower to finance a portion of the cost of the Project in or physically connected to the Area.

This Loan Agreement provides for the payment of the Series 2019 Note by the Borrower and further provides for the Borrower's repayment obligation to be evidenced by the Series 2019 Note, substantially in the form attached hereto as Exhibit A.

Subject to the further provisions of this Loan Agreement including Section 3.1, the loan will be payable solely out of the payments to be made by the Borrower on the Series 2019 Note.

In consideration of the premises, the loan, the acceptance of the Series 2019 Note by the City, and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Borrower has executed and delivered this Loan Agreement.

This Loan Agreement is executed upon the express condition that if the Borrower shall pay or cause to be paid all indebtedness hereunder (unless the 2019 Note is forgiven pursuant to Section 3.1 hereof) and shall keep, perform and observe all and singular the covenants and promises expressed in the Series 2019 Note, any other Notes (as hereinafter defined) and this Loan Agreement to be kept, performed and observed by the Borrower, then this Loan Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

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

## ARTICLE I.

### DEFINITIONS AND EXHIBITS

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

"Act" means, collectively, Indiana Code 36-7-11.9 and -12, and any successor provisions of the Indiana Code or successor codes.

"Allocation Area" means the Consolidated River Race/US 33 Allocation Area.

"Area" means the Consolidated River Race/US 33 Economic Development Area.

"Authorized Representative" means any officer of the Borrower or any other person certified by an officer of the Borrower to be the Borrower's Authorized Representative.

"Authorizing Resolution" means Resolution No. \_\_\_\_\_ adopted by the Goshen Redevelopment Commission on March 12, 2019, authorizing the use of TIF Revenues on hand to fund the Series 2019 Note.

"Bond Counsel" means a nationally recognized firm of municipal bond attorneys acceptable to the City and the Borrower.

"Borrower" means Goshen Theater, Inc., an Indiana Domestic Nonprofit Corporation duly organized and existing and authorized to do business under the laws of the State of Indiana, or any successors and/or assigns thereto permitted under Section 3.3 hereof.

"Business Day" means any day other than a Saturday, Sunday or holiday on which commercial banks in the city in which the principal office of the Trustee is located are open for conducting substantially all of its banking activities.

"City" means the City of Goshen, Indiana, or any successor thereto or assign thereof.

"Commission" means the Goshen Economic Development Commission.

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

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

"Note" or "Notes" means the Series 2019 Note, and any other note executed by the Borrower in connection with the Series 2019 Note, and any notes issued in exchange therefor pursuant (and subject) to Section 3.7 hereof.

"Project" means renovation of the Goshen Theater, together with all necessary appurtenances, improvements and equipment, in or physically connected to the Area.

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

(i) the "Note Issuance Costs," namely the reasonable costs, fees and expenses incurred or to be incurred by the City and the Borrower in connection with the Loan, the reasonable fees and disbursements of Bond Counsel, the reasonable fees of disbursements of the City's financial advisor, the acceptance fee of the Trustee, application fees and expenses, publication costs, the filing and recording fees in connection with any necessary filings or recordings or to perfect the lien thereof, the out-of-pocket costs of the City, the reasonable fees and disbursements of Counsel to the Borrower, the reasonable fees and disbursements of Counsel to the City, the costs of preparing or printing the 2019 Note and the documentation supporting the Loan, the costs of reproducing documents and any other costs of a similar nature reasonably incurred;

(ii) design costs and other expenses directly related to the construction of the Project;

(iii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Project;

(iv) all costs and expenses which City or Borrower shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto), for the construction of the Project; and

(v) any sums required to reimburse City or Borrower for advances made by either of them subsequent to the date of inducement by the City for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Project.

"Redevelopment Commission" means the Goshen Redevelopment Commission.

"Series 2019 Note" means the Note of the Borrower in the maturity amount of \$[850,000] in substantially the form attached hereto as Exhibit A, which will be issued and delivered by the Borrower to the City to evidence the loan and any Note issued in exchange for the Series 2019 Note pursuant to Section 3.7 hereof.

"State" means the State of Indiana.

"TIF Revenues" means all property tax proceeds attributable to the assessed valuation of real property within the Area as of each assessment date in excess of the base assessed value as described in IC 36-7-14-39(b)(1). The incremental assessed value is multiplied by the then current property tax rate (per \$100 assessed value).

"Trust Agreement" means the agreement by and between the Redevelopment Commission, the City and the Trustee dated as of March 1, 2019.

"Trustee" means the trustee and/or co-trustee at the time serving as such under the Trust Agreement, and shall initially mean \_\_\_\_\_, \_\_\_\_\_, Indiana.

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

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

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

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

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

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

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

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

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

Exhibit A. Form of Series 2019 Note

(End of Article I)

## ARTICLE II.

### REPRESENTATIONS; LOAN OF TAX INCREMENT

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

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

(b) The City agrees to loan the proceeds of the Series 2019 Note for financing a portion of the construction of the Project for the benefit of the Borrower, to benefit the health, safety, morals and general welfare of the citizens of the City, increase economic well-being of the State, promote job opportunities and attract major new businesses.

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

(a) The Borrower is an Indiana Domestic Nonprofit Corporation duly organized and in good standing and authorized to do business under the laws of the State, is not in violation of any provision of its Articles of Incorporation or by-laws, has not received notice and has no reasonable grounds to believe that it is in violation of any laws in any manner material to its ability to perform its obligations under this Loan Agreement and the 2019 Note, has power to enter into and to perform its obligations under this Loan Agreement and the 2019 Note, and has duly authorized the execution and delivery of this Loan Agreement and the 2019 Note by appropriate corporate action.

(b) The Project is the type authorized and permitted by the Act.

(c) All of the proceeds from the Series 2019 Note (including any income earned on the investment of such proceeds) provided to the Borrower will be used solely for Project Costs.

(d) The Borrower intends to operate or cause the Project to be operated as an economic development facility under the Act until the expiration or earlier termination of this Loan Agreement as provided herein, unless the Borrower has sold or otherwise transferred the Project to a Surviving Corporation (as hereinafter defined) in accordance with Section 3.3 of this Loan Agreement.

(e) Neither the execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby including execution and delivery of the Series 2019 Note nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, will contravene the Borrower's Articles of Incorporation or any law or any governmental rule, regulation or order presently binding on the Borrower or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which Borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the



creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of Borrower under the terms of any instrument or agreement.

(f) The execution, delivery and performance by the Borrower of this Loan Agreement and the Series 2019 Note do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(g) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Loan Agreement and the Series 2019 Note have been duly executed and delivered by the Borrower and constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(h) There are no actions, suits or proceedings pending, or, to the knowledge of the Borrower, 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 Borrower or might impair the ability of the Borrower to perform its obligations under this Loan Agreement or the Series 2019 Note.

(i) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Loan Agreement or the Series 2019 Note.

(j) Upon completion of phase one of the Project and the documented expenditure of a minimum of \$4,000,000 in Project Costs, 50% of the Series 2019 Note will be forgiven. The remaining 50% will be forgiven over a five (5) year period following the completion of the Project (scheduled to occur no later than May 1, 2020). The amount forgiven per year would be \$85,000, provided that the Borrower owns the Goshen Theater and the Goshen Theater remains open and is operated as a community Theater venue.

Section 2.3. Series 2019 Note. Concurrently with the execution and delivery hereof, the City is loaning the proceeds of the Series 2019 Note to the Borrower. The loan is being evidenced by the execution and delivery by the Borrower of the Series 2019 Note substantially in the form attached hereto as Exhibit A.

(End of Article II)

## ARTICLE III.

### PARTICULAR COVENANTS OF THE BORROWER

Section 3.1. Forgiveness of Payment of Loan. To the extent the representations in Section 2.2(j) and (k) are met, payment on the Loan shall be forgiven.

Upon meeting the requirements as set forth in Section 2.2(j), the repayment of the Series 2019 Note to the Borrower shall be forgiven.

Section 3.2. Payment of Notes; Payments Pledged. (a) To the extent the repayment of the Series 2019 Note is not forgiven, the Borrower shall duly and punctually pay the principal of the Series 2019 Note at the place and in the manner mentioned in the Series 2019 Note and this Loan Agreement according to the true intent and meaning thereof and hereof as follows: (i) upon demand in the case of default under Section 4.1(a)(i); or (ii) at maturity, if not forgiven pursuant to Section 3.1.

(b) The Borrower covenants and agrees with and for the express benefit of the City, that all payments pursuant hereto and to the Series 2019 Note shall be made by the Borrower on or before the date the same become due, and the Borrower shall perform all of its other obligations, covenants and agreements hereunder, without notice or demand (except as provided herein), and without abatement, deduction, reduction, diminution, waiver, abrogation, set-off, counterclaim, recoupment, defense or other modification or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and regardless of any act of God, contingency, event or cause whatsoever, and irrespective (without limitation) of whether the Borrower's title to the Project or any part thereof is defective or nonexistent, or whether the Borrower's revenues are sufficient to make such payments, and notwithstanding any damage to, or loss, theft or destruction of, the Project or any part thereof, expiration of this Loan Agreement, any failure of consideration or frustration of purpose, the taking by eminent domain or otherwise of title to or of the right of temporary use of, all or any part of the Project, legal curtailment of the Borrower's use thereof, or whether with or without the approval of the City, any change in the tax or other laws of the United States of America, the State, or any political subdivision of either thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any portion of this Loan Agreement; and the Borrower hereby waives (to the extent permitted by law) the provisions of any statute or other law now or hereafter in effect impairing or conflicting with any of its obligations, covenants or agreements under this Loan Agreement or which releases or purports to release the Borrower therefrom.

