

*\*\*PERSONAL AUDIO ENHANCERS ARE AVAILABLE FROM THE COUNCIL  
SECRETARY\*\**

**AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING**

LOCATION: CITY HALL, 2<sup>ND</sup> FLOOR, COUNCIL CHAMBERS

**April 1, 2024**

**7:00 P.M.**

**1. Call to Order, Pledge, Moment of Silent Meditation, Roll Call**

**2. Minutes for Approval**

There are no minutes for approval

**Presentations and Introductions**

Fair Housing – Dana Donald

**3. Unfinished Business**

**a) Reports of Council Committees**

**b) Ordinances on Second-Third Reading**

**Proposed Ordinance 24-O-07**, an ordinance appropriating Four Hundred Thousand Dollars (\$400,000.00) from the American Rescue Plan (ARP) Coronavirus Local Fiscal Recovery Fund for the emergency restoration of a portion of Grace Lawn Cemetery at the Elkhart River Riverbank

**Proposed Ordinance 24-O-08**, an ordinance appropriating Nine Hundred Thirty-Seven Thousand Three Hundred Sixty-Three Dollars (\$937,363.00) of MACOG Grant Money from the Local Income Tax Special Distribution Fund for the Bristol Street widening project

**Proposed Ordinance 24-O-09**, an ordinance repealing Elkhart City Ordinance No. 5849 (Bess Development CPUD) and rezoning the same as Planned Unit Development District, R-4, Multiple Family Dwelling District standards

**Proposed Ordinance 24-O-10**, an ordinance of the Common Council of the City of Elkhart, Indiana, authorizing the issuance of the City of Elkhart, Indiana Taxable Economic Development Revenue Bonds and approving and authorizing other actions in respect thereto

**c) Ordinances and Resolutions Referred to Committees**

There are no ordinances or resolutions referred to committees

**d) Tabled Ordinances and Resolutions**

There are no tabled ordinances or resolutions

4. **New Business**

a) **Ordinances on First Reading**

There are no ordinances on first reading

b) **Resolutions**

There are no resolutions

c) **Vacation Hearings**

There are no vacation hearings

d) **Other New Business**

e) **Reports of Mayor, Board of Works, Board of Safety or City Departments**

f) **Neighborhood Association Reports**

g) **Privilege of the Floor**

**Please limit your comments to 3 minutes to allow others time to comment**

h) **Scheduling of Committee Meetings**

5. **Acceptance of Communications**

Minutes of February 13, 2024 – Aurora Capital Development Corporation

Minutes of March 12, 2024 – Board of Public Safety

Minutes of March 5, 2024 – Board of Public Works

Minutes of July 20, 2023 – Elkhart Historic & Cultural Preservation Commission

Minutes of December 7, 2023 – Elkhart Historic & Cultural Preservation Commission

Minutes of February 15, 2024 – Elkhart Historic & Cultural Preservation Commission

Minutes of February 27, 2024 – Elkhart Urban Enterprise Zone

Minutes of February 14, 2024 – Lerner Theatre Board

Minutes of February 20, 2024 – Parks & Recreation Board

Minutes of February 13, 2024 – Redevelopment Commission

Minutes of February 27, 2024 – Redevelopment Commission – Special Meeting

Report – As of December 31, 2023 – Controller’s Office

Report – February Month End – Elkhart Communications Center

Report – February Month End – Parks Department

6. **Adjournment**



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## M E M O R A N D U M

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Date: March 11, 2024  
To: Arvis Dawson, Elkhart City Council President  
From: Tory Irwin, Director of Public Works *TI*  
RE: Appropriation Request – Grace Lawn Bank Stabilization Appropriation

In February, approximately 100' of the top of the Elkhart River Bank gave way to erosion at Grace Lawn Cemetery. Buildings & Grounds, the Cemetery, and Engineering quickly mobilized to ascertain the damage and develop a plan to stabilize the area that had collapsed.

In 2012 a similar collapse occurred at a different location along the River Bank. Engineering is working with a Consultant, B&G, and the Cemetery to develop a long term plan to stabilize the bank along the River at Grace Lawn.

With Engineering and Construction it is estimated that the restoration of the bank at this location is \$400,000.

It is requested that the City Council:

**Approve an appropriation of \$400,000 to for professional services and construction of the Grace Lawn River Bank Restoration.**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROPRIATING FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) FROM THE AMERICAN RESCUE PLAN (ARP) CORONAVIRUS LOCAL FISCAL RECOVERY FUND FOR THE EMERGENCY RESTORATION OF A PORTION OF GRACE LAWN CEMETERY AT THE ELKHART RIVER RIVERBANK**

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WHEREAS, the United States Congress passed the American Rescue Plan Act (ARPA) and awarded to the City of Elkhart (“City”) funds which may be used for certain authorized uses specified under Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the ARPA; and

WHEREAS, Section 603(c)(1) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, designates the following authorized uses:

*(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;*

*(B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;*

*(C) for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or*

*(D) to make necessary investments in water, sewer, or broadband infrastructure.*

WHEREAS, in February this year, a one-hundred-foot (100’) section of the top of the Elkhart River riverbank collapsed along the Grace Lawn Cemetery; and

WHEREAS, the City's departments of buildings and grounds, cemetery, and engineering quickly assessed the damage to the cemetery, to develop a plan to stabilize the area, and to determine a path to repair the section that had collapsed; and

WHEREAS, the Administration has determined that such costs will approximate Four Hundred Thousand Dollars (\$400,000.00); and

WHEREAS, funds within the American Rescue Plan (ARP) Coronavirus Local Fiscal Recovery Fund are available and appropriate for the requested purpose; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. The amount of Four Hundred Thousand Dollars (\$400,000.00), be, and hereby is, appropriated from the American Rescue Plan (ARP) Coronavirus Local Fiscal Recovery Fund and assigned to the following account line:

Account No. 2474-5-600-4390061 Provision of Government Services \$400,000.00

Section 2. The Common Council has fixed the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 3. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor, as provided by law, and shall continue into successive years, provided the project is ongoing, and the funds appropriated herein, have not been exhausted.

*[Balance of page is intentionally blank.]*

SO ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Arvis Dawson  
President of the Common Council

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
Debra D. Barrett, City Clerk

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Rod Roberson, Mayor

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk



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## M E M O R A N D U M

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Date: March 11, 2024  
To: Arvis Dawson, Elkhart City Council President  
From: Tory Irwin, Director of Public Works *TI*  
RE: Re-Appropriation Request – Bristol Street Widening Project

In 2018 the City Council appropriated \$1,520,000 for the Bristol Widening project – which is a Local Public Agency (LPA) Matching Funds project with MACOG – in other words a project funded through majority grant money through MACOG.

MACOG has reimbursed the City for money it has expended from that appropriation, in accordance with the grant, but the language in the original appropriation did not allow for access to the reimbursed funds to continuing funding the work on the project – engineering and right-of-way acquisition.

It is requested that the Council re-appropriate the money that will be reimbursed from the MACOG, \$937,363. The City has so far been reimbursed a total of \$868,939.02, but that will rise to \$937,363 once the entire \$1,520,000 appropriation has been spent on the project.

This appropriation will not cover the project through Construction, but will be enough through design, right-of-way acquisition, and utility relocations. The project cost estimate has gone up since 2018, and the City is working with MACOG to secure the full 80/20 match to fund the project through Construction. The project is currently still scheduled to go to bid in Q4 2024, at which time we will have firm picture of cost and MACOG grant funding, and will come back to the Council with a request to fund the project through Construction.

We are requesting **an appropriation of \$937,363 for the Bristol Street Widening project.**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE RE-APPROPRIATING NINE HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED SIXTY-THREE DOLLARS (\$937,363.00) OF MACOG GRANT MONEY FROM THE LOCAL INCOME TAX SPECIAL DISTRIBUTION FUND FOR THE BRISTOL STREET WIDENING PROJECT**

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WHEREAS, previously, in 2018, the Common Council appropriated One Million Five Hundred Thousand Twenty Dollars (\$1,520,000) for the Bristol Street widening project from the Local Income Tax Special Distribution Fund (Ordinance No. 5714); and

WHEREAS, the One Million Five Hundred Thousand Twenty Dollars (\$1,520,000) appropriation represented both the reimbursable grant portion and local matching funds portion (80%-20%) of a Local Public Agency (LPA) Matching Funds award by the City by the Michiana Area Council of Governments (“MACOG”); and

WHEREAS, the previous appropriation did not contain the customary and necessary provision to allow an appropriation to carry forward in successive years of a multi-year projects; and

WHEREAS, the Administration has requested a re-appropriation of the remaining grant and matching funds under the previously awarded and appropriated funds for the Bristol Street widening project which totals Nine Hundred Thirty-Seven Thousand Three Hundred Sixty-Three Dollars (\$937,363.00) which are held, available and appropriate for distribution from the Local Income Tax Special Distribution Fund.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:



Section 1. The amount of Nine Hundred Thirty-Seven Thousand Three Hundred Sixty-Three Dollars (\$937,363.00) is hereby appropriated from the Local Income Tax Special Distribution Fund and applied to the following account line:

Account No. 2248-5-310-4390900 Other Services & Charges \$937,363.00

Section 2. The Common Council has fixed the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 3. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor, as provided by law, and shall continue into successive years, provided the project is ongoing, and the funds appropriated herein, have not been exhausted.

SO ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Arvis Dawson  
President of the Common Council

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
Debra D. Barrett, City Clerk

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Rod Roberson, Mayor

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk

**Rod Roberson**  
*Mayor*

**Michael Huber**  
*Director of Development Services*



**Development Services**  
*Community Development*  
*Economic Development*  
*Planning Services*  
*Redevelopment*  
229 S. Second St.  
Elkhart, IN 46516  
574.294.5471  
Fax: 574.295.7501

DATE: March 6, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Conceptual Planned Unit Development Request 24-PUD-01

At its regular meeting on Monday, March 4, 2024, the Plan Commission recommended approval of Petition 24-PUD-01 on to the City Council by a vote of 7-0.

The petitioner requested a Conceptual Planned Unit Development. They are proposing to develop a new apartment complex on land that is currently vacant in the 2100 block of Cassopolis Street. Amenities will include a club house, playground, a dog park and a pedestrian exercise path that will be built around the perimeter of the property. The development will also provide sidewalks that connect to the public sidewalks to Cassopolis Street. The area of the parcel in question is 8.34 acres.

The petitioner is proposing a reduced number of on-site parking spaces at a rate of 1.5 spaces per dwelling unit versus the two spaces per dwelling unit, which is the current standard for parking. Where 480 spaces would be required for a typical development, there are 360 spaces proposed for the project – a reduction of 25%. Staff supports this reduction.

The petitioner is also proposing several developmental deviations for the project as well. The setback exceptions are minor for a project of this scale. A reduction of the front yard setback by five feet to twenty feet where twenty five is required; a corner side reduction by ten feet to fifteen where twenty five is required; and a reduction of the rear yard setback by five feet to twenty five feet where thirty is required.

Staff is supportive of the proposed development as this project addresses the need for diversified housing in our community.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REPEALING ELKHART CITY ORDINANCE NO. 5849 (BESS DEVELOPMENT CPUD) AND REZONING THE SAME AS PLANNED UNIT DEVELOPMENT DISTRICT, R-4, MULTIPLE FAMILY DWELLING DISTRICT STANDARDS**

WHEREAS, the City of Elkhart adopted Ordinance No. 5849, rezoning the property commonly known as 2 Cassopolis Street, Elkhart, Indiana 46514, to Planned Unit Development District, R4, Multiple Family Dwelling District Standards, under the former owner's plan to construct a one hundred forty-six-unit senior living facility; and

WHEREAS, the real property commonly known as 2 Cassopolis Street, Elkhart, Indiana 46514 (the "Real Estate"), is legally described as follows:

LOT NUMBER TWO-B (2B) IN THE REPLAT OF LOT 2 AND A PORTION OF LOT 1, TUFF MINOR SUBDIVISION, AS PER PLAT THEREOF RECORDED OCTOBER 1, 2007 AS INSTRUMENT # 2007-27348 IN PLAT BOOK 32, PAGE 14, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA

WHEREAS, the current owner of the Real Estate petitioned the Elkhart City Plan Commission, requesting that the Plan Commission recommend to the Common Council that Ordinance No. 5849 be repealed, that an alternate conceptual planned unit development may be approved for the construction of a two hundred forty (240) unit, residential apartment complex, consisting of four (4) to six (6) residential structures, a clubhouse, playground, pet park, and pedestrian exercise paths; and

WHEREAS, the intended use of the Real Estate is not a permitted use under Ordinance No. 5849 of the City of Elkhart, thus requiring the repeal of the statute and rezoning the property for conceptual Planned Unit Development, R-4, Multiple Family Dwelling District Standards, as

described in the Petition and Staff Analysis presented to the Plan Commission, if the current owner's intended use of the Real Estate is to be permitted; and

WHEREAS, the requested rezoning, as petitioned, remains compatible with the adjacent properties and reflects responsible growth and development; and

WHEREAS, on March 4, 2024, the Elkhart City Plan Commission conducted a public hearing on the petition to repeal and rezone the property commonly known as 2 Cassopolis Street, Elkhart Indiana, for the purposes stated herein and voted to forward the petition to the Common Council with the Commission's "DO PASS" recommendation.

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

Section 1. Ordinance No. 5849, of the City of Elkhart, Indiana, be, and hereby is, repealed.

Section 2. That the zoning map of the City of Elkhart, incorporated into Ordinance No. 4370, as amended, is hereby further amended to establish a zoning designation of Planned Unit Development, R-4, Multiple Family Dwelling District Standards for that certain Real Estate commonly known as 2 Cassopolis Street, City of Elkhart, County of Elkhart, State of Indiana, and more-fully described as follows:

**Legal Description:**

LOT NUMBER TWO-B (2B) IN THE REPLAT OF LOT 2 AND A PORTION OF LOT 1, TUFF MINOR SUBDIVISION, AS PER PLAT THEREOF RECORDED OCTOBER 1, 2007 AS INSTRUMENT # 2007-27348 IN PLAT BOOK 32, PAGE 14, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

**Address:**

2 Cassopolis Street, Elkhart IN 46514 (currently vacant)

**Parcel Identification No.(s):**

20-02-29-426-015.000-027

Section 3. Limitations of Zoning. All terms and conditions of the recommended amendment by the Planning Commission, as recommended by the Planning Department are approved and adopted as conditions herein.

Section 4. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council, as required by law.

So ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Arvis Dawson  
President of the Common council

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
Debra D. Barrett, City Clerk

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Rod Roberson, Mayor

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk



# Staff Report

## Planning & Zoning

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**Petition:** 24-PUD-01

**Petition Type:** Conceptual Planned Unit Development  
R-4, Multiple Family Dwelling District standards

**Date:** March 4, 2024

**Petitioner:** 2 Cass Opportunity Fund LLC Patrick Matthews

**Site Location:** 2 Cassopolis St, Elkhart, IN 46514 (currently vacant); 2100-2200 block  
Parcel 20-02-29-426-015.000-027

**Request:** Per Section 20.4.B approval of a Conceptual Planned Unit Development (R-4, Multiple Family Dwelling District standards) for the purpose of developing an apartment complex development. The parcel number is 02-29-426-015 and is approximately 8.34 acres in area.

**Existing Zoning:** PUD, Planned Unit Development

**Size:** +/- 8.32 Acres

**Thoroughfares:** Cassopolis Street

**School District:** Elkhart Community Schools

**Utilities:** Available and provided to site.

**Plan Commission Action:** Recommendation to Common Council.

**Surrounding Land Use & Zoning:**

Properties to the north, west, and south are commercially zoned as B-3 and land to the east is in the County of Elkhart out of City limits.

**Applicable Sections of the Zoning Ordinance:**

See enumerated in request.

**Comprehensive Plan:**

The Comprehensive Plan calls for this area to be developed with mixed uses.



## Staff Analysis

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The petitioner is proposing to develop a new apartment complex on land that is currently vacant in the 2100 block of Cassopolis Street. Amenities will include a club house, playground, a dog park and a pedestrian exercise path that will be built around the perimeter of the property. The development will also provide sidewalks that connect to the public sidewalks to Cassopolis Street. The area of the parcel in question is 8.34 acres. The site is accessed through a platted easement behind what is currently Communitywide Federal Credit Union and a small strip center with medical offices.

This proposal serves to meet the need of housing diversification by adding additional dwelling units in our community as highlighted in the Zimmerman Volk study. The developer is proposing 240 new units built over six buildings containing a mix of one, two and three bedroom units. Four of the six buildings are planned to have 36 units each with the remaining two buildings having each 48 units.

The petitioner is proposing a reduced number of on-site parking spaces at a rate of 1.5 spaces per dwelling unit versus the two spaces per dwelling unit, which is the current standard for parking. Staff agrees with the parking reduction as the 1.5/unit rate reflects current industry standard parking ratios. 360 parking spaces are being provided. Where 480 spaces would be required for a typical development, there are 360 spaces proposed for the project – a reduction of 25%. Staff supports this reduction - there isn't a need for the extra pavement when the site could be better programmed for natural areas and common space.

The proposed buildings are situated so that the parking is contained mostly in the center of the site with all but one building at the perimeter of the property. The setback exceptions are minor for a project of this scale. A reduction of the front yard setback by five feet to twenty feet where twenty five is required; a corner side reduction by ten feet to fifteen where twenty five is required; and a reduction of the rear yard setback by five feet to twenty five feet where thirty is required. The plan depicts the storm water collection areas at the western part of the property – currently with a drainage easement agreement for the southernmost retention pond.



The proposed Planned Unit Development (R-4) is conceptual, which means the submittal contains general information for the plan – property boundaries, existing site features, general street layout, proposed use, setback and preliminary on-site drainage. The project will need to be submitted for review and approval at the City’s Technical Review – this will also address any potential traffic concerns raised during that review. The Indiana Department of Transportation (INDOT) will also review as a part of the overall permitting process.

If this request is approved by the Common Council, a final site plan must be submitted to the Plan Commission for final approval at a public hearing.

## Recommendation

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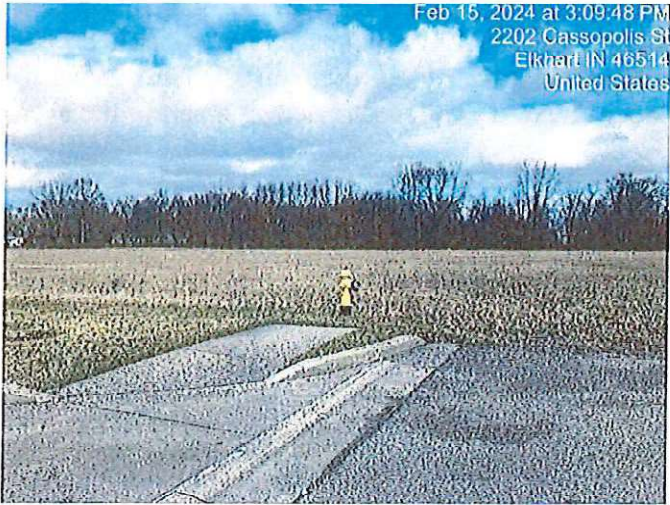
The Staff recommends **approval** of the conceptual Planned Unit Development based on the following findings of fact:

- 1) The Comprehensive Plan calls for this area to be developed with mixed uses. The proposed use is compatible with commercially mixed uses.
- 2) The proposed use should not negatively impact surrounding properties. The proposed apartments should benefit the commercial businesses along Cassopolis Street.
- 3) The proposed use is compatible with other activity currently occurring in the general area – which is largely service commercial and service oriented.

## Photos

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## Attachments

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Petition, appeal letter, site plan.

February 2, 2024

Honorable Members of the City Council and Plan Commission  
City of Elkhart  
229 South Second Street  
Elkhart, IN 46516

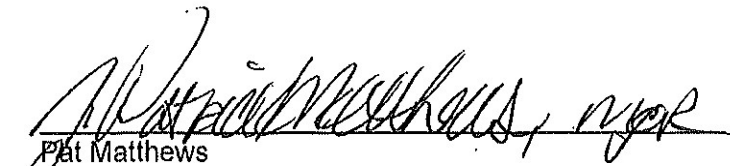
RE: Conceptual PUD petition for 2 Cassopolis St, Elkhart, In 46514  
Parcel # 20-02-29-426-015.000-027

The undersigned petitioner respectfully shows the Council and Plan Commission:

1. 2 Cass Opportunity Fund LLC. is the owner of the following described real estate located within the City of Elkhart, Osolo Township, Elkhart County, State of Indiana.  
SEE ATTACHED LEGAL DESCRIPTION
2. The above described real estate presently has a zoning classification of B-3 and M-1 Districts under the Zoning Ordinance of the City of Elkhart.
3. The proposed occupancy of the above-mentioned property is to develop a new multi-family apartment complex with approximately 240 units consisting of a mix of 1-, 2-, and 3-bedroom units.
4. Petitioner desires to rezone said real estate to a Conceptual PUD District for that purpose.
5. This petition meets the PUD standards as it:
  - I. Is consistent with the Comprehensive Plan. The City of Elkhart's future land use map indicates the area surrounding this property should be a variety of land use types including residential, commercial and mixed use. The use of this property for a higher density residential is consistent with that vision.
  - II. Encourages innovations in development and/or redevelopment by utilizing vacant land within the City in a heavily developed area with access to public utilities and replaces it with a new facility to meet documented demand for housing in our community. The development will allow for much needed housing units on the City's northside in a higher-density style while still providing for buffering, greenspace, a walking trail that connects the development to the sidewalk network and available commercial uses along Cassopolis Street.
  - III. Fosters the safe, efficient and economic use of the land, transportation, public facilities and services as it is utilizing vacant land in a heavily developed section of the City. The development of this site will take advantage of the existing infrastructure and services in the area.
  - IV. Facilitates the provision of adequate public services as it is a development of an underutilized site with access to the City of Elkhart public services. The trail around the property will connect to the existing sidewalk system promoting bike and pedestrian travel and connection to The Trolley route.

- V. Avoids the inappropriate development of lands and provides for adequate drainage and reduction of flood damage. The site is not located in a floodplain and will be designed to meet City standards for onsite stormwater management.
- VI. Encourages patterns of land use which decrease trip length of automobile travel and encourages trip consolidation. This site is conveniently located along Cassopolis Street. It is well situated near commercial uses making it convenient for residents to utilize existing services in the area. As Cassopolis Street is a major thoroughfare, employees and visitors will have easy access to the facility. The MACOG Interurban Blue Line runs along Cassopolis Street. In addition, improvements along Cassopolis Street make pedestrian travel much easier and safer. The new development will have an interior sidewalk and trail connection to the City's sidewalk network to improve and encourage pedestrian and bicycle travel. As the development is designed to be pedestrian and transit friendly, we are requesting a parking standard of 1.5 spaces per unit.
- VII. Minimize adverse environmental impacts of development. The development of the underutilized vacant land within the City limits and with access to public infrastructure will be much less impactful on the environment as the same development would be outside the City limits on a well and septic system. By utilizing the existing public infrastructure, this project can eliminate the potentially negative impacts to soil and water conditions in the community.
- VIII. Improves the design, quality and character of new development. The design team has created an aesthetically pleasing building and site plan to enhance the community while meeting the needs of the residents. This project will meet all local design requirements with the exception of:
  - a. a front-yard setback of 20 feet
  - b. a corner side-yard setback of 15 feet (south of proposed building #1)
  - c. a rear-yard setback of 25 feet
  - d. a parking standard of 1.5 spaces per unit
- IX. Foster a more rational pattern of relationships between residential, business, and industrial uses. The PUD will allow for higher intensity residential to be development in close proximity to local service and retail businesses along a major thoroughfare. This mix of residential and business used is a desirable mix of land uses and functionality for the City.
- X. Protects existing neighborhoods from harmful encroachment by intrusive or disruptive development. This project will allow for higher-density residential development near and commercial uses. This is consistent with the current mixed-use nature of the area.

Wherefore, Petitioner prays and respectfully requests a hearing on this appeal and that after such hearing, the Plan Commission make a do pass recommendation and the Elkhart Common Council, after hearing, pass on appropriate ordinance rezoning the above-described parcel of land located in the City of Elkhart.

  
Pat Matthews  
2 Cass Opportunity Fund LLC

Contact Person: Abonmarche Consultants

Name: Crystal Welsh

Address: 303 River Race Drive, Goshen, IN 46526

Phone number: 574-314-1027

Email: [cwelsh@abonmarche.com](mailto:cwelsh@abonmarche.com)

Legal Description per 2023-12759 Elkhart County Recorder

LOT NUMBER TWO-B (2B) IN THE REPLAT OF LOT 2 AND A PORTION OF LOT 1, TUFF MINOR SUBDIVISION, AS PER PLAT THEREOF RECORDED OCTOBER 1, 2007 AS INSTRUMENT #2007-27348 IN PLAT BOOK 32 PAGE 14, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

Parcel Number: 20-02-29-426-015.000-027

Commonly known as: 2 Cassopolis Street, Elkhart, Indiana 46514

**Rod Roberson**  
*Mayor*

**Michael Huber**  
*Director of Development Services*



**Development Services**  
*Community Development*  
*Economic Development*  
*Planning Services*  
*Redevelopment*  
229 S. Second St.  
Elkhart, IN 46516  
574.294.5471  
Fax: 574.295.7501

DATE: March 6, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Conceptual Planned Unit Development Request 24-PUD-01

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The petitioner requested a Conceptual Planned Unit Development. They are proposing to develop a new apartment complex on land that is currently vacant in the 2100 block of Cassopolis Street. Amenities will include a club house, playground, a dog park and a pedestrian exercise path that will be built around the perimeter of the property. The development will also provide sidewalks that connect to the public sidewalks to Cassopolis Street. The area of the parcel in question is 8.34 acres.

The petitioner is proposing a reduced number of on-site parking spaces at a rate of 1.5 spaces per dwelling unit versus the two spaces per dwelling unit, which is the current standard for parking. Where 480 spaces would be required for a typical development, there are 360 spaces proposed for the project – a reduction of 25%. Staff supports this reduction.

The petitioner is also proposing several developmental deviations for the project as well. The setback exceptions are minor for a project of this scale. A reduction of the front yard setback by five feet to twenty feet where twenty five is required; a corner side reduction by ten feet to fifteen where twenty five is required; and a reduction of the rear yard setback by five feet to twenty five feet where thirty is required.

Staff is supportive of the proposed development as this project addresses the need for diversified housing in our community.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REPEALING ELKHART CITY ORDINANCE NO. 5849 (BESS DEVELOPMENT CPUD) AND REZONING THE SAME AS PLANNED UNIT DEVELOPMENT DISTRICT, R-4, MULTIPLE FAMILY DWELLING DISTRICT STANDARDS**

WHEREAS, the City of Elkhart adopted Ordinance No. 5849, rezoning the property commonly known as 2 Cassopolis Street, Elkhart, Indiana 46514, to Planned Unit Development District, R4, Multiple Family Dwelling District Standards, under the former owner's plan to construct a one hundred forty-six-unit senior living facility; and

WHEREAS, the real property commonly known as 2 Cassopolis Street, Elkhart, Indiana 46514 (the "Real Estate"), is legally described as follows:

LOT NUMBER TWO-B (2B) IN THE REPLAT OF LOT 2 AND A PORTION OF LOT 1, TUFF MINOR SUBDIVISION, AS PER PLAT THEREOF RECORDED OCTOBER 1, 2007 AS INSTRUMENT # 2007-27348 IN PLAT BOOK 32, PAGE 14, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA

WHEREAS, the current owner of the Real Estate petitioned the Elkhart City Plan Commission, requesting that the Plan Commission recommend to the Common Council that Ordinance No. 5849 be repealed, that an alternate conceptual planned unit development may be approved for the construction of a two hundred forty (240) unit, residential apartment complex, consisting of four (4) to six (6) residential structures, a clubhouse, playground, pet park, and pedestrian exercise paths; and

WHEREAS, the intended use of the Real Estate is not a permitted use under Ordinance No. 5849 of the City of Elkhart, thus requiring the repeal of the statute and rezoning the property for conceptual Planned Unit Development, R-4, Multiple Family Dwelling District Standards, as



described in the Petition and Staff Analysis presented to the Plan Commission, if the current owner's intended use of the Real Estate is to be permitted; and

WHEREAS, the requested rezoning, as petitioned, remains compatible with the adjacent properties and reflects responsible growth and development; and

WHEREAS, on March 4, 2024, the Elkhart City Plan Commission conducted a public hearing on the petition to repeal and rezone the property commonly known as 2 Cassopolis Street, Elkhart Indiana, for the purposes stated herein and voted to forward the petition to the Common Council with the Commission's "DO PASS" recommendation.

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

Section 1. Ordinance No. 5849, of the City of Elkhart, Indiana, be, and hereby is, repealed.

Section 2. That the zoning map of the City of Elkhart, incorporated into Ordinance No. 4370, as amended, is hereby further amended to establish a zoning designation of Planned Unit Development, R-4, Multiple Family Dwelling District Standards for that certain Real Estate commonly known as 2 Cassopolis Street, City of Elkhart, County of Elkhart, State of Indiana, and more-fully described as follows:

**Legal Description:**

LOT NUMBER TWO-B (2B) IN THE REPLAT OF LOT 2 AND A PORTION OF LOT 1, TUFF MINOR SUBDIVISION, AS PER PLAT THEREOF RECORDED OCTOBER 1, 2007 AS INSTRUMENT # 2007-27348 IN PLAT BOOK 32, PAGE 14, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

**Address:**

2 Cassopolis Street, Elkhart IN 46514 (currently vacant)

**Parcel Identification No.(s):**

20-02-29-426-015.000-027

Section 3. Limitations of Zoning. All terms and conditions of the recommended amendment by the Planning Commission, as recommended by the Planning Department are approved and adopted as conditions herein.

Section 4. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council, as required by law.

So ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Arvis Dawson  
President of the Common council

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
Debra D. Barrett, City Clerk

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Rod Roberson, Mayor

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk



# Staff Report

## Planning & Zoning

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**Petition:** 24-PUD-01

**Petition Type:** Conceptual Planned Unit Development  
R-4, Multiple Family Dwelling District standards

**Date:** March 4, 2024

**Petitioner:** 2 Cass Opportunity Fund LLC Patrick Matthews

**Site Location:** 2 Cassopolis St, Elkhart, IN 46514 (currently vacant); 2100-2200 block  
Parcel 20-02-29-426-015.000-027

**Request:** Per Section 20.4.B approval of a Conceptual Planned Unit Development (R-4, Multiple Family Dwelling District standards) for the purpose of developing an apartment complex development. The parcel number is 02-29-426-015 and is approximately 8.34 acres in area.

**Existing Zoning:** PUD, Planned Unit Development

**Size:** +/- 8.32 Acres

**Thoroughfares:** Cassopolis Street

**School District:** Elkhart Community Schools

**Utilities:** Available and provided to site.

**Plan Commission Action:** Recommendation to Common Council.

**Surrounding Land Use & Zoning:**

Properties to the north, west, and south are commercially zoned as B-3 and land to the east is in the County of Elkhart out of City limits.

**Applicable Sections of the Zoning Ordinance:**

See enumerated in request.

**Comprehensive Plan:**

The Comprehensive Plan calls for this area to be developed with mixed uses.