(c) As long as the Series 2019 Note is outstanding, the Borrower covenants to pay all property tax bills for property related to the Project owned or leased by the Borrower, before the tax bills are delinquent, provided this provision shall not prohibit Borrower from contesting or appealing any assessments or taxes with respect to such Project fully to the extent permitted by law.

(d) Until such time as the Series 2019 Note shall have been fully paid or forgiven as set forth in Section 3.1 hereof, the obligations of the Borrower to make the required payments,

unless the Loan is forgiven as set forth herein, and to perform and observe the other agreements on its part shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Issuer, and the Borrower shall pay absolutely during the term of this Loan Agreement the payments to be made on account of the Loan and all other payments required thereunder free of any deductions and without abatement, diminution or set-off; and until such time as the principal of, premium, if any, on the Series 2019 Notes shall have been fully paid, or provision for the payment thereof shall have been made as set forth herein, the Borrower: (i) will not suspend or discontinue any payments of the Loan; (ii) will perform and observe all of its other agreements contained in this Loan Agreement; and (iii) will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Borrower to complete the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax laws of the United States of America or of the State of Indiana or any political subdivision of either thereof, or any failure of the City or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement.

(e) It is understood and agreed that Borrower shall be obligated to continue to pay the amounts specified herein and in the Series 2019 Note unless the Series 2019 Note is forgiven as set forth herein whether or not the Project is damaged, destroyed or taken in condemnation and that there shall be no abatement of any such payments and other charges by reason thereof.

Section 3.3. Continuing Existence and Qualification. The Borrower covenants that so long as any Series 2019 Note is outstanding, it (a) will maintain in good standing its corporate existence and qualification to do business in the State, and (b) will not (1) dissolve or otherwise dispose of all or substantially all of its assets and (2) consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Borrower may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Borrower) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the Surviving Corporation had originally executed this Loan Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Assignment, Sale or Other Disposition of Project. Any sale, lease or other disposition of the Project or any portion thereof is subject to the conditions of Section 3.11 hereof.

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

The indemnifications set forth herein shall survive the termination of this Loan Agreement and the resignation or removal of the Trustee.

Section 3.6. Issuance of Substitute Notes. Upon the surrender of any Note, the Borrower will execute and deliver to the holder thereof a new Note dated the date of the Note being surrendered but with appropriate notations thereon to reflect payments of principal already paid on such Note; provided, however, that there shall never be outstanding at any one time more than one Note of any one series.

Section 3.7. Payment of Expenses of Loan. The Note Issuance Costs (as defined under "Project Costs" in Article I hereof) will be paid by the Redevelopment Commission.

Section 3.8. Investments. The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for such investments, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Trustee shall not be liable or responsible for any loss resulting from any such investment properly obtained in accordance with the Borrower's direction. All such investments shall be held by or under the control of the Trustee and any income resulting therefrom shall be applied in the manner specified in the Trust Agreement.

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

(a) All reasonable out-of-pocket fees, charges and expenses, including agent and Counsel fees and out-of-pocket expenses, of the Trustee incurred under the Trust Agreement, as and when the same become due.

(b) All reasonable out-of-pocket costs incident to the payment of the Series 2019 Note as the same become due and payable.

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

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

(e) All other payments of whatever nature which the Borrower has agreed to pay or assume under the provisions of the Loan Agreement.

Notwithstanding anything in this Section 3.9 to the contrary, the Borrower may, without creating an event of default as herein defined, after making the payments required by this Section 3.9, contest in good faith the necessity for any such services, fees, charges or expenses of the City.

Section 3.10. Completion of Project. (a) The Borrower agrees that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for constructing and completing the Project, to the extent permitted by law, on or about May 1, 2020.

If the moneys comprising the Loan should not be sufficient to pay in full the costs of the construction of the Project, the Borrower agrees, for the benefit of the City and to fulfill the purposes of the Act, to complete the construction of the Project and to pay that portion of the costs therefor as may be in excess of the moneys available therefor. The City does not make any warranty, either express or implied, that the moneys will be available for payment of the costs of the construction of the Project, will be sufficient to pay all the costs which will be incurred in that connection. The Borrower shall not be entitled to any reimbursement therefor from the City or the Trustee, nor shall it be entitled to any diminution in or abatement or postponement of the amounts payable hereunder or under the Series 2019 Note.

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

(End of Article III)

## ARTICLE IV.

### EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder; provided, however, that no such event shall constitute an "event of default" unless it is so declared by the Trustee and the Trustee may not make such a declaration without the prior written consent of the City:

(i) Failure of the Borrower to achieve and maintain the covenants set forth in Section 2.2(j) hereof;

(ii) Failure of the Borrower to observe and perform any other covenant, condition or provision of this Agreement for a period of ninety (90) days after written notice, specifying such failure and requesting that it be remedied, given to the Borrower by the City, unless (i) the nature of the default is such that it cannot be remedied within the ninety (90) day period, (ii) the Borrower institutes corrective action within the ninety (90) day period and (iii) the Borrower diligently pursues such action until the default is remedied.

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

(i) Acceleration. Solely if an event of default under Section 5.1(a)(i) of this Loan Agreement has occurred and is continuing, the Trustee shall, but only if directed in writing by the City, by written notice to the Borrower, declare the principal of the Series 2019 Note due and payable, and upon any such declaration, the principal of the Series 2019 Note shall become and be immediately due and payable. The Borrower hereby acknowledges its obligation to repay upon default of Section 2.2(i) as set forth herein. This representation constitutes an agreement between the City and the Borrower that enhances or otherwise further secures the Series 2019 Note pursuant to IC 36-7-25-6 and shall be treated in the same manner as property taxes for real property owned by the Borrower or its affiliates, successors and assigns by merger or acquisition, for purposes of IC 6-1.1-22-13.

(ii) Right to Bring Suit, Etc. The Trustee, with or without entry, personally or by attorney, may proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the Series 2019 Note or this Loan Agreement, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee shall deem most effectual to protect and enforce any of its rights or duties hereunder; provided, however that all reasonable costs incurred by the Trustee and the City under this Article shall be paid to the City and the Trustee by the Borrower on demand; provided that the Trustee shall have acted solely at the direction of the City.

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

Section 4.2. Payment of Defaulted Amounts on Demand of Trustee. Subject to the further provisions of this Article IV, if the Borrower shall fail to pay any installment due on the Series 2019 Note when and as the same shall become due and payable, as therein and herein expressed; then, upon written demand of the Trustee (with the prior written consent of the City), the Borrower will pay to the Trustee, the whole amount which then shall have become due and payable on the Series 2019 Note and in addition thereto such further amount as shall be sufficient to cover the reasonable costs and out-of-pocket expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any reasonable expenses or liabilities incurred by the Trustee hereunder; provided that the Trustee shall have acted solely at the direction of the City.

Section 4.3. Trustee May Enforce Demand. If the Borrower shall have failed to pay such amounts due on the Series 2019 Note and other amounts upon demand, the Trustee, in its own name, (with the prior consent of the City), may institute such actions or proceedings at law or in equity for the collection of the amounts so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Borrower and collect the moneys adjudged or decreed to be payable out of the property of the Borrower wherever situated, in the manner provided by law.

The Trustee shall, if permitted by law and directed solely by the City, be entitled to recover judgement as aforesaid either before or after or during the pendency of any proceedings for the enforcement of this Loan Agreement; and the right of the Trustee, to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of the provisions of this Loan Agreement.

Any moneys thus collected by the Trustee under this Section shall be applied as follows:

FIRST: to the payment of all reasonable advances by the City or by the Trustee with interest at the prime rate of interest charged by the Trustee from time to time, and all reasonable out-of-pocket expenses.

SECOND: to the payment of the amounts then due and unpaid upon the Series 2019 Note in respect of which such money shall have been collected, ratably and without preference or priority of any kind, according to the amounts due and payable upon the Series 2019 Note, upon presentation of the Series 2019 Note and the notation thereon of such payment, if partly paid, and upon surrender thereon if fully paid.

Section 4.4. Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy or remedies, and each and every such

remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 4.5. Delay or Omission Not a Waiver. No delay or omission of the Trustee to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Loan Agreement to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee, without the prior written consent of the City.

Section 4.6. Waiver of Extension, Appraisal or Stay Laws. To the extent permitted by law, the Borrower will not during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; and the Borrower hereby expressly waives all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Trustee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 4.7. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 4.8. Rights of the Trustee. If there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the United States Bankruptcy Code or any other applicable law, or in case a receiver, trustee, or custodian shall have been appointed for the property of the Borrower, or in the case of any other similar judicial proceedings relative to the Borrower, or to the creditors or property of the Borrower, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it to the date of such distribution.

Section 4.9. Waiver of Events of Default. If after any event of default shall have occurred under this Loan Agreement and prior to the Trustee exercising any of the remedies provided in this Article, the Borrower shall have completely cured such default, such default may



be waived at the discretion of the City and, if so waived, shall be rescinded and annulled by the Trustee by written notice given to the Borrower.

(End of Article VI)

ARTICLE V.

IMMUNITY

Section 5.1. Immunity. No covenant or agreement contained in this Loan Agreement or the Trust Agreement shall be deemed to be a covenant or agreement of any member of the City or the Commission or of any officer or employee of the City, the Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the City, the Commission, nor any officer or employee of the City 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.

(End of Article VII)

ARTICLE VI.

SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT

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

(End of Article VIII)

## ARTICLE VII.

### DEFEASANCE

Section 7.1. Defeasance. If the Borrower shall pay and discharge or provide, in a manner satisfactory to the City, for the payment and discharge of the whole amount of the Series 2019 Note at the time outstanding, and shall pay or cause to be paid all other sums payable hereunder, or shall make arrangements satisfactory to the City for such payment and discharge, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Borrower, and the estate, right, title and interest of the City therein shall thereupon cease, terminate and become void; and this Loan Agreement, and the covenants of the Borrower contained herein, shall be discharged and the City in such case on demand of the Borrower and at its cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of this Loan Agreement, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower, all property, including money, then held by the City together with the Series 2019 Note marked paid or cancelled.

(End of Article IX)

ARTICLE VIII.

MISCELLANEOUS PROVISIONS

Section 8.1. Loan Agreement for Benefit of Parties Hereto. Nothing in this Loan Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns, the Trustee and the holder of the Series 2019 Note, any right, remedy or claim under or by reason of this Loan Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Loan Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, the Trustee and the holder of the Series 2019 Note.

Section 8.2. Severability. If any one or more of the provisions contained in this Loan Agreement or in the Series 2019 Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein, shall not in any way be affected or impaired thereby.

Section 8.3. Limitation on Interest. No provisions of this Loan Agreement or of the Series 2019 Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Series 2019 Note provided for, or shall be adjudicated to be so provided for herein or in the Series 2019 Note, neither the Borrower nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Loan Agreement and the Note inconsistent with this provision.

Section 8.4. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The City, the Borrower 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 Loan Agreement. Until otherwise provided by the respective parties, all notices, demands certificates and communications to each of them shall be addressed as follows:

To the City:                      City of Goshen, Indiana  
    City Hall, 202 South 5th Street  
    Goshen, IN 46528-3714  
    Attention: Clerk-Treasurer

With a copy to:                  Mr. Larry Barkes  
    204 East Jefferson Street, Suite 2  
    Goshen, IN 46528

To the Redevelopment Commission: Goshen Redevelopment Commission  
204 East Jefferson Street  
Goshen, IN 46528  
Attention: President

To the Borrower: Goshen Theater, Inc.  
216 South Main Street  
Goshen, IN 46526  
Attention: \_\_\_\_\_

To the Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Corporate Trust

Section 8.5. Successors and Assigns. Whenever in this Loan Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Loan Agreement contained by or on behalf of the Borrower, or by or on behalf of the City, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

Section 8.6. Counterparts. This Loan Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Loan Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 8.7. Governing Law. It is the intention of the parties hereto that this Loan Agreement and the rights and obligations of the parties hereunder and the Series 2019 Note and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State.

Section 8.8. Damages. In no event shall the City or the Borrower be liable for incidental, indirect, consequential or punitive damages arising from this financing or the other transactions contemplated by this Loan Agreement, including (but not limited to) loss of profits or revenue, loss of opportunity or use incurred by the other party, or like items of loss or damage; and each of the City and the Borrower hereby releases the other party therefrom.

Section 8.9. Third-Party Beneficiary. The parties hereto acknowledge and agree that the terms of this Loan Agreement may be enforced by the Redevelopment Commission. The Redevelopment Commission shall be deemed to be a third-party beneficiary of this Loan Agreement. Except as provided in the foregoing sentence and as specifically set forth herein, nothing in this Loan Agreement is intended to confer any rights or remedies under or by reason of this Loan Agreement on any person or entity other than the parties hereto and their successors and permitted assigns.

(End of Article X)

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

GOSHEN THEATER, INC.

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

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

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

CITY OF GOSHEN, INDIANA

By: \_\_\_\_\_  
Jeremy P. Stutsman, Mayor

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Angie McKee, Clerk-Treasurer

ACKNOWLEDGED BY THE GOSHEN  
REDEVELOPMENT COMMISSION, as Third-  
Party Beneficiary

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

Attest:

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

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



EXHIBIT A

FORM OF GOSHEN THEATER, INC.

BORROWER SERIES 2019 NOTE

Original Principal: \$850,000  
Maturity Date: March 22, 2029  
Interest Rate: 0%

FOR VALUE RECEIVED, the undersigned, Goshen Theater, Inc. ("Borrower"), an Indiana Domestic Nonprofit Corporation organized and existing in good standing and authorized to do business under the laws of the State of Indiana, hereby promises to pay to the order of the City of Goshen, Indiana ("City"), in immediately available funds, the amounts due under the Loan Agreement, dated as of March 1, 2019, between the City and Borrower ("Loan Agreement"), upon demand in the event of default or if no demand, upon maturity, unless this Series 2019 Note is forgiven pursuant to the Loan Agreement, at such place as the City may direct, in immediately available funds the principal sum of \$850,000.

In certain events and in the manner set forth in the Loan Agreement, payments due under this Series 2019 Note are entitled to forgiveness. In certain events and in the manner set forth in the Loan Agreement, all or a portion of this Series 2019 Note may be declared to be due and payable upon demand or maturity. Payments hereunder are to be made directly to the City.

This Series 2019 Note is issued pursuant to the Loan Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The obligations of the Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim or recoupment by reason of any default by City under the Loan Agreement or under any other agreement between Borrower and City or out of any indebtedness or liability at any time owing to the Borrower by the City or for any other reason. The Borrower's obligations under this Series 2019 Note are subject in all respects to the further provisions of the Loan Agreement.

The Borrower hereby unconditionally waives diligence, presentment, protest, notice of dishonor and notice of default of the payment of any amount at any time payable to the City under or in connection with this Note. All amounts payable hereunder are payable without relief from valuation and appraisal laws.

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

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

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

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

Dated: March 22, 2019.

GOSHEN THEATER, INC.

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

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

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

## TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of March 1, 2019 among the GOSHEN REDEVELOPMENT COMMISSION, established by the City of Goshen, Indiana ("City") to undertake redevelopment and economic development in the City ("Commission"), CITY OF GOSHEN, INDIANA, a municipal corporation duly organized and existing under the laws of the State of Indiana ("City") and \_\_\_\_\_, a banking and financial institution having its principal office in the [City/Town] of \_\_\_\_\_, [Indiana], and organized under the laws of the [United States of America], as Trustee ("Trustee").

WHEREAS, the Commission adopted a resolution on March 12, 2019 ("Resolution") and the Common Council ("Council") adopted an ordinance on March 19, 2019 ("Ordinance") (collectively, "Note Authorizing Instrument"), authorizing the issuance and funding of its Taxable Economic Development Revenue Note, Series 2019 ("Series 2019 Note") and a loan of the proceeds of the Series 2019 Note to Goshen Theater, Inc. ("Borrower") in an amount not to exceed \$850,000 to finance a portion of certain economic development facilities consisting of the rehabilitation of the Goshen Theater, together with all necessary appurtenances, improvements and equipment (collectively, "Project") in or physically connected to the Consolidated River Race/US 33 Economic Development Area; and

WHEREAS, the Note Authorization Instrument creates the Goshen Theater Project Fund to be held by a trustee at the direction of the Commission; and

WHEREAS, the Commission and the Council have determined that it is necessary to appoint the Trustee to hold the Goshen Theater Project Fund and to perform certain duties in connection with the Fund;

NOW THEREFORE, in consideration of the sum of One Dollar (\$1) in hand, receipt of which is hereby acknowledged, and the faithful performance of all the covenants and agreements contained in this Trust Agreement, and in performance of the authority of every kind and nature which the Commission or the Council have or may have, the parties hereto agree as follows:

1. The Trustee undertakes to perform only such duties as are expressly set forth herein and in the Loan Agreement between the City and the Borrower dated as of March 1, 2019 ("Loan Agreement"), and such duties as may be applicable as set forth in the Note Authorizing Instrument, copies of which are attached hereto and are incorporated herein by reference.

2. As provided in the Note Authorizing Instrument, the Commission and the Council hereby create with the Trustee a special trust fund designated as the Goshen Theater Project Fund ("Project Fund") to be held in the custody of the Trustee separate and apart from other funds of the Commission or the Trustee.

3. Upon issuance of the Series 2019 Note, the Commission shall deposit with the Trustee in the Project Fund the sum of \$850,000 to pay costs of the Project.

4. The Trustee shall distribute monies from the Project Fund to the Borrower upon the presentation of a written request in the form provided in Exhibit A hereto executed by an officer of the Borrower and an authorized officer of the Commission.

5. The Commission may discharge the Trustee and appoint a successor trustee subject to the terms and provisions of this Trust Agreement. Such discharge shall take effect on a date specified in writing to the Trustee (such date to be no later than 20 days after the date of such notice) stating the name of the successor trustee appointed by the Commission. The Trustee may at any time resign and be discharged of its duties and obligations by giving not less than 20 days' written notice to the Commission and the City specifying the date when such resignation shall take effect, provided that such resignation shall not take effect until the appointment and acceptance of a successor trustee. Upon the effective date of such discharge or resignation, the Trustee shall transfer all amounts on deposit in the Allocation Fund and the Goshen Theater Project Fund to the successor trustee. Such successor shall indicate its acceptance of the office of trustee and its agreement to be bound by the terms of the Trust Agreement by letter sent to the Commission and the Trustee prior to the effective date of the discharge or resignation of the prior trustee.

6. The Trustee may rely upon and shall be protected in acting or refraining from acting upon, any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties, provided that any modification of this Trust Agreement shall be required to be signed by the parties hereto.

7. The Trustee's obligations under this Trust Agreement shall terminate upon the payment or maturity of the Loan as provided in the Note Authorizing Instrument.