## Staff Analysis

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The petitioner is proposing to develop a new apartment complex on land that is currently vacant in the 2100 block of Cassopolis Street. Amenities will include a club house, playground, a dog park and a pedestrian exercise path that will be built around the perimeter of the property. The development will also provide sidewalks that connect to the public sidewalks to Cassopolis Street. The area of the parcel in question is 8.34 acres. The site is accessed through a platted easement behind what is currently Communitywide Federal Credit Union and a small strip center with medical offices.

This proposal serves to meet the need of housing diversification by adding additional dwelling units in our community as highlighted in the Zimmerman Volk study. The developer is proposing 240 new units built over six buildings containing a mix of one, two and three bedroom units. Four of the six buildings are planned to have 36 units each with the remaining two buildings having each 48 units.

The petitioner is proposing a reduced number of on-site parking spaces at a rate of 1.5 spaces per dwelling unit versus the two spaces per dwelling unit, which is the current standard for parking. Staff agrees with the parking reduction as the 1.5/unit rate reflects current industry standard parking ratios. 360 parking spaces are being provided. Where 480 spaces would be required for a typical development, there are 360 spaces proposed for the project – a reduction of 25%. Staff supports this reduction - there isn't a need for the extra pavement when the site could be better programmed for natural areas and common space.

The proposed buildings are situated so that the parking is contained mostly in the center of the site with all but one building at the perimeter of the property. The setback exceptions are minor for a project of this scale. A reduction of the front yard setback by five feet to twenty feet where twenty five is required; a corner side reduction by ten feet to fifteen where twenty five is required; and a reduction of the rear yard setback by five feet to twenty five feet where thirty is required. The plan depicts the storm water collection areas at the western part of the property – currently with a drainage easement agreement for the southernmost retention pond.

The proposed Planned Unit Development (R-4) is conceptual, which means the submittal contains general information for the plan – property boundaries, existing site features, general street layout, proposed use, setback and preliminary on-site drainage. The project will need to be submitted for review and approval at the City’s Technical Review – this will also address any potential traffic concerns raised during that review. The Indiana Department of Transportation (INDOT) will also review as a part of the overall permitting process.

If this request is approved by the Common Council, a final site plan must be submitted to the Plan Commission for final approval at a public hearing.

## Recommendation

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The Staff recommends **approval** of the conceptual Planned Unit Development based on the following findings of fact:

- 1) The Comprehensive Plan calls for this area to be developed with mixed uses. The proposed use is compatible with commercially mixed uses.
- 2) The proposed use should not negatively impact surrounding properties. The proposed apartments should benefit the commercial businesses along Cassopolis Street.
- 3) The proposed use is compatible with other activity currently occurring in the general area – which is largely service commercial and service oriented.

## Photos

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## Attachments

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Petition, appeal letter, site plan.

February 2, 2024

Honorable Members of the City Council and Plan Commission  
City of Elkhart  
229 South Second Street  
Elkhart, IN 46516

RE: Conceptual PUD petition for 2 Cassopolis St, Elkhart, In 46514  
Parcel # 20-02-29-426-015.000-027

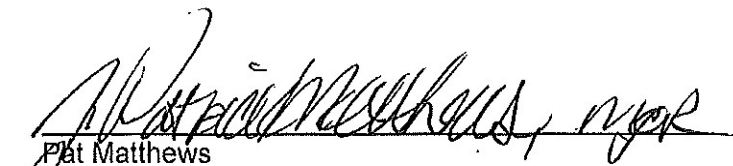
The undersigned petitioner respectfully shows the Council and Plan Commission:

1. 2 Cass Opportunity Fund LLC. is the owner of the following described real estate located within the City of Elkhart, Osolo Township, Elkhart County, State of Indiana.  
SEE ATTACHED LEGAL DESCRIPTION
2. The above described real estate presently has a zoning classification of B-3 and M-1 Districts under the Zoning Ordinance of the City of Elkhart.
3. The proposed occupancy of the above-mentioned property is to develop a new multi-family apartment complex with approximately 240 units consisting of a mix of 1-, 2-, and 3-bedroom units.
4. Petitioner desires to rezone said real estate to a Conceptual PUD District for that purpose.
5. This petition meets the PUD standards as it:
  - I. Is consistent with the Comprehensive Plan. The City of Elkhart's future land use map indicates the area surrounding this property should be a variety of land use types including residential, commercial and mixed use. The use of this property for a higher density residential is consistent with that vision.
  - II. Encourages innovations in development and/or redevelopment by utilizing vacant land within the City in a heavily developed area with access to public utilities and replaces it with a new facility to meet documented demand for housing in our community. The development will allow for much needed housing units on the City's northside in a higher-density style while still providing for buffering, greenspace, a walking trail that connects the development to the sidewalk network and available commercial uses along Cassopolis Street.
  - III. Fosters the safe, efficient and economic use of the land, transportation, public facilities and services as it is utilizing vacant land in a heavily developed section of the City. The development of this site will take advantage of the existing infrastructure and services in the area.
  - IV. Facilitates the provision of adequate public services as it is a development of an underutilized site with access to the City of Elkhart public services. The trail around the property will connect to the existing sidewalk system promoting bike and pedestrian travel and connection to The Trolley route.

- V. Avoids the inappropriate development of lands and provides for adequate drainage and reduction of flood damage. The site is not located in a floodplain and will be designed to meet City standards for onsite stormwater management.
- VI. Encourages patterns of land use which decrease trip length of automobile travel and encourages trip consolidation. This site is conveniently located along Cassopolis Street. It is well situated near commercial uses making it convenient for residents to utilize existing services in the area. As Cassopolis Street is a major thoroughfare, employees and visitors will have easy access to the facility. The MACOG Interurban Blue Line runs along Cassopolis Street. In addition, improvements along Cassopolis Street make pedestrian travel much easier and safer. The new development will have an interior sidewalk and trail connection to the City's sidewalk network to improve and encourage pedestrian and bicycle travel. As the development is designed to be pedestrian and transit friendly, we are requesting a parking standard of 1.5 spaces per unit.
- VII. Minimize adverse environmental impacts of development. The development of the underutilized vacant land within the City limits and with access to public infrastructure will be much less impactful on the environment as the same development would be outside the City limits on a well and septic system. By utilizing the existing public infrastructure, this project can eliminate the potentially negative impacts to soil and water conditions in the community.
- VIII. Improves the design, quality and character of new development. The design team has created an aesthetically pleasing building and site plan to enhance the community while meeting the needs of the residents. This project will meet all local design requirements with the exception of:
  - a. a front-yard setback of 20 feet
  - b. a corner side-yard setback of 15 feet (south of proposed building #1)
  - c. a rear-yard setback of 25 feet
  - d. a parking standard of 1.5 spaces per unit
- IX. Foster a more rational pattern of relationships between residential, business, and industrial uses. The PUD will allow for higher intensity residential to be development in close proximity to local service and retail businesses along a major thoroughfare. This mix of residential and business used is a desirable mix of land uses and functionality for the City.
- X. Protects existing neighborhoods from harmful encroachment by intrusive or disruptive development. This project will allow for higher-density residential development near and commercial uses. This is consistent with the current mixed-use nature of the area.

Wherefore, Petitioner prays and respectfully requests a hearing on this appeal and that after such hearing, the Plan Commission make a do pass recommendation and the Elkhart Common Council, after hearing, pass on appropriate ordinance rezoning the above-described parcel of land located in the City of Elkhart.



  
Pat Matthews  
2 Cass Opportunity Fund LLC

Contact Person: Abonmarche Consultants

Name: Crystal Welsh

Address: 303 River Race Drive, Goshen, IN 46526

Phone number: 574-314-1027

Email: [cwelsh@abonmarche.com](mailto:cwelsh@abonmarche.com)

Legal Description per 2023-12759 Elkhart County Recorder

LOT NUMBER TWO-B (2B) IN THE REPLAT OF LOT 2 AND A PORTION OF LOT 1, TUFF MINOR SUBDIVISION, AS PER PLAT THEREOF RECORDED OCTOBER 1, 2007 AS INSTRUMENT #2007-27348 IN PLAT BOOK 32 PAGE 14, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

Parcel Number: 20-02-29-426-015.000-027

Commonly known as: 2 Cassopolis Street, Elkhart, Indiana 46514

**Rod Roberson**  
*Mayor*

**Michael Huber**  
*Director of Development Services*



**Development Services**  
*Community Development*  
*Economic Development*  
*Planning Services*  
*Redevelopment*  
229 S. Second St.  
Elkhart, IN 46516  
574.294.5471  
Fax: 574.295.7501

DATE: March 13, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services

RE: Parkway at 17 Bond Ordinance

Last fall, the Elkhart Redevelopment Commission and the Elkhart Common Council approved the creation of a new TIF district called the Parkway at 17 Economic Development Area for the purpose of supporting new development within the County Road 17 Corridor. Additionally, the RDC negotiated and approved a development agreement with Holladay Corp for the construction of a new 252-unit multi-family residential project within the TIF area. The City agreed to pledge future project generated revenues totaling \$6.5m to support the development of the project. The future TIF revenues will be pledged by the RDC toward payment of a bond that will be purchased by the developer, minimizing the risk of the City if the project were to not move forward.

The Elkhart Redevelopment Commission approved the pledge of the future TIF at its March 12 meeting. The Economic Development Commission passed a resolution authorizing the issuance of the bonds for the project at its special meeting on March 12. The resolutions passed by both bodies are included along with the bond ordinance included in this packet.

The proposed residential development project includes a \$52m of investment associated with the construction of the projecting and the resulting increase in property tax assessment, the City will attract up to 300 new residents to the City of Elkhart, helping fill a demand for housing, capture a portion of the direct economic activity with the spending of these residents within the City and generate a significant amount of new income tax revenue.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF ELKHART, INDIANA, TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.**

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

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

WHEREAS, the City of Elkhart Redevelopment Commission (the “Redevelopment Commission”) on July 11, 2023 approved and adopted its Resolution No. 23-R049, whereby the Redevelopment Commission created the Parkway at 17 Economic Development Area (the “Area”) and designated the Area as an allocation area (the “Allocation Area”) in accordance with Indiana Code §§36-7-14-39, 56 for the purposes of capturing incremental ad valorem property taxes levied and collected on all taxable real property in such Area; and

WHEREAS, Holladay Properties, LLC (the “Company”) intends to undertake the acquisition of certain real estate in the City and the construction and equipping of a multi-family apartment complex thereon (collectively, the “Company Project”); and

WHEREAS, the Company has advised the City, the City of Elkhart Economic Development Commission (the “Economic Development Commission”) and the Redevelopment Commission concerning the Company Project, and has requested that the City authorize and issue its economic development tax increment revenue bonds under the Act, to be designated as City of Elkhart, Indiana Taxable Economic Development Tax Increment Revenue Bonds, Series 202\_\_ (Parkway at 17 Project), in one or more series (with such further series or different series designation as determined to be necessary or appropriate) (the “Bonds”), a portion of the net proceeds of such Bonds being used for the purpose of financing a portion of the costs of the Company Project and costs of issuing the Bonds; and

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

WHEREAS, following a public hearing, pursuant to Section 24 of the Act, the Economic Development Commission found that the financing of a portion of the costs of the Company

Project complies with the purposes and provisions of the Act and that each such financing will be of benefit to the health and public welfare of the City; and

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

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

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

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

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

WHEREAS, the forms of the Bonds, the Indenture and the Financing Agreement (collectively, the "Financing Documents"), and a form of this proposed Ordinance were submitted to, and approved by, the Economic Development Commission, which documents were incorporated by reference in the resolution heretofore adopted by the Economic Development Commission, which resolution has been transmitted to the Common Council in accordance with the Act;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkhart, Indiana, that:

Section 1. It is hereby found that the financing of a portion of the economic development facilities for the Company Project referred to in the Financing Documents previously approved by the Economic Development Commission and presented to this Common Council, the issuance and sale of the Bonds, the use (or deemed use) of the proceeds of the Bonds by the Company for the financing of a portion of the costs of the Company Project, the payment of the Bonds from the Pledged TIF Revenues (as hereinafter defined) and other sources pursuant to the Financing Documents, and the securing of the Bonds under the Indenture comply with the purposes

and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

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

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

Section 4. The City shall issue the Bonds in one (1) or more series in the maximum aggregate principal amount not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000), which Bonds shall mature no later than eighteen (18) years after the date of issuance of the Bonds and shall bear interest at a per annum rate not exceeding zero percent (0.00%) per annum. The Bonds may be issued on a draw basis. The Bonds are to be issued for the purpose of procuring funds to (a) pay all or a portion of the cost of acquisition, construction, and equipping of the Company Project, (b) pay capitalized interest on the Bonds (if necessary), (iii) fund a debt service reserve fund (if necessary), and (d) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto. The Bonds shall be lettered and numbered R-1 upward. The Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the Indenture (the "Trust Estate"), which Trust Estate shall consist of the funds and accounts created under the Indenture together with a pledge by the Redevelopment Commission of tax increment finance revenues from the Allocation Area, subject to the terms and conditions of a Pledge Agreement between the Redevelopment Commission and the City (the "Pledged TIF Revenues"), and upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

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

Section 6. Each of the Mayor, the Clerk and the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents

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

Section 7. The provisions of this Ordinance and the Financing Documents securing the Bonds of a series shall constitute a contract binding between the City and the holders of the Bonds of such series, and after the issuance of the Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

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

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

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

ORDAINED this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Arvis Dawson  
President of the Common Council

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this \_\_\_ day of \_\_\_\_\_, 2024, at \_\_\_  
a.m./p.m.

\_\_\_\_\_  
Debra D. Barrett, City Clerk

APPROVED by me this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Rod Roberson, Mayor

ATTEST:

\_\_\_\_\_  
Debra D. Barrett, City Clerk



RESOLUTION NO. 24-R- 019

**RESOLUTION OF THE CITY OF ELKHART REDEVELOPMENT COMMISSION  
PLEDGING CERTAIN TAX INCREMENT REVENUES TO THE PAYMENT OF  
CERTAIN TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS OF THE  
CITY OF ELKHART FOR THE PARKWAY AT 17 PROJECT**

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

WHEREAS, the Commission adopted its Resolution No. 23-R049 on July 11, 2023 (the "Declaratory Resolution"), which Declaratory Resolution has been confirmed, designating an area known as the Parkway at 17 Economic Development Area (the "Area") as an economic development area pursuant to the Act, designating the Area as an allocation area pursuant to Section 39 of the Act (the "Allocation Area") for purposes of capturing incremental *ad valorem* property taxes levied and collected on all taxable real property located in the Allocation Area, and approving an economic development plan for the Area; and

WHEREAS, the City of Elkhart, Indiana (the "City"), the Commission, and HP Crossroads 41, LLC (the "Developer"), have entered into a Development Agreement (the "Development Agreement"), whereby the Developer has agreed that the Developer, or an affiliate thereof will make investments in the Area, with said investments consisting of the acquisition of certain real estate in the City and the construction and equipping of a multi-family apartment complex thereon, all as more particularly described in the Development Agreement (the "Project"); and

WHEREAS, the City is considering the issuance of its City of Elkhart, Indiana Taxable Economic Development Tax Increment Revenue Bonds, Series 202\_\_ (Parkway at 17 Project), in one or more series (with the blank to be completed with the year of issuance of said bonds and with such further series or different series designation as determined to be necessary or appropriate) in a maximum aggregate principal amount not exceeding \$6,500,000 (the "Bonds"), for the purpose of making a portion of the net proceeds of the Bonds available to the Developer or an affiliate thereof for the purpose of financing a portion of the costs of the Project; and

WHEREAS, the Commission desires to pledge the incremental *ad valorem* property taxes levied and collected on all taxable real property located in the Allocation Area (the "Pledged TIF Revenues") to the payment of the principal of and interest on the Bonds; and

WHEREAS, the Commission has determined that the undertaking of the Project, the issuance of the Bonds by the City and the pledge of the Pledged TIF Revenues in the manner set forth herein will further the purposes of, and be a benefit to, the Area and the plan for the Area;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ELKHART REDEVELOPMENT COMMISSION, AS FOLLOWS:

1. The Commission hereby pledges the Pledged TIF Revenues to the payment of the principal of and interest on the Bonds for a term of years ending not earlier than upon the final payment of the Bonds or twenty-five (25) years from the date of issuance of the Bonds.