8. All notices required to be given or authorized to be given by any party pursuant to this Trust Agreement shall be in writing and shall be sent by registered or certified mail to the following addresses:

to the Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Trust Department

to the Commission: Goshen Redevelopment Commission  
City Hall, 202 South 5th Street  
Goshen, IN 46528-3714  
Attention: President

to the Council: Goshen Common Council  
City Hall, 202 South 5th Street  
Goshen, IN 46528-3714  
Attn: Clerk-Treasurer

Any party hereto may, by notice given hereunder designate any further or different address to which notices, certificates or other communications are to be sent.

9. If any provision of this Trust Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable thereof any other provision thereof.

10. This Trust Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Trust Agreement may be amended only with the consent of the parties hereto.

12. This Trust Agreement shall be governed by and constructed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, we have hereunto set our hand and seals as of the date first above written.

GOSHEN REDEVELOPMENT COMMISSION

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

ATTEST:

\_\_\_\_\_  
Secretary

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk-Treasurer

\_\_\_\_\_, as Trustee

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

ATTEST:

\_\_\_\_\_

EXHIBIT A

WRITTEN REQUEST

Attention: Corporate Trust Department

This written request ("Written Request") is submitted pursuant to the provisions of Section 4 of that certain Trust Agreement dated March 1, 2019 ("Agreement"), by and between the City of Goshen, Indiana ("City"), the Goshen Redevelopment Commission ("Commission") and \_\_\_\_\_, as trustee ("Trustee"). The terms used herein have the same meanings as when used in the Agreement except where the context otherwise requires.

Goshen Theater, Inc., an Indiana corporation ("Borrower"), hereby requests that on \_\_\_\_\_, 20\_\_, the Trustee pay to the Borrower from funds held in the Theater Project Fund the amount specified in paragraph (b) below. In support of this Written Request, the Borrower states as follows:

- (a) This Written Request is requisition number \_\_\_\_\_ (\_\_\_\_\_);
- (b) The aggregate amount of costs to be paid or reimbursed is \$\_\_\_\_\_;

(c) The costs referred to in paragraph (b) above have been paid or incurred and were necessary for the expansion or equipping of the Project (as defined in the Agreement) and were made or incurred in accordance with the construction contracts, plans and specifications, or equipment purchase contracts therefor now in effect;

(d) The costs referred to in paragraph (b) were incurred to pay costs of the Project relating to **[list the various components of the Project to which such costs relate; briefly describe the nature of such costs; indicate the aggregate amount that will have been paid from Loan proceeds for each component of the Project after payment of such costs; indicate the person(s), firm(s) or corporation(s) to whom payment is due or was paid and the amount due or paid to such person(s), firm(s) or corporation(s)]**;

(e) The amount paid or to be paid, as set forth in paragraph (b) above, is reasonable and represents a part of the amount payable for the costs of the Project, all in accordance with the cost budget, and 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;

(f) No part of the said costs of the Project was included in any Written Request previously filed with the Trustee;

(g) The costs referred to in paragraph (b) above are appropriate for the expenditure of proceeds of the Loan under the Act (as defined in the Loan Agreement between the City and the Borrower dated as of March 1, 2019); and



(h) The 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, are attached hereto on Schedule A.

In accordance with the provisions of the Agreement, the Borrower has caused this Written Request to be signed on its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GOSHEN THEATER, INC.

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

Its: \_\_\_\_\_

Acknowledged:

GOSHEN REDEVELOPMENT COMMISSION

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

ATTEST:

\_\_\_\_\_  
Secretary

SCHEDULE A

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]

## **RESOLUTION 13-2019**

### **Approve Amendment #2 to the Agreement with JPR for Design and Survey of 3<sup>rd</sup> Street, Jefferson Street and River Race Drive Modifications**

WHEREAS an agreement was entered into between the City and JPR for design and survey for 3<sup>rd</sup> Street, Jefferson Street and River Race Modifications dated October 9, 2018. An amendment for additional survey and design work was approved on February 12, 2019 for a total contract amount of \$31,500.

WHEREAS due to the timing of the developments, Engineering is requesting the remaining work be split into two additional bids. This will increase the contract amount by \$4,130 for a total of \$35,630.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Redevelopment Commission that Community Development Director Mark Brinson is authorized to execute an amendment agreement on behalf of the City of Goshen and Goshen Redevelopment Commission.

PASSED and ADOPTED on March 12, 2019.

---

Thomas W. Stump, President

---

Andrea Johnson, Secretary



**Engineering Department  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Redevelopment Commission

FROM: Leslie Biek, PE

RE: **River Race Design Exemption #2  
PN 2017-0014**

DATE: March 7, 2019

---

JPR has completed a majority of the design for the improvements at 3<sup>rd</sup> St, Jefferson, River Race Drive and the new pervious parking lot. The first part of the project was completed last year along 3<sup>rd</sup> St at Jefferson. The consultant is about finished with the design of the pervious parking lot and River Race Drive widening.

Due to the timing of the River Arts Apartment and Hawks Building developments, Engineering has asked JPR to break out the remaining work into two additional bids. The next bid will be the pervious parking lot to be constructed this year so that parking will be available for the Hawks building North once complete. The next bid will be in 2020 and will entail the River Race Drive extension and alley improvements. The cost to break up the project and prepare a separate bid package is \$4,130. This would bring the revised contract price to \$35,630.

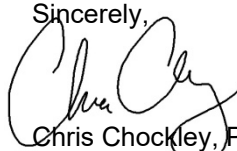
It is requested the Redevelopment Commission approve amendment 2 to the design contract with JPR for a revised contract amount of \$35,630.

Thank you for your consideration of this request.



Thank you again for this opportunity. Please feel free to call me at 574-232-4388 with any questions.

Sincerely,



Chris Chockley, PLA, AICP  
Landscape Architecture Department Manager

C:\Users\acunningham\Desktop\Projects\2018-0219\3rd and Jefferson  
and Riverrace Modifications\2019-02-28-Additional Bid Package.docx

**PROPOSAL ACCEPTANCE**

Please initial next to the tasks and/or alternates and then this proposal is hereby accepted and authorization to proceed is hereby granted:

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Business name: \_\_\_\_\_

Billing address: \_\_\_\_\_

Billing/account manager: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ E-mail: \_\_\_\_\_

***Please note:*** Jones Petrie Rafinski offers electronic invoicing if requested. Please sign below if you would prefer that option.

*I prefer to have my invoice transmitted through electronic email:* \_\_\_\_\_

## **RESOLUTION 14-2019**

### **Approve Request from Goshen Engineering To Advertise for Bids for the River Race Parking Lot**

WHEREAS the Goshen Engineering Department requests permission to advertise for bids for River Race Parking Lot.

WHEREAS Advertisement for the request for bids will be published in the local newspaper on March 22nd and March 29th. Bids will be opened on April 8th by the Board of Works, an award recommendation will be provided to the Redevelopment Commission on April 16, 2019

NOW, THEREFORE, BE IT RESOLVED that the Goshen Redevelopment Commission approves the request to advertise for bids for River Race Parking Lot.

PASSED and ADOPTED on March 12, 2019

---

Thomas W. Stump, President

---

Andrea Johnson, Secretary





**Engineering Department  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Redevelopment Commission

FROM: Leslie Biek, PE, Civil Traffic Engineer

RE: **PERMISSION TO ADVERTISE RIVER RACE PARKING LOT  
PN 2017-0014**

DATE: March 7, 2019

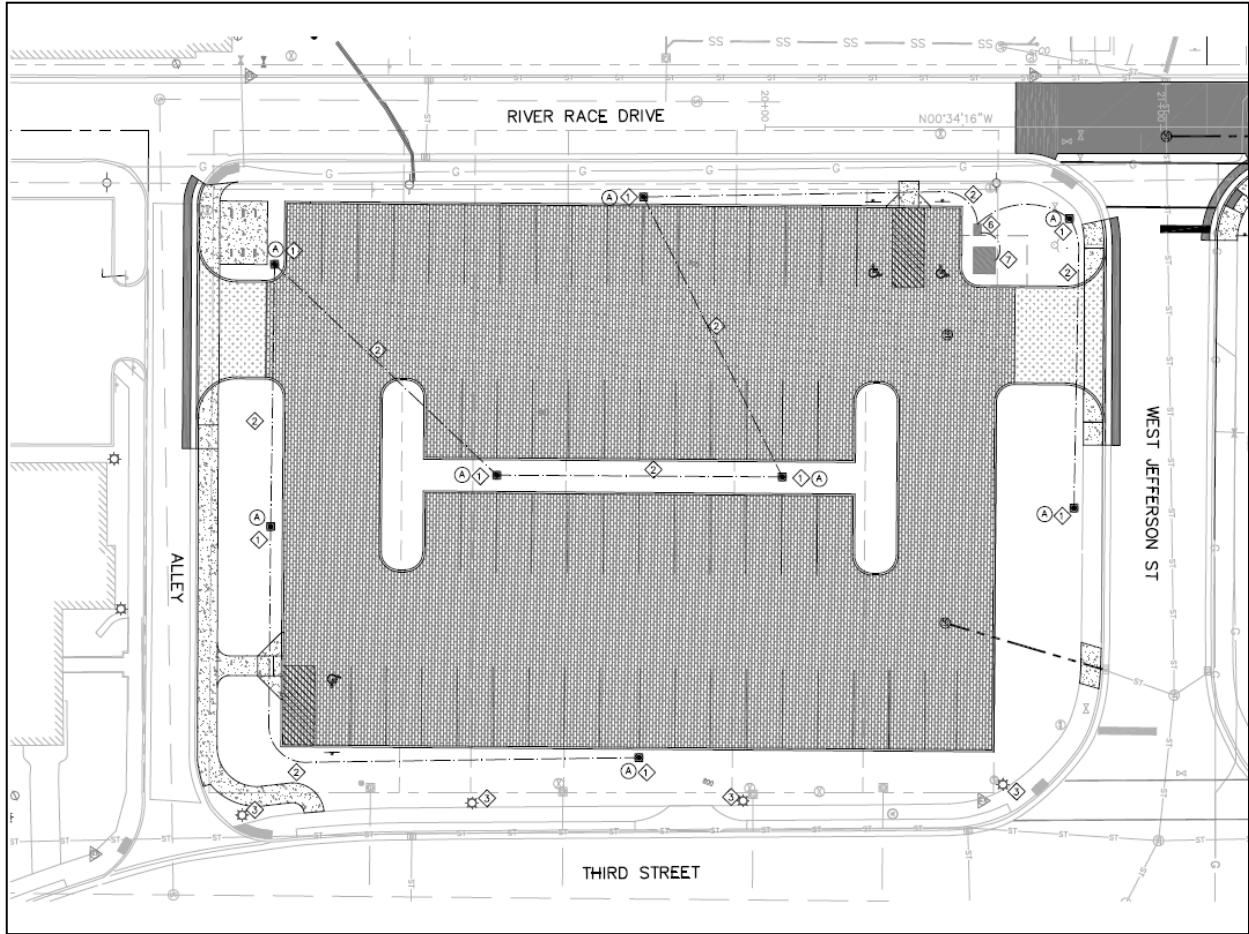
---

Goshen Engineering requests the Redevelopment Commission's permission to advertise for bids the "River Race Pervious Parking Lot" project, which entails the construction of a new pervious parking lot on the east side of River Race Drive south of Jefferson. The parking lot will have 61 spot which include 3 handicap parking spots.

Due to the timeline of the River Arts and north side of the Hawks developments, Engineering has decided to bid the parking lot ahead of the River Race Dr road improvements. The Road improvements will be constructed early 2020 when the developments have finished impacting the roadway for their construction.

Advertisement for the request for bids will be published in the local newspaper on Friday, March 22nd and Friday, March 29th, with bids to be opened at the Board of Public Works and Safety meeting on April 8th. An award recommendation will then be provided to the Goshen Redevelopment Commission on April 16th.

Thank you for your consideration of this request.



Pervious Parking Lot planned for River Race Dr and Jefferson St

**RESOLUTION 15-2019**

**Approve and Authorize Execution of Purchase Agreement  
with Millrace Townhomes, LLC**

WHEREAS in the fall of 2018 the Redevelopment Commission issued a Request for Proposals for River Race Redevelopment Area along Millrace Canal and InSite Development was selected.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Redevelopment Commission approves the terms and conditions of the Purchase Agreement with Matthews Townhomes, LLC attached to and made a part of this resolution.

BE IT FURTHER RESOLVED that Mark Brinson, Community Development Director is authorized to execute the Purchase Agreement with Millrace Townhomes, LLC on behalf of the City of Goshen and Goshen Redevelopment Commission.

PASSED and ADOPTED on March 12, 2019

---

Thomas W. Stump, President

---

Andrea Johnson, Secretary



Department of Community Development  
CITY OF GOSHEN

204 East Jefferson Street, Suite 6 • Goshen, IN 46528-3405

Phone (574) 537-3824 • Fax (574) 533-8626

[communitydevelop@goshencity.com](mailto:communitydevelop@goshencity.com) • [www.goshenindiana.org](http://www.goshenindiana.org)

## Memorandum

---

To: Redevelopment Commission

From: Becky Hutsell, Project Manager

Date: March 12, 2019

RE: Authorize Execution of Purchase Agreement of Millrace Townhomes, LLC

---

Last fall, the Redevelopment Commission issued a Request for Proposals for the River Race Redevelopment Area along the Millrace Canal (north of Purl Street and south of Monroe Street). The area was previously sold to Dave Matthews to be redeveloped, however, the development never occurred and the land was transferred back to the Commission last year.

Two submissions were received in response to the RFP. A selection committee was established to review and score the proposals and in December 2018, the Commission accepted the committee's recommendation to select InSite Development's proposal for 16 new townhomes and to negotiate a purchase agreement.

A copy of the Agreement for the Sale, Purchase and Development of Real Estate is attached for your review. InSite is creating a limited liability corporation for this development and the agreement will be with Millrace Townhomes, LLC. There are a few details to the agreement that are still being negotiated and it is our hope that we can bring a final version to the meeting with any changes highlighted from what is attached. If outstanding details cannot be resolved prior to Tuesday's meeting, the overall terms of the sale will be discussed with a final approval being granted by the Commission in April once all issues are resolved. Scott Sivan with InSite Development will be at this month's Commission meeting to present his concept for the redevelopment project.

## **AGREEMENT FOR THE SALE, PURCHASE AND DEVELOPMENT OF REAL ESTATE**

THIS AGREEMENT, is made and entered into this \_\_\_\_\_ day of March, 2019, by and between City of Goshen, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Redevelopment Commission and Board of Public Works and Safety, hereinafter referred to as “Redevelopment,” and Millrace Townhomes, LLC, an Indiana domestic limited liability company, hereinafter referred to as “Purchaser.”

WHEREAS Redevelopment sought proposals to develop three (3) parcels of real estate identified as tax codes 20-11-16-202-018-000-015 consisting of approximately .32 acres, 20-11-16-202-019.000-015 consisting of approximately 0.39 acres, and 20-11-16-202-020.000-015 consisting of approximately 0.30 acres for a total of 1.01 acres, all located in Elkhart Township in the City of Goshen, Indiana hereinafter collectively referred to as the “subject real estate”. The subject real estate is shown as Exhibit A attached to this Agreement.

WHEREAS, Purchaser intends to construct eight (8) residential structures consisting of two (2) units per structure that may be either flat or vertical layouts. Each unit shall be at least fifteen hundred square feet (1,500 sq. ft.).

Purchaser agrees to develop the subject real estate in accordance with the terms, covenants and conditions set forth in this Agreement. Redevelopment agrees to sell and Purchaser agrees to purchase the subject real estate.

### **REAL ESTATE**

The subject real estate is described as follows:

Mill Race Townhomes Primary Subdivision Phase 1, Phase 2 and Phase 3 as recorded November 1, 2016, in Plat Book 36, Page 62, as Instrument Number 2016-22780, in the office of the Recorder of Elkhart County, Indiana.

Formerly known as Lot One (1) of River Race Subdivision as recorded May 21, 2014 in Plat Book 35, Page 20, as Instrument Number 2014-08737, in the office of the Recorder of Elkhart County, Indiana.

## **CONSIDERATION FOR PURCHASE AND DEVELOPMENT**

Purchaser agrees to pay Redevelopment the sum of Ninety Three Thousand Two Hundred Fifty Five Dollars (\$93,255.00) (“purchase price”) for the subject real estate.. Purchase price shall be divided equally between eight (8) subdivision lots with \$11,625.00 due at the time of closing for each lot. A initial deposit for two (2) lots totaling \$23,250.00 shall be made at the time of the initial closing which shall occur at the start of construction but no later than August 31, 2020. Redevelopment will transfer title of the subject real estate to Purchaser at the time of closing for each lot. Purchaser shall provide a personal guarantee in the amount of \$70,005.00 for the remaining six (6) lots at the time of the initial closing. The lot price of \$11,625.00 shall be released from the personal guarantee as each additional lot is purchased by the Purchaser.

As additional consideration, Purchaser commits to develop the subject real estate on the terms and conditions set forth in this agreement.

Redevelopment agrees to fulfill Redevelopment’s obligations as set forth in this agreement.

## **REDEVELOPMENT LIEN**

Redevelopment will retain a mortgage in the amount of Three Million Dollars (\$3,000,000.00) to insure that Purchaser makes the agreed upon investment in the real estate. At the time of the sale of a developed parcel of real estate, Redevelopment will release the mortgage from the developed parcel, reducing the mortgage by Three Hundred and Seventy-Five Thousand (\$375,000) per developed lot, so that it can be sold free and clear of the mortgage. Redevelopment also agrees to subordinate its mortgage to allow Purchaser to acquire financing for the project so long as such financing is used solely for this development. Once the Purchaser can demonstrate that the Purchaser has invested Three Million Dollars (\$3,000,000.00) into the real estate, Redevelopment will completely release its mortgage.

## **OBLIGATIONS OF REDEVELOPMENT**

In order to induce Purchaser’s commitment and investment, Redevelopment agrees to do the following at Redevelopment’s expense:

1. City will fund the completion of a Phase I Environmental Site Assessment identifying Purchaser as such to satisfy Purchaser’s due diligence requirement. The assessment will be completed within 180 days of closing.
2. Indiana Department of Environmental Management (IDEM) requires a two (2) foot cap of clean soil in any areas of the lots that are greenspace. Once final site layout has been established by the Purchaser, City will compile available soil data and submit information

to IDEM showing that all greenspace meets their closure requirements. If additional soil data is needed, sampling will be completed by the City. If additional excavation work and capping is needed, City will coordinate the remediation activities with the Purchaser and fund the work. City will submit all final documentation to IDEM requesting environmental closure for the site be granted to the Purchaser.