2. The pledge made herein shall be effective as set forth in I.C. 5-1-14-4 without the recording of this Resolution other than in the records of the Commission or the filing of any other instrument. Notwithstanding the foregoing, in the event that the Pledged TIF Revenues are in excess of the amount necessary to make scheduled principal and interest payments on the Bonds when due (the "Excess TIF Revenues"), the Commission shall retain such Excess TIF Revenues received and may use such Excess TIF Revenues for any purpose under the Act.

3. The President and Secretary of the Commission are hereby authorized and directed to enter into a pledge agreement on behalf of the Commission (the "Pledge Agreement") providing that the Pledged TIF Revenues are pledged as described herein and containing such other terms consistent with this Resolution to evidence the intent of the Commission to secure the Bonds solely with the Pledged TIF Revenues as described herein.

4. Any officer of the Commission is hereby authorized to take such further actions and execute on behalf of the Commission such further documents or agreements as any such officer deems necessary or appropriate to effectuate the purposes of this Resolution.

5. This Resolution shall be deemed to take effect immediately upon adoption by the Commission. The provisions of this Resolution shall constitute a contract binding between the Commission and the holder or holders of the Bonds and after the issuance of said Bonds, this Resolution shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders of said Bonds.

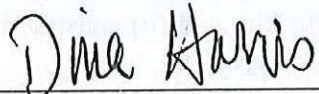
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ADOPTED at a meeting of the City of Elkhart Redevelopment Commission held on March 12, 2024.

**CITY OF ELKHART REDEVELOPMENT  
COMMISSION**

By:   
Sandra Schreiber, President

ATTEST:

  
Dina Harris, Secretary

**REPORT OF THE CITY OF ELKHART  
ECONOMIC DEVELOPMENT COMMISSION CONCERNING  
THE PROPOSED FINANCING OF ECONOMIC DEVELOPMENT  
FACILITIES FOR HOLLADAY PROPERTIES, LLC**

The City of Elkhart Economic Development Commission (the "Commission") proposes to recommend to the Common Council of the City of Elkhart, Indiana (the "City"), that it provide the net proceeds of certain economic development revenue bonds (the "Bonds") to HP Crossroads 41, LLC (or a related party, the "Developer") for the financing of a portion of certain economic development facilities in the City.

In connection therewith, the Commission hereby reports as follows:

A. The proposed economic development facilities consisting of all or any portion of the following: (i) acquiring certain real estate in the City and (ii) constructing and equipping a multi-family apartment complex thereon (the "Project").

B. The Commission estimates that except for those public works and services for which funds of the City and other parties are expected to be available, there are no public works or services, including public ways, schools, water, sewer, street lights and fire protection, which will be made necessary or desirable by the Project, because any such works or services already exist or will be provided from proceeds of the Bonds or by the Developer or other parties.

C. The Commission estimates that the total costs of the Project for which funding is not otherwise available will not exceed \$6,500,000.

D. The Commission estimates that completion of the Project will result in the creation of approximately six (6) new permanent full-time jobs in the City, with average hourly wages ranging from \$20.00 to \$29.00 per hour and that the Project will result in the expansion of further business opportunities in the City.

E. The Project will not have an adverse competitive effect on similar facilities already constructed or operating in the City as the project will compliment similar facilities and provide further opportunities for retail and commercial growth in the City.

*(Signatures follow on next page)*

Adopted this 12<sup>th</sup> day of March, 2024.

CITY OF ELKHART ECONOMIC  
DEVELOPMENT COMMISSION

\_\_\_\_\_  
President

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Secretary

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

**RESOLUTION OF THE CITY OF ELKHART ECONOMIC DEVELOPMENT  
COMMISSION APPROVING AND AUTHORIZING CERTAIN ACTIONS AND  
PROCEEDINGS WITH RESPECT TO CERTAIN PROPOSED ECONOMIC  
DEVELOPMENT TAX INCREMENT REVENUE BONDS AND RELATED MATTERS**

WHEREAS, the City of Elkhart, Indiana (the "City"), is authorized by I.C. 36-7-11.9 and I.C. 36-7-12 (collectively, the "Act") to issue revenue bonds for the financing of economic development facilities, and to provide the proceeds of the revenue bond issue to another entity to finance the acquisition, construction, renovation, installation and equipping of said facilities; and

WHEREAS, HP Crossroads 41, LLC (the "Company") desires to finance a portion of the costs of acquiring certain real estate in the City and of constructing and equipping a multi-family apartment complex thereon (the "Project") which is located in the Parkway at 17 Economic Development Area Allocation Area (the "Allocation Area"); and

WHEREAS, the Company has advised the City of Elkhart Economic Development Commission (the "Commission") and the City that it proposes that the City issue economic development tax increment revenue bonds in an amount not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000) (the "Bonds") under the Act for the purpose of procuring funds to (a) pay all or a portion of the cost the Project, (b) pay capitalized interest on the Bonds, and (c) pay all incidental expenses on account of the issuance of the Bonds; and

WHEREAS, the Commission has studied the Project and the proposed financing of the Project and its effect on the health and general welfare of the City and its citizens;

WHEREAS, the completion of the Project is expected to result in the further diversification of industry and the creation of approximately six (6) new permanent jobs and two hundred twenty-five (225) temporary construction jobs and the expansion of further business opportunities in the City; and

WHEREAS, pursuant to I.C. § 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance the Project; and

WHEREAS, on the date hereof the Commission held the Public Hearing on the Project and considered any adverse competitive effect the Project may have on similar facilities in the area served by the Project;

NOW, THEREFORE, BE IT RESOLVED by the City of Elkhart Economic Development Commission, as follows:

SECTION 1. The Commission hereby finds, determines, ratifies and confirms that the diversification of business, the creation of business opportunities and the creation of opportunities for gainful employment within the jurisdiction of the City are desirable, serve a public purpose,

**TRUST INDENTURE**

**BETWEEN**

**CITY OF ELKHART, INDIANA**

**AND**

---

**as Trustee**

**Dated as of March 1, 2024**

**Re:**

**NOT TO EXCEED \$6,500,000  
CITY OF ELKHART, INDIANA,  
TAXABLE ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BONDS,  
SERIES 2024 (PARKWAY AT 17 PROJECT)**

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EXHIBIT B COSTS OF ISSUANCE

B-1

**TRUST INDENTURE**

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

WITNESSETH:

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

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

WHEREAS, in accordance with the provisions of the Act, the Issuer has induced HP Crossroads 41, LLC, an Indiana limited liability company (the “Developer”), to proceed with the Project (as defined herein), in the jurisdiction of the Issuer by offering to issue its Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Parkway at 17 Project) (the “Bonds”) in the aggregate principal amount of not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000) pursuant to this Indenture and (i) be deemed to make a portion of the proceeds of the Bonds available to the Developer pursuant to the Financing Agreement (as defined herein) for the purpose of paying a portion of the costs of “economic development facilities” consisting of the Project (as defined herein) and (ii) use a portion of the proceeds of the Bonds to pay for the costs of issuance of the Bonds; and

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

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

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

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

## GRANTING CLAUSES

### DIVISION I

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

### DIVISION II

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

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

(End of Preamble and Granting Clauses)

## ARTICLE I

### DEFINITIONS

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

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

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

“Affiliate” means an entity or business which directly or indirectly controls, is controlled by or is under common control with, the Developer. For purposes of this provision, “control” (including the terms “controls”, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

“Allocation Area” means the Parkway at 17 Economic Development Area Allocation Area previously established by the Redevelopment Commission pursuant to a declaratory resolution, as confirmed and amended, in accordance with IC 36-7-14-39 for the purposes of capturing incremental *ad valorem* property taxes levied and collected on all taxable real property in such allocation area.

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

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

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

“Bonds” means the City of Elkhart, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Parkway at 17 Project), issued in the original aggregate principal amount of not to exceed \$6,500,000.

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

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

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

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

“Closing” means \_\_\_\_\_, 2024.

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

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

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

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

“Developer” means HP Crossroads 41, LLC, an Indiana limited liability company, or any successor thereto under the Financing Agreement and the Development Agreement.

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

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

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

“Electronic Means” means the following communication methods: a portable document (“pdf”) or other replicating image attached to an unsecured email, facsimile transmission, secure

electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee or another method or system specified by the Trustee as available for use in connection with its services under this Indenture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Project Fund” means the Project fund created and established pursuant to Section 4.3 of this Indenture.

“Purchaser” means HP Crossroads 41, LLC, or their successors and assigns.

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



Ratings Services, Inc. and which matures not more than 270 days after the date of purchase; (vii) investment agreements fully and properly secured at all times by collateral security described in (i), (ii) or (iii) above or issued by entities rated in the single highest full classification by Moody's Investors Service and Standard & Poor's Ratings Services, Inc. when such agreement was entered into; and (viii) repurchase agreements with any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (i), (iii) or (iv) above; provided, underlying securities are required by the repurchase agreement to be continuously maintained at a market value not less than the amount so invested.

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

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

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

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

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

"State" means the State of Indiana.

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of Article I)

ARTICLE II

THE BONDS

Section 2.1 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The principal amount of the Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.10 hereof) that may be issued is hereby expressly limited to not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000).

Section 2.2 Issuance of Bonds.

(a) The Bonds shall be designated “City of Elkhart, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Parkway at 17 Project),” and shall have such terms, conditions and characteristics as specified in the form of the Bonds set forth in Section 2.6 hereof. The Bonds shall be originally issuable as fully-registered bonds without coupons in denominations of One Hundred Thousand Dollars (\$100,000) or in integral multiples of \$1,000 in excess thereof and shall be numbered 2024R-1 and upward, or in any other manner acceptable to the Trustee and the Issuer.

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

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

Date	Principal Amount
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\*Final maturity.

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

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

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

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

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

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

(Form of Bond)

No. 2024R-1

UNITED STATES OF AMERICA

STATE OF INDIANA

ELKHART COUNTY

CITY OF ELKHART, INDIANA

TAXABLE ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BOND,  
SERIES 2024 (PARKWAY AT 17 PROJECT)

Interest <u>Rate</u>	Maturity <u>Date</u>	Original <u>Date</u>	Authentication <u>Date</u>
0.00%	_____	_____, 2024	_____, 2024

REGISTERED OWNER:

PRINCIPAL AMOUNT: Not to Exceed Six Million Five Hundred Thousand Dollars (\$6,500,000)

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

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

The principal installment payments and interest (except the final principal installment and the final interest payment) on this Bond are payable by wire transfer to the person in whose name this Bond is registered as of the applicable Record Date, and the final principal installment and the final interest payment shall be payable at the principal office of \_\_\_\_\_, as trustee (the "Trustee"), in the City of \_\_\_\_\_, \_\_\_\_\_, or at the principal office of any successor trustee. This Bond is one of an authorized issue of the Issuer's bonds, designated as the "City of Elkhart, Indiana, Taxable Economic Development Revenue Bonds, Series 2024 (Parkway at 17 Project)" (hereinbefore and hereinafter referred to as the "Bonds"), which are being issued pursuant to Ordinance No. \_\_\_\_\_, adopted by the Common Council of the City of Elkhart, Indiana, on \_\_\_\_\_, 2024 (the "Bond Ordinance") and under the hereinafter described Indenture in the aggregate principal amount of not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000).

The Bonds are being issued for the purpose of providing funds to (a) finance a portion of the costs of the Project (as defined in the Indenture) to be constructed by the Developer (as defined in the Indenture) and (b) pay the costs of issuance of the Bonds. The Issuer will loan a portion of the proceeds of the Bonds upon the closing thereof to the Developer or its designee, for the purpose of paying costs of the Project, all pursuant to the Financing Agreement, dated as of March 1, 2024, between the Issuer and the Developer (the "Financing Agreement"), which prescribes certain of the terms and conditions under which such proceeds will be used.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

CITY OF ELKHART, INDIANA

(Seal)

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

Attest:

\_\_\_\_\_  
Clerk

CERTIFICATE OF AUTHENTICATION

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

\_\_\_\_\_, as Trustee  
and Registrar

By: \_\_\_\_\_  
Authorized Officer

ABBREVIATIONS

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

UNIF TRAN MIN ACT -- \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

under Uniform Transfers to Minors Act, \_\_\_\_\_  
(State)

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

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

ASSIGNMENT

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

Dated: \_\_\_\_\_

SIGNATURE GUARANTEED:

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

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

Exhibit A

Principal Installment Date      Principal Amount

(End of Bond Form)

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

(a) A copy, duly certified by the Clerk of the Issuer, of the Bond Ordinance authorizing the execution and delivery of the Financing Agreement and this Indenture and the issuance of the Bonds;

(b) Executed counterparts of the Financing Agreement, the Pledge Agreement and this Indenture;

(c) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Bonds, to the purchasers thereof;

(d) An Opinion of Bond Counsel to the effect that the Bonds are valid and binding limited obligations of the Issuer enforceable in accordance with their terms, subject to such enforcement limitations customarily contained in such opinions, and bear interest that is exempt

from taxation in the State of Indiana for all purposes except the Indiana financial institutions tax; and

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

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

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

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

**Section 2.9 Registration and Exchange of Bonds; Persons Treated as Owners.** The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee, who is hereby constituted and appointed the registrar of the Issuer. Upon surrender (i) for transfer of any fully registered Bond at the principal office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his or its or her attorney duly authorized in writing or (ii) for replacement for the purpose of establishing the final principal amount of the Bonds if necessary pursuant to Section 2.10 hereof, the Issuer shall execute and the Trustee shall authenticate and deliver (i) with respect to a transfer, in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and the same maturity for a like aggregate principal amount and (ii) with respect to establishing the final principal amount, a new fully registered Bond or Bonds of the same series and the same maturity with the final principal amount pursuant to Section 2.10 hereof. The execution by the Issuer of any fully registered Bond of any denomination shall constitute full and due authorization of such denomination so long as such denomination is authorized pursuant to this Indenture, and the Trustee shall thereby be authorized to authenticate and deliver such registered Bond. The Trustee shall not be required to transfer or exchange any fully registered Bond during the period between the Record Date and any Interest Payment Date of such Bond, nor to transfer or exchange any Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Bonds.

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

(End of Article II)

## ARTICLE III

### APPLICATION OF BOND PROCEEDS

Section 3.1 Deposit of Net Proceeds of Bonds. The Issuer shall deposit with the Trustee the proceeds received from the sale of the Bonds, which consists of an amount equal to \$\_\_\_\_\_, and the Trustee shall deposit \$\_\_\_\_\_ into the Project Fund and \$\_\_\_\_\_ into the Expense Fund and disbursed therefrom for the purposes described in Sections 4.4 and 4.5 hereof, respectively. No further deposits shall be required pursuant to this Indenture.

(End of Article III)

## ARTICLE IV

### REVENUES AND FUNDS

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

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

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

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

#### Section 4.3 Bond Fund.

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

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



(c) In accordance with the terms of the Pledge Agreement and the Bond Ordinance, the Clerk, as the fiscal officer of the Issuer and the Redevelopment Commission, shall set aside the Pledged Revenues (in the amounts described in this Section) and transfer such Pledged Revenues to the Trustee, no later than three (3) business days prior to January 15 and August 15 of each year, commencing \_\_\_\_\_ 15, 202\_\_, for application in accordance with this Indenture. The Trustee is hereby directed to deposit any Pledged Revenues so received into the Bond Fund in the manner prescribed in this Section.

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

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

#### Section 4.4 Project Fund.

(a) Moneys held in the Project Fund representing proceeds of the sale of the Bonds shall be disbursed by the Trustee in accordance with the provisions of this Section 4.4 to pay the costs of the Project, including the issuance costs of the Bonds. Subject to the provisions below and to any applicable representations, warranties and covenants contained in the Indenture or the Financing Agreement, disbursements from the Project Fund shall be made only to pay (or to reimburse the Company for payment of) costs of the Project, as the case may be, as follows:

(1) Costs incurred directly or indirectly for or in connection with the acquisition, construction, expansion, equipping, installation or improvement of the Project, as the case may be, including: costs incurred with respect to preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

(2) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project, as the case may be; and

(3) Any other incidental and necessary costs, expenses, fees and charges relating to the acquisition, construction, expansion, equipping, installation or improvement of the Project, as the case may be.

Any further disbursements from the Project Fund described above to pay such fees, costs or expenses or to reimburse the Company for the payment of such fees, costs or expenses shall be made by the Trustee only upon the written order of an Authorized Representative of the Company and acknowledged by the Issuer. Each such written order shall be in the form of the disbursement request attached hereto as Exhibit A and shall be consecutively numbered and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. The Trustee may conclusively rely, without investigation or inquiry, on the information contained in the disbursement requests meeting the requirements of this Section 4.4(a) and shall be protected in issuing the payments requested therein.

(b) The Trustee shall cause to be kept and maintained accurate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Company or the Issuer, the Trustee shall file copies of the records pertaining to the Project Fund and all disbursements from such fund with the Issuer and the Company.

(c) If, after the later of the payment of all costs of the Project requested by the Company or ninety (90) days after the filing of the Completion Certificate, there shall remain any balance of moneys in the Project Fund, the Issuer shall direct the Trustee to transfer all moneys then in such Project Fund to the Bond Fund.

**Section 4.5 Expense Fund.** The Trustee shall deposit into the Expense Fund the moneys required to be deposited therein pursuant to the provisions of Article III hereof. The Trustee shall pay Costs of Issuance set forth in Exhibit B, by check or wire transfer, at closing to the entities listed. Execution of this Indenture shall be authorization for these payments. The Trustee may disburse any remaining funds held in the Expense Fund upon receipt of invoices or requisitions certified by an Authorized Representative of the Issuer to pay Costs of Issuance for the Bonds or to reimburse the Issuer for amounts previously advanced for such costs. In making disbursements from the Expense Fund, the Trustee may rely upon such certifications and invoices without further investigation. Any amounts remaining in the Expense Fund sixty (60) days after the issuance of the Bonds will be transferred to the Bond Fund to be used to pay debt service on the Bonds, at which time the Expense Fund may, at the direction of the Issuer, be closed.

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

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

(End of Article IV)

## ARTICLE V

### REDEMPTION OF BONDS BEFORE MATURITY

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

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

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

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

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

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

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

(End of Article V)

## ARTICLE VI

### GENERAL COVENANTS

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

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

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

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

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

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

Section 6.6 [RESERVED]

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

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

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

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

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

(End of Article VI)

## ARTICLE VII

### DEFAULTS AND REMEDIES

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

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

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

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

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

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

Section 7.2 Remedies: Rights of Bondholders.

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

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



or to enforce any obligations of the Issuer hereunder or of the Redevelopment Commission under the Pledge Agreement.

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

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

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

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

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

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

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

Section 7.4 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article VII shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer (including, without limitation reasonable attorneys' fees and costs), be deposited into the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(End of Article VII)

## ARTICLE VIII

### THE TRUSTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

(End of Article VIII)

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

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

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

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

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

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

(End of Article IX)

## ARTICLE X

### MISCELLANEOUS

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

- (a) All fees and expenses of the Trustee shall have been paid;
  - (b) The Issuer shall have performed all of its covenants and promises in this Indenture;
- and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(End of Article X)



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

CITY OF ELKHART, INDIANA

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

ATTEST:

\_\_\_\_\_  
Clerk

**[ISSUER'S SIGNATURE PAGE TO TRUST INDENTURE]**

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

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

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

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

**[TRUSTEE'S SIGNATURE PAGE TO TRUST INDENTURE]**

## EXHIBIT A

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 4.4 OF THE TRUST INDENTURE BETWEEN THE CITY OF ELKHART, INDIANA AND \_\_\_\_\_, AS TRUSTEE

Pursuant to Section 4.4 of the Trust Indenture (the "Indenture") dated as of March 1, 2024, between the City of Elkhart, Indiana (the "Issuer") and \_\_\_\_\_ (the "Trustee"), the undersigned, as the Authorized Representative (as defined in the Indenture) of \_\_\_\_\_, LLC (the "Company"), hereby requests and authorizes the Trustee, as depository of the Project Fund created by and as defined in the Indenture to pay to the Company or to the person(s) listed on the Disbursement Schedule attached hereto out of the moneys on deposit in the Project Fund the aggregate sum of \$\_\_\_\_\_, to pay such person(s) or to reimburse the Company in full, as indicated in the Disbursement Schedule, for advances, payments and expenditures made by it in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Indenture, and none of those items has formed the basis for any disbursement heretofore made from the Project Fund;

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

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

(d) This statement constitutes the approval of the Company of each disbursement hereby requested and authorized; and

(e) To the best of our knowledge, there is no current or existing Event of Default pursuant to the terms of the Indenture and no event exists which by notice of or passage of time or both would constitute such Event of Default under the Indenture.

IN WITNESS WHEREOF, the authorized representative of the Company has set his hand  
as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, LLC, an Indiana  
limited liability company

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

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

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

Acknowledged and Agreed:

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

City of Elkhart, Indiana

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

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

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

**EXHIBIT B**

COSTS OF ISSUANCE

TOTAL

\$ \_\_\_\_\_

**FINANCING AGREEMENT**

**between**

**HP CROSSROADS 41, LLC**

**and**

**CITY OF ELKHART, INDIANA**

**Dated as of March 1, 2024**

**Re:**

**Not to Exceed \$6,500,000  
City of Elkhart, Indiana,  
Taxable Economic Development Tax Increment Revenue Bonds, Series 2024  
(Parkway at 17 Project)**

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## FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of December 1, 2023 (the “Financing Agreement”) between HP CROSSROADS, LLC, an Indiana limited liability company (the “Company”), and the CITY OF ELKHART, INDIANA (the “Issuer” or “City”), a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the “State”).

### RECITALS

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

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

WHEREAS, the Issuer intends to issue its City of Elkhart, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Parkway at 17 Project), in the aggregate principal amount not to exceed \$6,500,000 (the “Bonds”), pursuant to a Trust Indenture, dated as of January 1, 2024 (the “Indenture”), by and between the Issuer and \_\_\_\_\_, as trustee (the “Trustee”), for the purpose of providing funds to pay a portion of the costs of the Project and costs related to the issuance of the Bonds; and

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

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

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

(end of recitals)

## ARTICLE I

### DEFINITIONS AND EXHIBITS

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

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

“Affiliate” means an entity or business which directly or indirectly controls, is controlled by or is under common control with, the Company. For purposes of this provision, “control” (including the terms “controls”, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

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

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

“Bond Ordinance” means Ordinance No. \_\_\_\_\_, adopted by the Common Council of the Issuer, on February 5, 2024, authorizing and approving the issuance and sale of the Bonds and approving this Financing Agreement, the Indenture, and related matters.

“Bond Proceeds” means an amount equal to not to exceed \$6,500,000 to be provided for out of the proceeds (or deemed proceeds) of the Bonds, a portion of which will be made available or deemed to be made available to the Company pursuant to the terms of this Financing Agreement, the Development Agreement and the Indenture, to pay for Eligible Costs.

“Bonds” means the City of Elkhart, Indiana, Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Parkway at 17 Project), dated March \_\_, 2024, issued pursuant to the Indenture in an aggregate principal amount of not to exceed \$1,800,000, for the purpose of (i) being deemed to pay a portion of the costs of the Project and (ii) paying costs related to the issuance thereof.

“Closing” means March \_\_, 2024.

“Company” means HP Crossroads 41, LLC, an Indiana limited liability company, together with each of its successors and assigns under Sections 3.2 and 6.4 hereof.

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

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

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

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

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

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

“Project” means all or any portion of the Project as such term is defined in the Development Agreement. The Project will be located in the Parkway at 17 Economic Development Area, Parkway at 17 Economic Development Area Allocation Area, and will conform to the parameters, requirements and descriptions thereof set forth in the Development Agreement.

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

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

“State” means the State of Indiana.

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

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

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

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

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

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

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

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

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

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

(End of Article I)

## ARTICLE II

### REPRESENTATIONS; USE OF BOND PROCEEDS

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

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

(b) Subject to the terms of this Financing Agreement, the Issuer shall issue the Bonds pursuant to the Bond Ordinance in the aggregate principal amount of not to exceed \$6,500,000, in order to pay the costs of issuance incurred by the Issuer in connection with the issuance of the Bonds and deemed to pay a portion of the costs of the Project, all for the purpose of creating or retaining employment opportunities in the City and benefiting the health and general welfare of the citizens of the City and the State.

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

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

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

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

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

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

(End of Article II)

## ARTICLE III

### PARTICULAR COVENANTS OF THE COMPANY

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

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

Section 3.3. Use of Bond Proceeds for Project and Costs of Issuance. The City shall cause to be deposited all proceeds from the sale of the Bonds in the manner specified in Article III of the Indenture, and the City shall cause to be maintained such proceeds and funds in the manner specified in Article IV of the Indenture. Costs relating to the issuance of the Bonds shall be paid from proceeds of the Bonds allocated for such purposes under the Indenture. Under the Indenture, the Trustee, on behalf of the City, is authorized and will be directed from time to time to make payments from the Project Fund to pay for costs of the Project approved by the City, or to reimburse the Company for any costs of the Project approved by the City, with any such disbursements to be made in accordance with the terms and conditions of the Indenture and this Agreement. The Company shall submit disbursement requests substantially in the form at Exhibit A of the Indenture to the City, and the City agrees to direct such requisitions to the Trustee as may be necessary to effect payments out of the Project Fund for costs of the Project approved by the City, all in accordance with Section 4.3(a) of the Indenture and this Agreement. Any moneys remaining in the Project Fund after completion of the Project shall be transferred and applied in the manner provided in Section 4.3 of the Indenture. The Company hereby acknowledges receipt of a copy of the Indenture.

Section 3.4. Completion of the Project.

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

(b) A portion of the proceeds of the Bonds in the amount of \$ \_\_\_\_\_ will be deemed to be transferred to the Company at the Closing to pay for costs of the Project. To conform the deemed amount of proceeds applied to the Project, the final principal amount of the Bonds shall be confirmed by the Company to the Issuer by the Company providing evidence of Project expenses in accordance with the Trust Indenture on or before \_\_\_\_\_, 202\_\_. If such Project expenses provided by the Company to the Issuer are less than \$ \_\_\_\_\_, the par

amount of the Bonds shall be correspondingly reduced, and, the Issuer shall notify the Trustee, the Company and the holder of the Bonds (if not the Company) of the reduced par amount of the Bonds in accordance with Section 2.10 of the Indenture. The Company agrees or cause its affiliate, as the Bondholder, to submit the original Bond received at the Closing to the Trustee which Bond shall be replaced by the Trustee with a new Bond stating the corrected, final aggregate principal amount and principal installment payment schedule attached thereto.

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

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

Section 3.6. Indemnity. The Company will pay, and protect, indemnify and save the City (including members, directors, officials, officers, agents, attorneys and employees thereof), the Bondholders 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 action, suits, claims, demands and judgments of any nature arising from or relating to:

(a) Violation by the Company of any agreement or condition of this Agreement;

(b) Violation of any contract, agreement or restriction by the Company relating to the Projects, or a part thereof;

(c) Violation of any law, ordinance or regulation by the Company in connection with the Projects, or a part thereof;

(d) Any act, failure to act or material misrepresentation by the Company, or any of the Company's agents, contractors, servants, employees or licensees; and

(e) The provision of any information or certification furnished by the Company to the Bondholders in connection with the issuance and sale of the Bonds or the Project which is materially misleading or false.

In case any action or proceeding is brought against the City in respect of which indemnity may be sought hereunder, the City promptly shall give notice of that action or proceeding to the Company, and the Company upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the City to give that notice shall not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company. At its own expense, the City may employ separate counsel and participate in the defense. The Company shall not be liable for any settlement made without its consent.

The Company hereby further agrees to indemnify and hold harmless the Trustee from and against any and all costs, claims, liabilities, losses or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of the trusts established pursuant to the Indenture, except costs, claims, liabilities, losses or damages resulting from the gross negligence or willful misconduct of



the Trustee, including the reasonable costs and expenses (including the reasonable fees and expenses of its counsel) of defending itself against any such claim or liability in connection with its exercise or performance of any of its duties hereunder and of enforcing this indemnification provision. The indemnifications set forth herein shall survive the termination of the Indenture and/or the resignation or removal of the Trustee for so long as the Bonds are outstanding.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the City, the Common Council, the Economic Development Commission and the Redevelopment Commission. That indemnification is intended to and shall be enforceable by the City to the full extent permitted by law.

The foregoing shall not be construed to prohibit the Company from pursuing its remedies against either the City or the Trustee for damages to the Company resulting from personal injury or property damage caused by the intentional misrepresentation or willful misconduct of either the City or the Trustee.

Section 3.7. Payment of Bond Issuance Costs of Bonds, Other Fees and Expenses. The Company hereby covenants and agrees to pay all Bond Issuance Costs and any related transactional costs, fees or expenses incurred by the City in connection with the issuance of the Bonds, including legal, municipal advisory and/or accounting fees, charges and expenses, Trustee and other fiduciary fees and expenses, and City fees and expenses, all of which are obligations of the Company; *provided, however*, pursuant to the terms of the Development Agreement, the Company shall have the right to pay such amounts from the proceeds of the sale of the Bonds.

Section 3.8. Other Amounts Payable by the Company. The Company covenants and agrees to pay the following, to the extent that such expenses are not included in the Bonds:

(a) All reasonable fees, charges and expenses, including agent and counsel fees and expenses, of the Trustee incurred under the Indenture, as and when the same become due to the extent TIF Revenues of the Redevelopment Commission are not available.

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

(c) All reasonable expenses incurred in connection with the enforcement of any rights under this Agreement, the Development Agreement or the Indenture by the City, the Trustee or the Bondholders.

(d) All other payments of whatever nature which the Company has agreed to pay or assume under the provisions of this Agreement or the Development Agreement.

(End of Article III)

## ARTICLE IV

### IMMUNITY

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

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

(End of Article IV)

## ARTICLE V

### SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

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

(End of Article V)

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

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

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

To the Issuer:                      City of Elkhart, Indiana  
   229 S. Second Street  
   Elkhart, Indiana 46516  
   Attn: Controller

With a copy to:                      Barnes & Thornburg LLP  
   201 S. Main Street, Suite 400  
   South Bend, Indiana 46601  
   Attn: Randolph R. Rompola, Esq.

To the Redevelopment  
Commission:                      City of Elkhart Redevelopment Commission  
   Attn: President and Michael Huber (or his successor)  
   229 South Second Street  
   Elkhart, IN 46516

To the Company:                   HP Crossroads 41, LLC  
  3454 Douglas Rd., Ste. 250  
  South Bend, IN 46635  
  Attn: Peter Gillin

Section 6.4. Successors and Assigns.

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

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

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

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

(End of Article VI)

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

HP CROSSROADS 41, LLC, an Indiana limited liability company

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

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

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

**[SIGNATURE PAGE OF FINANCING AGREEMENT]**

CITY OF ELKHART, INDIANA

---

Rod Roberson, Mayor

Attest:

---

Debra D. Barrett, IAMC, City Clerk

**[SIGNATURE PAGE OF FINANCING AGREEMENT]**



City of Elkhart  
*Redevelopment Commission*

**Aurora Capital Development Corporation  
Meeting Minutes  
Tuesday, February 13, 2024**

**Present:** Dina Harris, Gerry Roberts, Wes Steffen, Gary Boyn, Sherry Weber (Recording Secretary),  
Drew Wynes, and Chris Pottratz (via Webex)

**Call to Order:**

This meeting was held in-person, telephonically and virtually through WEBEX. Ms. Schreiber called meeting to order at 3:34 pm

**Approval of the January 9, 2024 Regular Meeting Minutes:**

Mr. Steffen asked for a motion to approve the January 9, 2024 Regular Meeting Minutes. The motion was moved by Mr. Roberts. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Minutes are approved.