3. City will fund the transport and disposal of all soils removed by Purchaser during the construction of the eight (8) residential structures and fund the replacement of the excavated soils with clean fill during or upon completion of construction. Redevelopment acknowledges that this process may require excavation, transportation and disposal of soils at separate times; perhaps once for the construction of each residential structure. If substantial geotechnical issues arise that impede development, additional consideration will be given to the matter.
4. Redevelopment agrees to affirmatively support any zoning change as long as the change is needed for the proposal submitted by Purchaser to Redevelopment on November 13, 2018.

### **OBLIGATIONS OF PURCHASER**

As additional consideration for the purchase of the subject real estate, Purchaser agrees to the following at Purchaser's expense:

1. Purchaser agrees to develop a site plan and construct building and improvements consistent with the proposal submitted by Purchaser to Redevelopment on November 13, 2018.
2. Construct all building water lines and building sewer lines necessary to provide water and sewer service to each building constructed and properly abandon any water lateral that will not be used by Purchaser's development. Excess sewer laterals shall be allowed to remain.
3. Comply with all applicable federal, state and local laws including all building codes and ordinances, all applicable zoning, and subdivision ordinances and all city engineering policies and standards.
4. Submit final site plans and architectural plans to Redevelopment Commission and obtain the Commissioner's approval before commencing construction. Approval will not be unreasonably withheld by the Commission.

5. Construct all infrastructure necessary to retain stormwater on site consistent with city stormwater policies or address stormwater by another method approved by city engineering department. A storm sewer lateral has been extended into the site and Purchaser may utilize the existing discharge point for stormwater but use is limited to the capacity of the pipe and grade will not be altered. Purchaser's plan to tie in to the existing lateral must be compatible with the pipe's current location, size and capacity.

### **INFRASTRUCTURE CONSTRUCTION REQUIREMENTS**

1. Water building lines, sewer building lines, sidewalks, and other appurtenant facilities, shall be constructed in accordance with detailed plans and specifications approved in advance of construction by the Goshen City Engineer and the Goshen Board of Public Works and Safety.
2. Redevelopment and Purchaser each agree to execute all deeds of easements, rights of way or other documents that are reasonably necessary, desirable or appropriate to further the development of the subject real estate and to provide for the future maintenance of the City of Goshen's water mains, sewer mains, streets and sidewalks.
3. All easements and rights of way obtained shall be recorded in the office of the Recorder of Elkhart County, State of Indiana.
4. City of Goshen has supplied multiple water and sewer services to the subject real estate for use of the Purchaser. Purchaser shall construct, at Purchaser's expense, water and/or sewer building lines from each building to the laterals that are stubbed into the subject real estate. Purchaser's development shall plan to utilize existing laterals and any changes to the size currently provided or location of the laterals will be the Purchaser's expense. Such building lines must be constructed in accordance with specifications reasonably approved by the Goshen City Engineer.
5. All new buildings constructed on the subject real estate shall be connected to the City's sewer system and water system at the expense of the owner of the subject real estate before the building is occupied.

### **PHASING AND DUTY TO DEVELOP**

Purchaser will construct the exterior and the framework of the first two buildings, each building consisting of at least three thousand square feet (3,000 sq.ft.) on or before October 31, 2020. Timing of the construction of the remaining of buildings will be based on demand, except all eight (8) buildings must be constructed by December 31, 2024.



## **LANDSCAPING REQUIREMENTS**

The landscaping must be consistent with the City of Goshen landscaping requirements. Purchaser must pay for all required landscaping on the subject real estate.

## **CLOSING**

The closing to transfer ownership of the initial two (2) lots of the subject real estate to Purchaser shall occur on or before August 31, 2020. The closing deadline may be extended by agreement of both parties. Parties will equally share the costs of the closing agent. Closing for the remaining six (6) lots shall occur on or before June 1, 2024.

## **TITLE INSURANCE**

1. Redevelopment will conduct at Redevelopment's sole cost a title search to confirm the ownership of the real estate for the benefit of Purchaser within thirty (30) days of the execution of this agreement.
2. At the time of closing, Redevelopment agrees to provide Purchaser with a deed conveying a merchantable title to the real estate and a policy of title insurance in standard ALTA owner's form insuring the title to the real estate to be conveyed by Redevelopment to Purchaser in an amount equal to the purchase price, to be free of defects, except such defects that are included in the standard exceptions forming a part of such policies.

## **WARRANTIES**

1. Redevelopment shall deliver to Purchaser a warranty deed conveying to Purchaser a merchantable title to the real estate free and clear of all liens and encumbrances, except conditions of record including zoning restrictions, taxes and assessments.
2. Redevelopment makes no warranty, express or implied, that the real estate is suitable for any particular purpose. Purchaser has made its own inspection of the real estate and relies solely upon Purchaser's observation in deciding to purchase the real estate. Purchaser does not rely upon any representation of Redevelopment or any agent of Redevelopment.

## **POSSESSION OF REAL ESTATE**

Possession and occupancy of the real estate will be delivered to the Purchaser on the date of closing for the initial two (2) lots with Purchaser providing a personal guarantee for the remaining six (6) lots.

### **RISK OF LOSS**

Redevelopment shall assume the risk of loss until the closing at which time Purchaser shall assume the risk of loss.

### **PURCHASER'S WARRANTIES AND REPRESENTATIONS**

1. Purchaser will construct buildings and infrastructure on the subject real estate in accordance with detailed plans submitted to Redevelopment for review and comment by Redevelopment prior to construction. Purchaser's construction will comply with all applicable federal, state and city statutes including building codes, subdivision ordinances, zoning ordinances, environmental rules and regulations. This agreement shall not be construed to limit Purchaser's right to petition and obtain zoning variances as it deems necessary.
2. The person signing this agreement warrants that such person has full lawful right, power and authority to execute and deliver this agreement to Redevelopment and has the authority to obligate Insite Development, LLC to carry out the terms and conditions of this agreement.

### **DEFAULT AND REMEDIES**

Each of the following shall constitute an event of default under this agreement

1. A proceeding under the provisions of the Federal Bankruptcy Code is filed against the Purchaser or the Purchaser voluntarily submits itself to such proceeding;
2. The Purchaser shall make an assignment for the benefit of creditors;
3. A receiver is appointed for the Purchaser, the subject real estate or assets of the Purchaser;
4. Either party materially violates or fails to keep, perform or comply with any of the terms, provisions, and covenants to be kept, complied and performed under this agreement.

Upon the occurrence of any event of default by the Purchaser, Redevelopment shall notify Purchaser in writing of the alleged default and shall demand performance to remedy the default. The Purchaser shall then proceed to remedy or cure such default with thirty (30) days after receiving the notice. If Redevelopment gives notice of a default of a nature that cannot be reasonably cured within the thirty (30) days, then no breach of this agreement shall be deemed to

have occurred so long as the Purchaser, following notice by Redevelopment, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to cure the same within a reasonable period. In addition, no default shall have been deemed to have occurred if and so long as the Purchaser shall be delayed in or prevented from curing any default as a result of an unavoidable delay. An unavoidable delay shall mean any delay caused by reason of power outages, fire, acts of God or other reasons beyond Purchaser's control and not avoidable by reasonable diligence. Following any default by the Purchaser for which the Purchaser does not diligently pursue a cure, Redevelopment may institute and exercise any and all proceedings and remedies permitted by law or equity.

In the event that either the Purchaser or Redevelopment breach or default under any terms of this agreement, the non-defaulting party shall have the right to such damages as may be available in law or equity, including the right to compel specific performance and/or the right to recover costs and expenses in enforcing the provisions of this agreement, the costs and expenses incurred to the date of the breach in complying with the terms of this agreement and the costs and expenses relating to the initiation of construction and development of the plans.

### **MISCELLANEOUS**

1. This agreement shall be construed in accordance with and governed by the laws of the State of Indiana.
2. In the event that legal action is brought to enforce or interpret the terms and conditions of this agreement, the proper venue for such action will be in a court of competent jurisdiction in Elkhart County, Indiana.
3. In the event that either party brings an action to enforce any right conferred by this agreement or to force the other party to fulfill any obligation imposed by this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorney's fees.
4. In the event that any provision of this agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement.
5. All provisions, covenants, terms and conditions of this agreement apply to and bind the parties and their legal heirs, representatives, successors and assigns.
6. This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understanding between Redevelopment and Purchaser.
7. The parties' rights and obligations may not be assigned or otherwise transferred without the written consent of the other party.

IN WITNESS WHEREOF, the parties have set their hands to this agreement the day and year first written above.