**Contract for Steve Watts**

Gary Boyn addressed the board and answered questions. Mr. Steffen asked for a motion to approve the resolution allowing the Elkhart City Controller to serve as Controller for the Corporation. Moved by Mr. Roberts. Seconded by Ms. Harris.. Voice vote carried with all in favor. Motion approved.

**January 2024 ACDC Expense Report**

Mr. Steffen asked for a motion to approve the January 2024 ACDC Expense Report in the amount of \$877.05. The motion was moved by Mr. Roberts. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Minutes are approved.

**Adjournment**

There being no further discussion, Mrs. Schreiber asked for a motion to adjourn the meeting. Moved by Ms. Harris. Seconded by Mr. Roberts. Voice vote, all in favor, non-opposed. Motion approved. Meeting adjourned at 3:36 pm. Next meeting is on Tuesday, March 12, 2024 at 3:30 p.m. in Council Chambers.

  
Wes Steffen, Vice President



BOARD OF PUBLIC SAFETY  
Tuesday, March 12, 2024

Vice-Chairman LaLaesha Black called a regular meeting of the Board of Public Safety to order at 9:07 a.m., Tuesday, March 12, 2024. Clerk of the Board Nancy Wilson called the roll. LaLaesha Black, Anthony Coleman and Proxy Tim Reecer were present. Dacey Davis attended on WebEx. Kara Boyles and Brian Thomas were absent.

1. APPROVE AGENDA

On motion by Tim Reecer, seconded by Anthony Coleman and carried 4-0, the agenda was approved as presented.

2. MINUTES- Regular Meeting February 27, 2024

On motion by Anthony Coleman, seconded by Tim Reecer and carried 4-0, the minutes from February 27, 2024 were approved as presented.

3. POLICE

Chief Milanese reported to the Board the Police Merit Commission hired 3 new Officers on Monday, March 11, and 3 new Officers two weeks ago.

4. FIRE

Chief Rodney Dale reported the Fire Merit Commission hired 9 new Firefighters on Monday March 11, and one more prospective firefighter is expected to be hired at their next meeting for a total of 10 starting on March 25, 2024.

Chief Rodney Dale presented a request to extend a Medical Leave of Absence for Firefighter Andres Galvez. On motion by Tim Reecer, seconded by Anthony Coleman and carried 4-0, the Board extended the Medical Leave of Absence for Firefighter Andres Galvez until May 2, 2024.

5. COMMUNICATIONS

Dustin McLain announced that National Telecommunicators Week is April 14-20, 2024. The Communications Center will be hosting an open house that week, and invitations will be coming soon.

6. BUILDING & CODE ENFORCEMENT

Aimee Latimer presented the Building and Code Enforcement February Month End Reports. Following discussion, on motion by Tim Reecer, seconded by Anthony Coleman and carried 4-0, the Building and Code Enforcement February Month End reports were accepted and placed on file.



7. OTHER PUBLIC SAFETY MATTERS

Police and Fire Merit Commission Minutes and MOU

On motion by Tim Reecer, seconded by Anthony Coleman and carried 4-0, the Police Merit Commission minutes of February 12, 2024, the Fire Merit Commission minutes of January 8, 2024, and the MOU of the Fire Merit Commission Special Meeting February 12, 2024 were accepted and placed on file.

8. ADJOURNMENT

On motion by Tim Reecer, seconded by Anthony Coleman and carried 4-0, the Board of Public Safety meeting was adjourned at 9:17 a.m.

LaLaesha Black, Vice-Chairman

Attest: Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS  
Tuesday, March 5, 2024

Vice- President Jamie Arce called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, March 5, 2024. Clerk of the Board Nancy Wilson called the roll. Jamie Arce, Ron Davis, Andy Jones, and Rose Rivera attended in person. Mike Machlan attended on WebEx as a member of the public and did not vote. Jamie noted the time was after 9:00 a.m. and no more quotes would be accepted.

1. Approve Agenda

A motion was made by Rose Rivera and seconded by Ron Davis to approve the agenda. On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the agenda was amended by adding the Block by Block Contractual Services and the Art League Lease to New Business. The amended agenda carried 4-0.

2. Open Quotes

Quote #24-08 Municipal Building Bollard Installation

DBL Services submitted a quote for \$5,980.00. Selge Construction Company submitted a quote for \$4,500.00. Premium Concrete Services submitted a quote for \$7,560.00. C&E Excavating submitted a quote for \$7,085.00.

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board referred the bids to the Engineer for his review and recommendation later in the meeting.

3. Claims & Allowance Docket

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the claims and allowance docket in the amount of \$6,158,400.43, consisting of 25 pages as prepared on February 28, 2024 at 12:08 p.m.

4. Minutes Regular Meeting February 20 2024

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the minutes from the Regular meeting on February 20, 2024.

5. Utilities

(A.) Administration

Board of Works Resolution 24-R-05 Appropriation

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved Board of Works Resolution 24-R-05, a Resolution to appropriate \$32,000.00 to 6203-5-999-7992004 to replace a vehicle.

Wastewater Utility MRO for January 2024

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board accepted and placed on file the Wastewater Utility MRO for January 2024.

Request Bid #24-06 Public Works Reroof Projects

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #24-06 Public Works Reroof Projects.

(B.) Utility Attorney

Hively Avenue Overpass Deeds & Easements

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved, accepted and signed the Hively Avenue Deeds & Easements as presented.

BOARD OF PUBLIC WORKS  
Tuesday, March 5, 2024

(C.) Pretreatment  
Cobus Green Consent Order Extension

A motion was made by Rose Rivera, and seconded by Ron Davis to approve the Cobus Green request for a 90-day extension to their Consent Order. Steve Brown explained the Consent Order that was approved on November 21, 2023. Cobus has been updating us on their progress. They were unable to conclude the specified alterations to their system. We agreed with them on a 90-day extension, and find it reasonable. Jamie asked what caused the delay. Dan Fox came forward to represent Cobus Green. He explained the delay. They are testing different chemicals because they have such a long detention time in the Forcemain. They also embarked on a flow study at the end of pipe to watch what's going on at that end, because there is 3-mile difference from there to the lift station. They want to study it under some different weather conditions so they make sure they stay in compliance. Mike asked him if they have been in compliance all this time. Mr. Fox said they have had a couple spikes. They talked to Mr. Brown about it and they can't understand what they're from. The chemical feeds seem to be good. Jamie called for the vote and the motion carried 4-0.

Notice of Alleged Violation: Swift Prepared Foods- Permit #2002-01

A motion was made by Rose Rivera, and seconded by Ron Davis to find Swift Prepared Foods Permit #2002-01 in violation of its Industrial Wastewater Discharge Permit and assign a total penalty of \$100.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the violation to the Board. These penalties are under the old Enforcement Response Plan. Swift has a self monitoring requirement to monitor certain parameters semi-annually. They failed to self monitor the second half of 2023, unfortunately that put them in Significant Non-Compliance. Jamie asked if semi-annual was industry standard. Steve explained each industry has different monitoring requirements and frequencies. Semiannual is a minimum requirement from the regulations that is due. Steve explained the Department of Public Works Pretreatment monitored them in the second half of 2023 and they were in compliance. Jamie asked why they are recommending the old penalty matrix, and what the new penalty would have been. Steve said this happened before we implemented the new Enforcement Response Plan. The new plan has a recommended penalty for failure to conduct self-monitoring per-parameter of \$50.00 for each parameter. They have 19, so the recommended penalty would be \$950.00. Attorney Maggie Marnocha clarified the Board can penalize up to \$2,500.00 per day per incident according to the Penalty Matrix and State Law. She said they made a decision to follow the old matrix for incidents that occurred prior to the approval of the new penalty matrix because of the notice issue. Mike asked if they have been previously in compliance with our testing and with their testing. Steve said they have had an occasional issue with FOG. Dominick Fultz came forward to represent Swift as their new Safety Manager. He explained the previous manager reported on January 31, 2023, then again on May 26, 2023, and again on June 12, 2023 which should have been July. When he discovered the oversight, he tried to report as soon as possible. He didn't get that turned in on time and missed the date. He said he messed up the composite and got it to Element which is the laboratory, but they didn't get it back in time. He submitted in when it came back, which was January 5, 2024.

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He then realized Element didn't have the correct recipient list, so they got that corrected. Now they have a set schedule with Element to do their semi-annual reporting. January was done and they are set up for July. It will be done on a regular basis. Jamie asked him to explain the recipient list significance. He explained Element was sending their samples to the Controller and the supervisor that was there before him, so he was not getting them. They were not getting sent to the plant manager as well. Benjamin Nuss the Plant Manager told the Board that Dominick drove the samples all the way to Indianapolis twice trying to get them done it time. It took forever to get the results. They really did attempt to do their due diligence. They we not trying to circumvent the process and they have never done anything like that. Jamie called for the vote and the motion carried 4-0.

Notice of Alleged Violation: Voyant Beauty Main- Permit #85-20

A motion was made by Rose Rivera, and seconded by Ron Davis to find Voyant Beauty Main Permit #85-20 in violation of its Industrial Wastewater Discharge Permit and assign a total penalty of \$100.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the violation to the Board. These penalties are under the old Enforcement Response Plan. On January 5, 2024 the Pretreatment staff received Voyant Beauty's self-monitoring report for the sample collected on December 12, 2023. The sample collected had an oil and grease exceedance. The limit is 200 mg/L and their sample was 573 mg/L. That is 186.5% increase from Elkhart's established FOG Local Limit. The old matrix penalty is \$100.00, the new one is \$250.00 for the first offense, \$1500.00 for a second offense, and \$2,500.00 for a third offense in one year. Steve explained the year is a 12-month rolling year starting with the first offense. Voyant did not attend the meeting. Jamie called for the vote and the motion carried 4-0.

Notice of Alleged Violation: McDowell Enterprises Permit #85-01

A motion was made by Rose Rivera, and seconded by Ron Davis to find McDowell Enterprises Permit #85-01 in violation of its Industrial Wastewater Discharge Permit and assign a total penalty of \$200.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the violation to the Board. These penalties are under the old Enforcement Response Plan. This sample was collected prior to the Board's approval of the current consent order. This Chromium exceedance was the second violation in a 12-month period. McDowell Enterprises did not attend the meeting. Rose asked how many violations they had in 2023, and Steve said numerous, that is what lead to the Consent Order. Jamie noted the EPA made changes in their Category. At the conclusion of discussion, Jamie called for the vote. The motion carried 4-0.

6. Engineering

(A.) Administration

Mediation- Center for Community Justice Agreement

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the Mediation and Facilitation Services Agreement with the Center for Community Justice.

Request Quote #24-10 Goshen Avenue and Blazer Blvd. River Greenway Intersection Improvement

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board

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granted permission to request Quote #24-10 Goshen Avenue and Blazer Blvd. River Greenway Intersection Improvement.

Award Bid #24-01 ADA-funded Curb Ramp Replacement

On motion by Ron Davis, seconded by Rose Rivera and carried 4-0, the Board awarded Bid #24-01 ADA-funded Curb Ramp Replacement to Premium Services, who submitted the lowest responsive bid, with a contract price in the amount of \$210,200.00.

Right of Way Dedication- Johnson St. by Plat Known as Northeast Six and Nine DPUD Replat Two

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board accepted the right-of-way for Johnson Street dedicated by the Plat know as Northeast Six and Nine DPUD Replat Two.

Indemnification Agreement with River District Development Co., LLC

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the License, General Release and Indemnification Agreement with River District Development Company, LLC to discharge Stormwater runoff into the City's storm sewer.

Award Quote #24-08 Municipal Building Bollard Installation

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board awarded Quote #24-08 Municipal Building Bollard Installation to Selge Construction who submitted the lowest, responsive quote, with a contract price in the amount of \$4,500.00.

(B.) Utility

Partial Payment to C&E

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved partial payment request #9 in the amount of \$122,250.00 to C&E Excavating from SRF loan WW22162005 for construction on the Oakland Avenue Forcemain- Phase A project.

Partial Payment #64 to Bowen Engineering Corp.: Elkhart WWTP Capacity Upgrades Phase 2 QA 7634

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved partial payment request #64 from SRF loan WW18262004 in the amount of \$1,316,747.00 to Bowen Engineering Corporation from the allocated SRF loan for construction on the Elkhart WWTP Capacity Upgrades Phase 2 project.

Partial Payment#65 to Donohue & Associates: Elkhart WWTP Capacity Upgrades Phase 2 QA7634

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the partial payment request SRF #65 of Loan WW18262004 in the amount of \$95,541.00 to Donohue & Associates Inc. for professional services on the Elkhart WWTP Capacity Upgrades Phase 2 project.

Partial Payment #20 to DLZ Indiana LLC: Oakland Avenue Project B Storage Tank Design WW22162005

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved partial payment request SRF #20 of SRF loan WW22162005 in the amount of \$473,123.00 to DLZ Indiana LLC from the allocated SRF loan for professional services on the Oakland Avenue Project B Storage Tank design.

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Partial Payment #21 to DLZ Indiana LLC: Oakland Avenue Project B Storage Tank Design WW22162005

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved partial payment request SRF #21 of SRF loan WW22162005 in the amount of \$307,636.00 to DLZ Indiana LLC from the allocated SRF loan for professional services on the Oakland Avenue Project B Storage Tank design.

CSO 39 Sewer Separations Bid #23-14 Warranty Deed Acceptance

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board accepted and signed the Warranty Deed for the CSO 39 Sewer Separation Warranty Deed Acceptance.

Lift Station Replacement Bid #24-04 Siemens Easement Purchases and Legal Reimbursements

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the reimbursement agreement and easement purchases for Lift Station 20 replacements Project in the amount of \$6,002.00. Jamie asked if the reimbursement for Legal Counsel is appropriate and not uncommon. Attorney Maggie Marnocha explained that because they incurred a cost to provide this easement for free to the City, they have asked us to cover the cost. The Attorney fees are reasonable.

(C.) Summary

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board ratified the following permit:

Water Assessment: Habitat for Humanity Elkhart  
2910 Elkhart Rd.  
Goshen, IN. 46526  
Property: 2933 Kelsey Ave  
Paid in full, \$621.00

Sewer Assessment: Habitat for Humanity Elkhart  
2910 Elkhart Rd.  
Goshen, IN. 46526  
Property: 2933 Kelsey Ave  
Paid in full, \$6055.00

Revocable Permit: #6570, Placed by: Jeff Long  
Property: 520 S. Main St.  
Permit Holder: MIBCO Inc.  
109 York Dr.  
Middlebury, IN. 46540

#6571, Placed by: Contractor  
Property: 302 - 420 E. Jackson Blvd  
Permit Holder: DJ Construction  
3414 Elkhart Road  
Goshen, IN. 46526

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#6572, Placed by: Lucas Williams  
Property: 1401 Kilbourn St.  
Permit Holder: Lucas Williams  
1401 Kilbourn St.  
Elkhart, IN. 46514

7. New Business

Request Quote #24-12 Purchase of Ford Lightning for the EEC

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved a request to solicit Quote #24-12 for the purchase of a Ford Lightning for the Elkhart Environmental Center.

Sourcwell Purchase for Central Garage Service Truck

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board granted permission to purchase a Central Garage Service Truck for \$98,613.00 using the Sourcwell co-op purchasing program contingent upon approval from Legal.

Sourcwell Purchase for Three Street Department Dump Trucks

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board granted permission to purchase three Street Department Dump Trucks for \$99,428.00, \$94,687.00, and \$99,428.00 using the Sourcwell co-op purchasing program contingent upon providing the Sourcwell Agreement documents to Legal and Legal approval.

Block by Block-Contractual Services Agreement

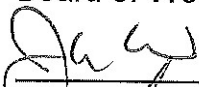
On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved a Contractual Agreement with Block by Block for \$449,914.00 for the Park Department.

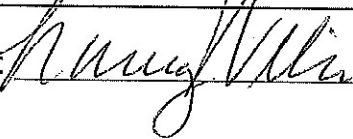
Lease with Elkhart Art League

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board received the notices of lease renewal from the Art League and accepted them as communication. Rose explained we received notice on August 1, 2023 for the 2024 lease renewal, and January 1, 2024 for the 2025 lease renewal.

8. Adjournment

On motion by Andy Jones, seconded by Rose Rivera and carried 4-0, the Board of Works adjourned at 10:47 a.m.

 \_\_\_\_\_ Jamie Arce, Vice-President

Attest:  \_\_\_\_\_ Nancy Wilson, Clerk of the Board

**Elkhart Historic & Cultural Preservation Commission**

**Meeting Thursday, July 20, 2023**

**Call to Order:**

Ann Linley called to order the Elkhart Historic & Cultural Preservation Commission Meeting for Thursday, July 20, 2023 at 7:00 pm.

**Roll Call:**

Present: Raymond Enfield, JA Whitmer, Ann Linley, Phalene Leichtman, Bill Zimmerman; Nathan Hooley, Eric Trotter with the City of Elkhart Planning and Development and Deb Parcell with Indiana Landmarks.

Absent: Robert Glassburn

**Approval of Agenda:**

Linley asked for a motion to approve the agenda as presented. Motion made by Zimmerman, seconded by Whitmer; motion carried.

**Approval of Minutes:**

Ann Linley gave everyone a minute to look over the minutes from Thursday February 16, 2023 to see if any corrections or adjustments needed to be made.

Linley asked for a motion to approve the February 16, 2023 minutes as presented. Motion made by Whitmer, seconded by Enfield; motion carried.

**Financial Report:**

N/A

**Hearing of Visitors:**

Linley stated that there were a few visitors speaking to their projects and a presentation.

**Old Business:**

**A: Neighborhood Update/Progress Review/Nominations**

N/A

**New Business:**

**A: 23-COA-06, 425 Division St, Install new fence**

Deb Parcell: Application 23-COA-06, applicant is Capstone II Llc, property address is 425 Division Street. It is an American foursquare rated contributing built around 1920.

Alterations: Previous COA #06-COA-16, approved the existing asphalt shingle roof with asphalt rounded roof panels and #13-COA-03, approved replacement of all the windows except those on the porch with wood widows.



Description of proposed project: New fencing all around the structure with 6' white vinyl fence. Parcell said she was unable to contact the owner and could not leave a message because the voicemail was not set up. She was not able to know specifically what all around the structure meant. Parcell said there was a fence now and she assumed by the picture that it was going to be where the existing one was located.

**Finding of Fact:**

- 1) Existing fence at the front plane of the house is wrought iron style; side and rear fence is chain link.
- 2) Chain link fence is considered inappropriate in the historic district.
- 3) Vinyl is not considered an appropriate material in the historic district.
- 4) Recommended fence styles are slat, picket, and wrought iron.
- 5) Fence will not affect the historic integrity of the house.

**Recommendation:** While wood is the more appropriate fence material for the historic district, to address safety concerns, approval is recommended, with the condition that the fence does not extend beyond the front wall of the house.

Linley asked Parcell to give the board more information about the safety concern. Parcell replied that the concern came from problems in the neighborhood and the fence would give the homeowner more security around the house. Parcell added that the chain link is pretty open and removing the chain link would be great. Parcell definitely recommended that but commented that wood fence would be a more appropriate choice. Whitmer asked what about the wrought iron style that was already in the front of the house. Parcell replied that she liked that in the front and that's why she was hoping to get a hold of the applicant. Whitmer and Linley asked if the homeowner was there to speak on their project. Linley asked the applicant to come forward to speak to the project. Applicant presented herself, Rosibel Hernandez, with address 425 Division Street. Linley asked homeowner if the wrought iron fence in the front was going to stay and Hernandez response was inaudible. Linley said that usually a 6 foot fence in the front of the house was not allowed by code. Hooley explained how it was drawn and had conversation with Hernandez and Parcell off the mic that was inaudible. Linley asked if it was just the chain link that was seen in the photographs being replaced by proposed to be replaced by the vinyl. Parcell replied that they are willing to do that.

**Inaudible**

Linley stated you are not allowed to do that anywhere in the city. Hooley stated the wrought iron apparently was not actually in front of the house and it could be removed but homeowner agreed to maintain the wrought iron to transition into the final further back from the edge of the house. Whitmer asked applicant for aesthetics reasons if she could move the wrought iron from where it was to the front of the house. Hooley replied I believe if you were to look at the front of the house you are only going to see wrought iron from the street. Parcell showed Whitmer the drawing which she did not get with the package and they had a conversation off the microphone. Enfield asked if the chain-link fence would come up to where the wrought iron was. Hooley responded to his understanding it would transition from the wrought iron to the chain-link. Enfield asked Hooley if

the vinyl fence could start where the wrought iron was and Hooley replied yes. Whitmer asked Hooley if the fence would even come up to the front of the house and Hooley replied no and explained if you are standing at the street, you should see wrought iron and then the transition into the vinyl, as it goes around the back by the alley. Whitmer asked applicant if there were alternatives to the solid vinyl fencing and Hernandez, replied no. Whitmer asked homeowner if it was because she did not want it or because it was not available.

**Inaudible**

Translator replied for her younger sibling's safety. Whitmer asked if they played in the yard and translator replied yes they do play in the yard. Whitmer understood the concern was in the back not as much on the side. Linley said we have clarified where it starts from again. The commission focus was always from the right of way looking at the house but this was going to transition in a side line where you are not going to see it. Linley said we usually do not involved ourselves too much in the backyards and totally understood wanting security for children in busy downtown areas.

Whitmer asked for a motion to recommend approval for 23 COA 06 upon condition that only the chain-link fence is removed and replaced and the wrought iron remained. Motion made by Whitmer, seconded by Enfield; motion carried.

**B: 23-COA-07, 415 Division Street**

Parcell: Application 23-COA-07, applicant is Terry Floyd, property address is 415 Division Street. The subject property is a modular constructed ranch from 1970. The property is rated non-contributing.

Alterations:

Previous COAs for this were in 2006 where they retroactively approved removal of the original aluminum siding and replacement with vinyl siding and 03-COA-10, approved installation of a fence.

Description of proposed project: Replace the existing asphalt shingles with a pewter colored metal roof.

Staff Recommendation:

Finding of Fact:

- 1) Property is non-historic and non-contributing.
- 2) Existing roof is seriously deteriorated.
- 3) Metal roof is not typical for ranch or for modular-constructed circuit 1970 house.
- 4) Metal exposed-fastener roofing systems are not recommended.
- 5) Traditional standing-seam metal roofs can be considered in a historic district.
- 6) Owner has purchased roofing material and it's exposed faster.

Recommendation: The state division street guidelines state replacement roofing materials should be appropriate to the style of the house. Exposed-fastener metal roofing is not inappropriate

material. However, since the structure on the side is non-contributing, it should be reviewed as new construction, which would allow the use of standing-seam metal roofing systems.

Linley asked the applicant, Terry Floyd, to come to the microphone sign his name for the record and speak to the COA. Floyd explained that he knew the house was in the historical district but he went ahead and ordered the material but the work had not been done. Floyd had it delivered but when he went to get the permit he remembered that he was not able to get a permit because he was in the Historical District. Floyd had to load all the material back up when he realized that he was in the Historical District.

**Inaudible**

Whitmer asked homeowner if the material could be exchanged and Floyd replied no. Linley confirmed the reception of the oversight by email and thanked Mr. Floyd for that. Enfield asked Floyd if this was a rental property and Floyd replied yes, but he was selling it to retire. Enfield asked if homeowner would live there and Floyd responded no.

Enfield said that fasteners through the roof eventually leak or rotten the roof. Homeowner replied that he planned on cutting off the top 2 feet of it and replaced it.

**Inaudible**

Parcell asked a question to Floyd but it was inaudible. Floyd replied I thought there was only 1 layer, but I think there is a 2 layers. Deb asked a question to homeowner (inaudible). Floyd replied that according to the last time he checked you were allow to put metal roof over 2 layer shingles. Hooley said he had talk to the building commissioner to double check because he was told that the applicant may had to re-roof if there were two layer shingles.

**Inaudible**

Linley asked if they needed to go back to the building commission. Hooley replied that it would get resolve when Floyd gets his roofing permit. Hooley said the bigger question was whether or not the board would approve the material. Floyd agreed with Hooley's question.

Zimmerman asked Parcell for the staff recommendations.

Parcell said that staff recommendation first choice would be asphalt shingles because that's what was there and it was typical for a modular construction from the 1970. Parcell said that they try to keep things looking like they were even if they are not historic and when it is non-contributing. Parcell stated that they do not have the new guidelines which would allow metal roof because it looked at it as a new construction but the current guidelines said that it should be something typical for that period of construction which is asphalt but it is non-contributing. Parcell continued to say that they normally do not recommended exposed fasteners because over time fasteners are not waterproof, end up leaking if they are not installed perfectly square and gaskets are exposed to the elements due to UV degradation over time plus the profile doesn't match what they normally recommended. Parcell said when we are talking about standing seam in the historic district we are talking about a historic house and this is not. It is a little different situation. Zimmerman said that they would stay with those guidelines.

## Inaudible

Leichtman said that she would love to hear that actually.

Speaker presented himself as Steve Gruber. Gruber said he owned 3 buildings in the Historic district: 112, 116 and 128 Division Street. Gruber said he actually knew the house that this applicant bought the roofing material for. He asked the board if the applicant did not go through with it, what was going to happen to the roof and what was going to happen to the house. Gruber said we need affordable housing in this city and your ordinance; the very ordinance that created this body was at the best of the residents and it was not decided by the city.

Gruber continued to say the residents in 1980 none of whom live in the district; one is still alive, Emily Morrison Good. She does not live in the neighborhood. This ordinance that was created for the residents specifies: there is to be three annually elected representatives of this historic district to serve annually as liaisons to this body. Gruber said that the commission is operating out of compliance with the very ordinance that created their body.

Gruber said he lived across from 129 Division Street. Craig Gibson from premier Arts who committed \$160,000 dollars to that project but after meeting with Ann Linley he said to Gruber that he was not able to do the Historic ordinances. Gruber said it has been nine years since then and they would not sell it because people do not want to deal with the historic restrictions. Gruber said that in his 100 block they were much more aesthetically historic than what the applicant's pre fab house was. He said that Leichtman just walked the neighborhood and she had never been in that neighborhood.

Gruber was disturbed that nobody from this neighborhood was speaking for the applicant who bought nonrefundable building materials to preserve a roof for a little while. He came to the meeting with an invitation to see the progress on 129 Division owned by German Hernandez. He pointed out the masterful job that Mr. Hernandez was doing with recycled materials and preserving the German siding. Gruber stated since none of you live there, I commend you to go and visit him and congratulate him on helping to restore a family home. Gruber added that the property should have been occupied eleven years ago but no one wanted to deal with the Historic and Cultural Resource Commission.

Gruber said his home was 112 Division Street right behind vanilla bean and it was done after working on it for 2 years. Gruber invited everybody from the commission and Planning and Zoning department to his open house to walk the neighborhood on Tuesday, September 12 for them to see the real progress. Gruber said he would tell Kayla to send out invites. Gruber said the progress had been in spite of these regulations not because of them, the only progressive development had been by 501 C3 nonprofits that do not pay property tax or sales tax. Gruber added that they can get government grants, community grants, and family foundation grants. La Casa had its own construction team. They can say, hey, guys, we are going to stop because we got to talk about the pillars. No, commercial contractor would put up with that.

Gruber said your ordinance also says that the five members who are appointed by the mayor should be in the professions of construction, architecture not as a knows, but as experts who advised our neighborhood, because you serve at our pleasure. Gruber said that his urgent plea was that the city

needed housing. Gruber pointed out that there were other houses like the beautiful First Italian Nate house on Division Street which was rotting and nobody wanted it because they did not want to deal with the Historic ordinances and no contractor would touch that. Grubber stated it is falling in on itself and the commission wants to talk about the applicant's metal roof.

Gruber said that on 1970's he swore that there was a company with other drop in modular houses that had been there since before this ordinance and other 1970's horrible looking apartment buildings and they had to be painting their houses with historic colors, patching the roof because that's the only way to afford to live there was by doing the work themselves.

Gruber again invited Trotter and the City departments to his open house. Grubber said that he did not want to be their adversary but he loves the neighborhood. Grubber had lived there 12 years and none of the commission members did. Gruber recommended to leave the petitioner alone since the city was not able to take care of a pre-fab concrete deck behind Havilah Beardsley sculpture and an illegal multifamily apartment building behind Ruthmere. Gruber questioned the board why you are imposing on mine with a metal roof if the applicant did not have anybody on the board representing his neighborhood or investment.

Linley thanked Gruber and added to the record that Bobby Glassburn who was not present lived in the Historic neighborhood.

### **Inaudible**

Enfield stated that as an architect and as a non-historic building the proposed roof did not make a difference. Enfield stated that he does not like the screws on surface fasteners but based on the character of the house he would move if motion in order to approve the metal roof if that's an order.

Linley stated that the Historic commission often received and looked at homes with the same situation with started projects as Mr. Floyd whom already bought the materials. Linley added that the commission had been working along with Deb Parcell to get the new rules which have been ongoing for three years to get the new Indiana standards. The new rules would be tied to what a house is rated which the applicant is nonconforming and it would be measured differently to Mr. Gruber and Mr. Glassburn's properties to be fair to those people who follow the letter of the law to keep magnificent homes. Linley said that the commission often received a number of neighbors saying they invested and they did not know the rules or they had language barriers like the one earlier. Linley said that there were a couple of assumptions made before the audience which were not 100% accurate reflecting the work of the committee.

Linley asked for a motion to approve **23-COA-07 for 415 Division Street** based on the staff recommendation. Motion made by Enfield, seconded by Leichtman; motion carried.

Linley said it had been noted that they had 3 to 1 votes but it meant the COA was approve. Linley referred the applicant to Hooley for the next steps.

### **C: Downtown Elkhart Historic Building Inventory**

Linley presented the downtown Elkhart Historic Building Inventory.

Drew Wynes stated that he was a development specialist for the city of Elkhart during the summer. Wynes had the pleasure to work with 4 interns from Notre Dame Center for civic innovation. Wynes said the interns completed a historic building inventory, documenting critical information on historic buildings, downtown, and uploading their findings into ArcGIS. This information included photos, structural additions, current use, occupancy status, historical integrity and historical contribution. Wynes asked to commend the interns for their hard work and stated that they were there to present their findings and discuss their project. Wynes said that their final presentation along with 3 other intern groups would be July 26 from 5 to 7 at Pierre Moran middle school. Wynes thanked Trotter and the planning staff for their help with the project.

**(Inaudible)**

Linley stated that she was amazed and asked if the project was already completed or was an interim report. The intern responded it was already completed. Linley expressed admiration for the fast work done in a few weeks.

**(Inaudible)**

First speaker presented herself as Marisol and her team member's Kate, Duncan and Stephanie who was not present. Marisol said their project was a rich historical and cultural project that involved the ArcGIS and mapping system that involved multiple layers and documented multiple information that they had collected over the past few weeks. The project was based on the conditions of their circle buildings specifically around downtown Elkhart and a few areas further away. It had everything: the years of the buildings, the condition of the buildings and anything that had been altered or changed.