City of Goshen Redevelopment Commission

Millrace Townhomes, LLC

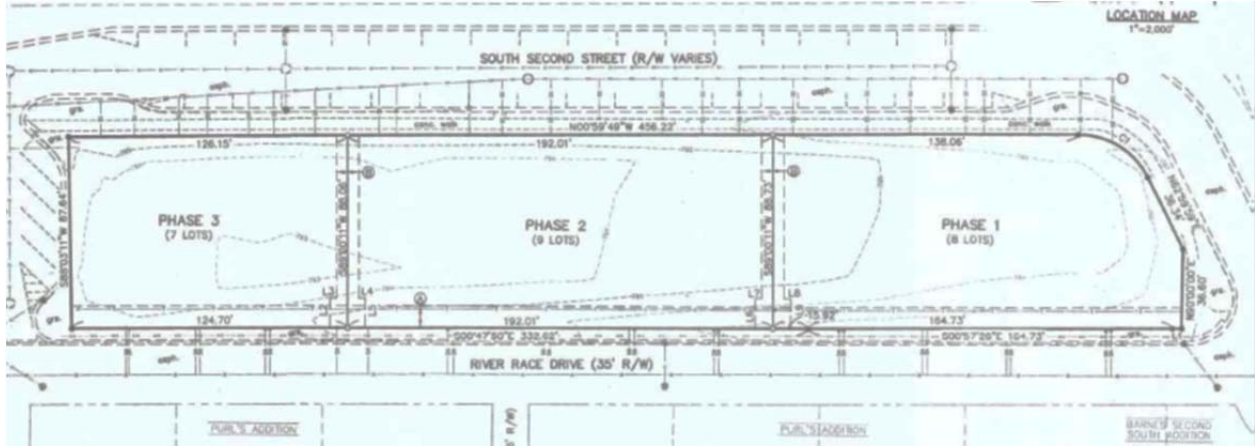
\_\_\_\_\_  
Mark E. Brinson, Director  
Community Development

\_\_\_\_\_  
Scott Sivan, Member

City of Goshen  
Board of Public Works and Safety

\_\_\_\_\_  
Jeremy Stutsman, Mayor

# Exhibit A



## **GOSHEN REDEVELOPMENT COMMISSION**

### **Register of Claims**

The Goshen Redevelopment Commission has examined the entries listed on the following itemized Expenditure Report for claims entered from **February 13, 2019** through **March 7, 2019** and finds that entries are allowed in the total amount of **\$835,091.66**

**APPROVED** on March 12, 2019

---

Thomas W. Stump, President

---

Andrea Johnson, Secretary

# GOSHEN REDEVELOPMENT COMMISSION

## Itemized Expenditure Report

**Claims from 02/12/19 through 03/07/19**

Invoice Date	Payee	Description	Claim #	Line Number	Amount
2/15/2019	Kelly Appraisals	Appraisal of 702 East Lincoln Avenue	1374	482-560-00-439.0930	\$375.00
2/26/2019	Environmental Systems Research Institute (05146)	ArcGIS - Redevelopment 2019	1376	406-560-00-439.0301	\$1,406.00
2/26/2019	Yoder Concrete LLC	Helicals Piers for Co-Housing	1375	480-560-00-442.0000	\$25,565.00
2/27/2019	Indiana Department of Transportation	R-38157-A DES 1401747 Kercher Road Phase 2	1378	473-560-00-442.0000	\$751,600.00
2/27/2019	Yoder Concrete LLC	Helical Piers for Co-Housing	1377	480-560-00-442.0000	\$17,596.00
2/28/2019	Elan Corporate Payment Systems	Indiana Assn of Cities	1379	406-560-00-439.0301	\$25.00
3/5/2019	CHA Consulting, Inc. (06860)	Ninth Street	1380	480-560-00-431.0502	\$248.46
3/5/2019	DLZ Indiana, LLC (04710)	Goshen Industrial Park Drainage	1383	473-560-00-431.0502	\$320.00
3/5/2019	DLZ Indiana, LLC (04710)	Northwest Bike Trail	1386	480-560-00-431.0502	\$4,946.42
3/5/2019	Jones Petrie Rafinski Corp. (00463)	3rd Street-River Race Design Services	1385	480-560-00-431.0502	\$405.00
3/5/2019	Kelly Appraisals	Appraisal for 65693 State Road 15	1382	406-560-00-431.0502	\$375.00
3/5/2019	Lawson-Fisher Associates, PC (05374)	Northwest Bike Trail	1381	480-560-00-431.0502	\$348.36
3/5/2019	NIPSCO (00014)	Utilities for 65706 State Road 15	1384	406-560-00-435.0101	\$35.52
3/5/2019	NIPSCO (00014)	Utilities for 65706 State Road 15	1384	406-560-00-435.0201	\$33.70
3/6/2019	DLZ Indiana, LLC (04710)	Kercher Road Phase 2	1388	473-560-00-431.0502	\$5,155.73
3/6/2019	DLZ Indiana, LLC (04710)	Northwest Bike Trail	1390	480-560-00-431.0502	\$349.74
3/6/2019	Great Lakes Superior Walls	Millrace Co-Housing	1389	480-560-00-442.0000	\$6,839.00
3/6/2019	Lochmueller Group	Kercher Road Phase 1	1387	473-560-00-431.0502	\$18,494.28
3/7/2019	L & M Electric, Inc. (00707)	Elec work for River Arts	1391	480-560-00-442.0000	\$973.45
				<b>Total:</b>	<b>\$835,091.66</b>



# March 2019 Redevelopment Staff Report

---

**PROJECT: USEPA REVOLVING LOAN FUND (RLF) GRANT PROGRAM**

PROJECT DESCRIPTION

The City received a revolving loan fund (RLF) grant (\$1,000,000) to be used for remediation projects from the USEPA. The original funding was loaned to the Redevelopment Commission by the City to remediate the former salvage yard property on East Lincoln. Per the loan agreement between the City and the Redevelopment Commission, the funds utilized (\$838,500) is being repaid into a Revolving Loan Account established by the City Council. The funds can then be granted and /or loaned back to the Commission or private developers for additional assessment and remediation work. The intention of the fund is to continue to revolve. However, the City has the ability to grant the full \$838,500 in which case the revolving component of the fund would be complete. Reporting for the grant will continue until all funds have been expended from the Revolving Loan Fund account.

PROJECT UPDATE

Staff and Legal are working to develop the guidelines for the loan/grant program and the Mayor has selected the members that will serve on the advisory committee to review applications. It is anticipated that it will be implemented on March 11th. There is local non-profit waiting to apply for funding assistance as soon as the program is approved.

---

**PROJECT: GOSHEN THEATER RENOVATION**

PROJECT DESCRIPTION

Goshen Theater, Inc. has purchased the Goshen Theatre building to serve as an Arts and Entertainment facility downtown. A phased renovation of the theater has been proposed and fundraising is in progress.

PROJECT UPDATE

The Commission has included \$850,000 in the five year capital plan for funding and loan documents are in the process of being approved this month. The Regional Development Authority has announced a funding allocation of \$1.8 million from the Regional Cities fund. The Community Foundation has committed \$1 million to the project, contingent on a 2:1 match from private donors. The theater board has secured approximately \$5.0 million to date, which includes \$1 million for an operating endowment.

KIL Architecture/Planning has been retained as the project architect and DJ Construction will be the construction manager. Design work is nearly complete and construction will begin May 2019.

---

**PROJECT: NORTHWEST BIKE TRAIL CONNECTOR**

PROJECT DESCRIPTION

The Northwest Bike Connector connects the northwest Goshen neighborhoods to the US 33 Commercial district, extending west along Bashor Road, north along Reliance Road, and then west along US 33 to end at Market Center shopping area.

PROJECT UPDATE

The trail has been completed with restoration to be done in the spring. There are lingering issues with drainage with the predominate drainage issue located in the southeast corner of Brookside Communities' entrance. To remedy the situation, the contract will need to remove and replace part of the path to slope away from the road and place a swale behind the trail. The City anticipates the additional work will come an increase in the project cost.



---

**PROJECT: NORFOLK SOUTHERN RAILROAD CROSSING SAFETY IMPROVEMENTS PHASE II**

PROJECT DESCRIPTION

Federal Highway Safety Improvement Project (HSIP) funding was applied for the installation of new warning devices at two at-grade railroad crossing to improve safety and meet minimum Federal Railroad Administration (FRA) standards. The two crossings include: Jefferson Street and College Avenue.

PROJECT UPDATE

The work at the Jefferson Street crossing has been completed.

The College Xing improvements are currently under design by the railroad and would also follow a fall timeline for construction. This work will all be done by the railroad.

---

**PROJECT: RAILROAD QUIET ZONE FROM KERCHER ROAD TO LINCOLN AVENUE**

PROJECT DESCRIPTION

Establishment of a Quiet Zone along the Norfolk Southern Railroad Marion Branch from Washington Ave to Kercher Ave.

PROJECT UPDATE

Here is the updated schedule for the implementation of the Quiet Zone:

- Winter 2018– Traffic counts to be done at each of the railroad crossings. Once US 33 Bypass is complete.
- Spring 2019 – Madison Street will become a local street soon and safety improvements can be implemented at this crossing, which is anticipated to cost approximately \$400,000. INDOT has agreed to pay 90% of the project.
- Fall 2019 – Submit the Public Authority Application (PAA) to Federal Railroad Administration (FRA) for review, which typically takes 2 months.
- Fall 2019 – Installation of signs and delineators at the railroad crossings.
- November 2019 – Railroad Quiet Zone is anticipated to be “in-service”.

The City met with the Federal Railroad Administration (FRA) and INDOT at the end of July to review the plans implementation status and finalize the proposed changes. We are currently working on the final plans to be submitted for approval.

---

**PROJECT: NINTH STREET TRAIL FROM COLLEGE AVENUE TO PURL STREET**

PROJECT DESCRIPTION

New bicycle and pedestrian trail construction along Ninth Street from College Avenue and Purl Street. The path will path be along the east side of Ninth Street from College Avenue to Jackson Street, then the path will extend on the west side of Ninth Street from Jackson Street to Purl Street

PROJECT UPDATE

Bids have been received for the project and the low bid was Walsh and Kelly. Construction is expected to start early spring .A pre-construction meeting has been set for March 19<sup>th</sup>. The project will be divided in half starting with College to Jackson, then Jackson the Purl.

---

**PROJECT: STEURY AVENUE RECONSTRUCTION AND STORMWATER DETENTION AREA**

PROJECT DESCRIPTION

This project has grown out of the recent improvements along the Steury Avenue corridor with the expansion of GDC, Lions Head, the Goshen Street Department and the Goshen Central Garage. The roadway corridor no longer supports the additional vehicle loads and has been chip and sealed to extend the service life of the current pavement. The intersection of Steury Avenue and State Road 4 has small turning radiuses, which causes semi-traffic serving the corridor to make wide swings onto and off of Steury Avenue and State Road 4. Drainage is effectively non-existent along the roadway corridor and there are limited opportunities to improve the drainage without looking outside the corridor. In addition to the functionality of the roadway, the roadway's appearance does not reflect the investment the adjoining companies have made on their properties.

The current plan is to reconstruct Steury Avenue from State Road 4 north 1,450-feet to the first roadway bend to the right. The new roadway cross section will have a thicker pavement section to support the additional vehicle traffic and curb and gutter to control stormwater water runoff. A new storm sewer will be constructed that directs stormwater to State Road 4 where several properties will be purchased, on the south side of State Road 4, to allow for the placement of a detention pond. The new detention pond will have an overflow release to Rock Run Creek.

PROJECT UPDATE

Phase I of the project has been completed and it is anticipated that Phase II will be constructed in 2020 followed by Phase III in 2021. The final design for the next two phases will be completed in 2019. There are three (3) remaining properties to be acquired at this time.

---

**PROJECT:       KERCHER ROAD RECONSTRUCTION FROM RAILROAD TO DIERDORFF ROAD**

PROJECT DESCRIPTION

Improvements to Kercher Road from the Railroad to Dierdorff Road will include one lane in each direction and a center left turn lane, curb and gutter along with storm sewer, and a 10-foot sidewalk/bicycle trail along the south side of the roadway. The intersection at Pine Manor Drive and Industrial Park Drive will be aligned to allow for safe turning movements. This project was let in February 2018.

PROJECT UPDATE

Phase 1B, from Weymouth to Dierdorff, will be completed in 2019. Construction should begin early spring. The pavement surface for Phase 1A and 1B will be completed at the same time.

---

**PROJECT:       KERCHER ROAD RECONSTRUCTION FROM DIERDORFF ROAD TO US 33**

PROJECT DESCRIPTION

Improvements to Kercher Road from Dierdorff Road to US 33 will include one lane in each direction, a center left turn lane, curb and gutter along with storm sewer, and a 10-foot sidewalk/bicycle trail along the south side of the roadway. This project was let in February 2019.

PROJECT UPDATE

The project has been bid and came in under the estimate. The lowest bid came from Rieth Riley. Construction is expected to start late early spring and be completed in 2020.

---

**PROJECT:       KERCHER ROAD RETENTION AREA**

PROJECT DESCRIPTION

Development of a plan for a stormwater retention area on the north side of Kercher Road, just east of the railroad tracks. This project will address some of the flooding problems in the Goshen Industrial Park.

PROJECT UPDATE

All work has been completed on the first phase of this project. Goshen Engineering is currently working with DLZ to finalize the construction plans. Once the necessary easements are acquired, bidding of the work will take place in 2019.

---

**PROJECT: PLYMOUTH AVENUE AREA STORMWATER PROJECT**

PROJECT DESCRIPTION

The city owns an existing stormwater facility located on the south side of State Road 119 and east of Lighthouse Lane. This facility does not adequately address the stormwater issues in the area. The project will supplement existing public stormwater facilities by constructing additional interconnecting detention areas in partnership with the developer of The Crossing, a residential subdivision. The project will also include the extension of Lighthouse Lane to connect to The Crossing.

PROJECT UPDATE

The Redevelopment Commission has approved an agreement with the Barak Group, LLC, developer of The Crossing subdivision. The agreement requires the developer to complete the design for stormwater and road improvements, which will then be bid by the City. Design is underway and construction should occur in the spring of 2019.

---

**PROJECT: FORMER WESTERN RUBBER SITE**

PROJECT DESCRIPTION

No development plans are in place for the parcel at this time. The remediation activities are complete at the site and we have received environmental closure.

PROJECT UPDATE

Staff is discussing the property with potential purchasers and will bring a proposal to the Commission at the appropriate time.

---

**PROJECT: CREATIVE ARTS COORDINATOR – ECCVB LIVE/WORK/PLAY GRANT**

PROJECT DESCRIPTION

The Redevelopment Commission received a 3-year grant from the Elkhart County Convention Visitors Bureau in June 2016. The program provides \$50,000 per year to provide capacity to move forward downtown initiatives. The funding for the first year was utilized by Goshen Theater, Inc. to put towards their fundraising campaign. The funding for the 2<sup>nd</sup> and 3<sup>rd</sup> year is being used to fund a Creative Arts Coordinator to develop an arts and asset database/directory to connect and list all of the various individuals in Goshen that contribute to our arts and culture.

PROJECT UPDATE

An agreement amendment was approved by the Commission January. The agreement term runs through May 2019.

---

**PROJECT: MULTI-USE PAVILION AND ICE RINK**

PROJECT DESCRIPTION

A market analysis/feasibility study was completed in October 2017 to evaluate the ice rink/multi-use pavilion project on the west side of the Millrace Canal and the results were favorable. The concept is to have a parks' department operated facility

that will function year round for programming and events. Public feedback was incorporated into the study and all interviewed community members are in support of the idea. The City has received a \$300,000 grant from the Regional Cities initiative and \$1,000,000 from the Elkhart County Community Foundation. Mayor Stutsman has received a \$1,000,000 anonymous private commitment and he continues to talk with other potential donors to fulfill the costs of the project. The Commission has pledged \$2,500,000 as part of the approval of our 5 Year Capital Plan.

PROJECT UPDATE

American Structurepoint has been hired to design the pavilion and work is underway. A kickoff meeting was held in late August and two additional meetings have been held to continue refining the project goals and design. All design work was to be completed by February 15, 2019 but an amendment will be brought to the Commission in April extending the timeline.

---

**PROJECT: RIVER ART**

PROJECT DESCRIPTION

An agreement has been executed with Insite Development to design and construct an upscale residential project along the millrace canal. The site is near the intersection of South Third Street and Jefferson Street.

The River Art development project will consist of an approximately 46-unit apartment building, the construction of 18 condominium/apartment units in the north half of the Hawks building and the creation of a new community park. The new apartments will be constructed on property previously offered for sale by the Goshen Redevelopment Commission. The development site also includes the north half of the Hawks building which is privately owned and will be acquired separately by the developer.

The developer plans to invest \$11 million on the construction of a modern architectural style building featuring high-quality rental apartments. Amenities include covered parking spaces for residents located under the apartment building, a common terrace shared by residents and private balconies for individual apartments.

An additional \$3.6 million would be invested in the complete redevelopment of the north half of the Hawks Building for the construction of condominiums. Plans also include the possibility of constructing a coffee shop and gallery space on the first floor of the Hawks building.

As an amenity to the two development projects, Insite is proposing to design and construct a small community park on the vacant lot north of the Hawks Building. The park would serve area residents including those at the Hawks and River Art and will feature landscaping, a walkways, benches, lighting and public art produced by local artists. The developer would donate the completed park to the City.

PROJECT UPDATE

A development agreement was executed on March 26, 2018 and closing was held on April 17, 2018 for the north half of the Hawks building. It is anticipated that construction on the Hawks building will begin this month and they will then go through the Tech Review process for the apartment building with construction beginning Fall 2019.

---

**PROJECT: MAIN STREET IMPROVEMENTS**

PROJECT DESCRIPTION

Main Street is currently part of US 33 and is therefore under the jurisdiction of INDOT. The transfer should occur in sometime in the winter/early spring.

The Goshen Engineering Department will be redesigning Main Street from Pike south to Madison to include a number of aesthetic and functional improvements. The project has been scaled down for 2019 so that an all-encompassing project can be planned for in the future. Features under consideration include:

1. Installation of some bump out areas (intersections and mid-block)

2. Mill and surface pavement
3. Installation of new underground conduit for street lights
4. Striping for angle parking
5. Some selective sidewalk improvement

The River Race Capital Plan includes \$500,000 for construction in 2019.

**PROJECT UPDATE**

A public open house was on May 7, 2018, to gather input on what the public would like to see and has also met with EID and DGI. The City has received lots of input and is currently tabulating the comments. A survey has been completed so the design can begin. Based upon the current funding, the following work is being planned for in 2019: 1.) Deep mill, pavement patching and resurface the roadway; 2.) Improved bumpouts at Washington Street and Main Street; 3.) Placement of angled parking; 4.) Select sidewalk panel replacement to address public safety; 5.) Evaluation and possible replacement of street lighting. The project is scheduled for construction in 2019. Engineering is currently working on a preliminary design and cost estimates. Once complete public meetings will be held to share what can be expected.

---

**PROJECT: MILLRACE TOWNHOME SITE**

**PROJECT DESCRIPTION**

The Redevelopment Commission issued an RFP for the Millrace Townhome site on River Race Drive and received two proposals. A committee was established to review both proposals and make a recommendation to the board. The committee, which included members of the Redevelopment Commission, the Mayor and City staff, recommended that the Commission select the proposal from Insite Development as the preferred project. The proposed project includes 16 town homes, ranging in size from 2,500 to 3,000 square feet. All homes would feature private garages, decks and courtyards. Total private investment is projected to be \$4.2 million, with construction being completed in 2020.

At the December Redevelopment meeting, the Commission authorized staff to negotiate a development agreement with Insite Development.

**PROJECT UPDATE**

A development agreement has been drafted by the Goshen Legal Department and has been reviewed by staff. The draft agreement has been sent to the developer for comment and the final agreement is expected to be on the April Redevelopment Commission agenda. The developer will also give an overview of the project at this month's meeting.