Duncan came to the mic and stated that they were tasked with going around downtown. They had 174 locations from the railroad tracks out of the town following the river over to Prairie as far up as Pottawatomie, and then just a few buildings scattered around the West side of 3rd street. Duncan stated we had to make a coding chart to establish what things meant. The red dots meant contributing and black dots meant they could not get to those properties. Duncan explained that they tried to use the same language that the commission used, contributing and noncontributing. Duncan explained that some buildings were not recognized as historical until the earliest 1973. Duncan said that he had to walk a lot and it was difficult to do 174 locations. Duncan stated that they learned a lot, met some nice people, and people wondered what their project was about. Duncan said that they added potential contributing category because they believed that there were some houses that were homogenized as Trotter would call them. It meant that it could be a modern roof, windows and siding over something that could have been original. That brought the following questions: if they removed any of that could they find a beautiful brick, original window frames or if that could go back to original, was it residential or commercial.

Duncan stated that few times they couldn't tell if the location was vacant or occupied and the hardest one to talk about was the structural additions. People kept old homes looking the same way

after additions so it was hard to tell if it was structural addition all in one go like the one on Washington Street built on the late 1800.

Katelyn took over the presentation and stated depending on the coding sheet they used the version of the interim report and they asked Dr. Danielle Wood for recommendations with the project. Katelyn said that they were not focusing as much on sidewalk but they could not tell everything just from looking on the streets. They used map property to look at bills.

Whitmer stated I might said this is an outstanding job. Whitmer said she was sad that they did not come to her office on Fourth Street. Linley said maybe next summer. Katelyn added that they are actually hoping other interns would expand on the project since they only had 8 weeks.

Linley stated that Mr. Gruber would love them to come over to their home to look at it and many other people who worked so hard from that neighborhood would love to share their information. Linley asked the internets what was the goal with all the great information gathered.

Duncan responded that they went for the homes that were not already acknowledge to bring attention. Duncan continued to say that they used the last interim report which was from 20 years ago and many homes as time went by have reached the qualification to have historical merit. Duncan said we were hoping to bring attention to those and have an asset, piece of data to look at if you wanted to see what those buildings held historically.

Linley asked if anyone in the commission had a question or comments. Linley thanked the presenters for the tremendous work done in eight weeks. Linley asked if the information was going to be access on the website or was just for internal use. Trotter responded probably both. Trotter stated that they have not worked on how the information would be published and would let Wynes work on it. Trotter encouraged everyone to attend their final presentation at Pierre Moran on Wednesday February 26 at 5'oclock. Trotter said he would be there representing the department.

Leichtman asked if they actually had photos of every stop since she was curious to know which property was on every dot. Duncan response was inaudible.

Linley asked if the presenters had questions for the board. They said no. Linley thanked the presenters and was looking forward to the full polished presentation next week.

### **Announcements:**

#### **A. NACP Virtual Summer Short Course**

Hooley read the NACP virtual summer short course was coming up on August 23rd through the 24<sup>th</sup> and they were offering 11 aia, and aicp credits to register now. Hooley said there was another course coming up on August 2nd with exterior carpentry is trades training workshop series at Saint Joe County public library of South Bend. They were offering noon and 6pm classes through the next months. Linley asked for the new commission member if you had to be in the trades to attend or was it like the old window restoration. Hooley responded that it was opened to anyone. Linley said it was for anyone with ten dollars and if you learned 3 things from a class it made your money worth it.

#### **Inaudible**

Linley stated that the classes the commission had taken before were amazing and encourage them to go.

Parcell stated that she did not know a lot about the workshop. Parcell said it was a group that formed last year called Tradeworks in South Bend. She said it is a very interesting group of people. The group included Todd, Elicia Feasel director of the South Bend HPC, homeowners that have worked on their own houses and contractors. Parcell said they met once a month and they had what is called beer and buildings. She had heard it was fun but she had never attended. She said the program was getting some traction and they were offering workshop series where people came in and got trained. Parcell said that this group also connected with La Casa on a building that they had to do a 106 review on in Goshen. Tradeworks was able to get trim work out of that job and salvage all that stuff in their warehousing which was open to the public. People could go and buy vintage trim, stairs, doors, windows or whatever. Parcell added that tradeworks group at Logansport on the fall would give a public workshop demonstration and a little bit of training. Parcell thought that would be something they will be working with the different commissions they worked with and that this maybe something the commissions might want to promote or host locally and open up to the public for people to learned to do it themselves. Linley thanked Parcell and added that the rehab safety class was one that needed to be recorded and put on the website so homeowners know before they watch HGTV rip into a wall and poison everybody.

Linley asked if there was any comments or announcements from the commission.

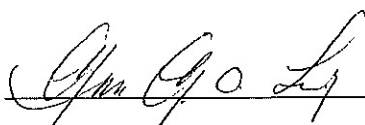
Enfield stated that he saw in the minutes that his Middlebury school project was mentioned and he would report within the next two or three weeks to submit the drawings to the state of Indiana for their approval. Enfield stated that he did not know the client's timeframe since he was out of town so much and he hardly saw him, met him or talked to him. Enfield ought the commission to know this information.

Linley asked what his plan were for the building.

Enfield responded that they have twelve apartments plan for the structure. Enfield stated that the site would be totally redesign because of parking and landscaping but the exterior would not change except for the window and interior would totally rehab. Linley stated that it would be nice to see the building in use.

**Adjournment:**

Ann Linley stated she would accept a motion to adjourn the meeting at 7:50 pm. Motion made by Whitmer, seconded by Zimmerman; motion carried.



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Ann Linley, Chair



**Elkhart Historic & Cultural Preservation Commission**

**Meeting Thursday, December 7, 2023**

**Call to Order:**

Ann Linley called to order the Elkhart Historic & Cultural Preservation Commission Meeting for Thursday, December 7, 2023 at 7:04 pm.

**Roll Call:**

Present: Raymond Enfield, JA Whitmer, Ann Linley and Bill Zimmerman; Eric Trotter and Carla Lipsey with the City of Elkhart. Bobby Glassburn (via telephone).

Absent: Phalene Leichtman and Deb Parcell

**Approval of Agenda:**

Linley asked for a motion to approve the agenda as presented. Motion made by Enfield, Seconded by Whitmer; motion carried.

**Approval of Minutes:**

N/A

**Financial Report:**

Eric Trotter presented the budget and the balance on the donation accounts. Trotter said that they had paid three invoices for 2023: the national alliance of preservation commissioners 2023 membership renewal, Indiana Landmarks commission individual memberships, and Indiana landmark's second invoice of their service contract. The beginning balance was \$8,000 and the final balance was \$320.

Trotter wanted to highlight for the commission that NAPC membership was an individual membership that allowed him to take continuing education on behalf and to support the commission's endeavors. Trotter stated that there was an option to allow all the board members to participate in the continuing credit program NAPC offered. Trotter added that since COVID they offered a number of online workshops that could help in depth many issues that the commissions faced in Elkhart. Trotter said he would get the renewal for 2024 and he would bring it up to the board. Trotter thought that if there was interest and it would be use then it would be something for the commission to consider for 2024.

Linley stated that she got her own membership the previous year because there were a couple of online conferences that were well done and they could be recorded or archived for future use in case a situation like that came up. Linley said that the timing on the conferences were a little different times during the day. Trotter agreed that classes were typically during the day. Trotter stated that he would bring it back to the commission when the invoice came. Trotter stated that they may not have enough money out of the current budget but he could take from other commissions since he was able to move money around Planning and Development services from the planning section if it was necessary.

Ann Linley said she would accept a motion to approve the financial report as presented. Motion made by Zimmerman, seconded by Enfield; motion carried.

**Hearing of Visitors:**

Linley asked if there were any visitors and asked Trotter if he would like to introduce their proxy.

Trotter said Kristen Smole was their proxy through that month. Trotter said the quorum was not enough from two to seven and she was close. Trotter said Smole was there in case they needed her. Linley thanked Smole for being there.

Linley said that Parcell was absent and she was at another meeting at Michigan City.

**Old Business:**

Trotter stated they were going to have a busy first quarter and probably 2<sup>nd</sup> quarter. Trotter stated that Mary Ann Lorentz building on East Lexington was purchased by Kil architecture of South Bend. Linley asked if it was the old copy shop. Trotter responded yes and stated that the new owners would do a full rehab and restoration of the building. Trotter said they had Indiana Landmarks information and Deb Parcell had spoken to the architect a couple times. Trotter said that the project would be coming before the commission due to some time.

Trotter stated that the property on W Franklin has sold again and they had been in touch with the new owners. The new owners asked for the list of outstanding issues with the exterior work that was not completed by previous owners and that would be coming to the board.

Trotter said 515 East Street, Wheelchair factory, was awarded with light tech credits. They would be seeking two or three different requests from the board: the first one would be the demolition, second would be the construction of sixty apartment building four story narrow very urban going straight back parallel the parking garage. Trotter gave them Deb's contact information to start the process of completing the paperwork. Trotter believed that the demolition approval would be coming to the board on Q1.

Linley asked if the board would be looking at infrastructure in the Historic District.

Trotter stated that there would be some discussion in the coming year about some infrastructure or the district which would mean that they have to take the streets up. Trotter stated that the infrastructure is over hundred years old and it was the last neighborhood with meaningful in major infrastructure work in the city. Trotter said that it would be coming. Trotter said that they would start some dialogue this year or future year on how they were going to address that because the entire neighborhood would have to be worked on.

Linley asked if anyone had any questions or concerns for Trotter. Linley added that it was nice to know that they would be needed.

Trotter said that Bobby Glassburn was trying to call into the meeting. Glassburn joined the meeting via telephone. Glassburn said that he had been in the meeting for ten minutes but his video was not working.

Linley asked since Glassburn was not able to connect via video how that would affect the board. Trotter replied that Glassburn was able to participate but could not vote.

Zimmerman asked Trotter if the infrastructure on brick street in the Historic District that was breaking on 2<sup>nd</sup> Street which ran from Prairie Street and dead ended in Dr. Martin Luther King Drive had been addressed. Trotter replied the street was part of the most recent neighborhood planning process for the Benham West neighborhood. Trotter guess was yes that the infrastructure street was part of that but he had not seen the plan yet. Trotter stated that there would be some discussion on how to deal with that since he knew that Zimmerman had some concerns about it. Zimmerman stated that it was getting pretty rough and really bad to drive. Trotter said that it was noted and he would get to the plan at the end of the year to report back to the board in January.

**New Business:**

Linley said that the 2024 Meeting Calendar was the Commission's typical schedule, with the meetings on the third Thursday of the month and COA file date on the first Thursday of the month.

Linley asked if anyone had a question or concern about the schedule and asked for a motion to approve the 2024 calendar as presented. Motion made by Whitmer, seconded by Enfield; motion carried.

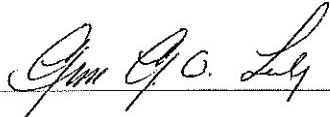
**Announcements:**

Trotter stated that the city and the department of drone services were in the process of updating the zoning ordinance to UDO which would incorporate the current zoning, subdivision and the preservation ordinances. Trotter said the consultant was in the process of doing a draft to bring to the board and it could be presented either on a regular Historic commission meeting or a special one. Trotter said that they would be discussing the standards and how to put together the preservation and incorporate it into the UDO. Trotter said that they were thinking that rather than being a separate section that's going to be an overlay district with a separate set of standards that would then hyperlink to what the workbook that Indiana Landmarks had put together. Trotter added that they would be looking at more graphical and language improvements for the people who would need help for reference and eventually a Spanish translated version of the ordinance.

Linley asked if the single sites would become an overlay. Trotter replied probably it would not change because they each have their own individual ordinances associated with them. Trotter said that their ordinance would then incorporate them but that would have to reference the individual ordinances that each one of those are approved by. Trotter stated that they have not worked all that out and he was planning to go down to Indianapolis a couple of days to work there to move things forward. Trotter stated that Parcell presented to the plan commission on the uses and some of the development standards to inform the time frame to cross the finish line. Trotter wanted to keep the board informed that during Q1 they would have a special meeting or would be asked to participate virtually.

**Adjournment:**

Ann Linley states she would accept a motion to adjourn the meeting at 7:21 pm. Motion made by Enfield, seconded by Whitmer; motion carried.

A handwritten signature in cursive script that reads "Ann G.O. Linley". The signature is written in black ink and is positioned above a horizontal line.

Ann Linley, Chair

**Elkhart Historic & Cultural Preservation Commission**

**Meeting Thursday, February 15, 2024**

**Call to Order:**

Ann Linley called to order the Elkhart Historic & Cultural Preservation Commission Meeting for Thursday, February 15, 2024 at 7:04 pm.

**Roll Call:**

Present: Bobby Glassburn, JA Whitmer, Ann Linley, and Bill Zimmerman. Eric Trotter with the City of Elkhart Planning and Development and Deb Parcell with Indiana Landmarks.

Absent: Raymond Enfield

**Approval of Agenda:**

Linley asked for a motion to approve two amendments to the agenda in order to add item 2.5 Election of Officers and Contract renewal for Deb Parcell with Indiana Landmarks as item B under New Business. Motion made by JA Whitmer, seconded by Bobby Glassburn; motion carried.

Ann Linley asked for a motion to approve the agenda as amended. Motion made by Zimmerman, seconded by Whitmer; motion carried.

**Election of Officers:**

Eric Trotter stated as a reviewed the election would be a Chair person, Vice Chair person, and the Treasurer.

Linley opened nominations for the Chair. JA Whitmer nominated Ann Linley, seconded by Zimmerman; Ann Linley is Chair for the Historic Commission for 2024.

Trotter said that Zimmerman was Vice Chair previous year. Glassburn nominated Bill Zimmerman, seconded by Whitmer; Bill Zimmerman is Vice Chair for the Historic Commission for 2024.

Linley said that Whitmer was current treasurer. Zimmerman nominated JA Whitmer for Treasurer, seconded by Glassburn; JA Whitmer is Treasurer for the Historic Commission for 2024.

**Approval of Minutes:**

Linley gave everyone a minute to look over the minutes from May 18, 2023 to see if any corrections needed to be made.

Linley said she would accept a motion to approve the minutes as presented. Motion made by Whitmer, seconded by Zimmerman; motion carried. The May 18, 2023 minutes are approved.

**Financial Report:**

Trotter stated that the starting balance was \$8,000 mainly to cover the contract for Indiana Landmarks and incidental expenses incurred by the commission. Trotter said that he did not recall the balance but the Historic donation account would roll over from 2023 to 2024.

Linley said that the financial report does not need to be approved because there is nothing to officially approve.

**Hearing of Visitors:**

N/A

**Old Business:**

N/A

**New Business:**

**A: 24-COA-01, 515 East Street**

Deb Parcell: Application 24-COA-01 for property address 515 East Street. The subject property is a contributing rated building, 20<sup>th</sup> century functional build around 1900. Parcell said that she got an interesting History fact from the Indiana Historic Preservation Review Board that originally the building was a chewing gum factory.

Description of the proposed project: Demolition

Parcell saw the building and hoped that there was some way to reuse the building.

Applicable guidelines: Consider demolition only when fire, winds, flooding, or other natural disasters cause extensive damage to a building and its structural framework, and only if the building represents a threat to the health and safety of the public.

Parcell stated that this building does not fall into those demolition guidelines but it would be extremely difficult and expensive to rehab it because of the deterioration of the additions made over the years. Parcell stated that she recommended the same as the state of Indiana because of their funding, it had to be reviewed at the state level.

Staff Recommendation: Proposed demolition would provide space for construction of a new four-story 60-unit affordable housing complex in this location, also extending into the vacant parcel to the west. Two commercial spaces will be located on the ground floor. A surface parking lot will be constructed at the west side of the development, and new sidewalk and on-street parking will be added along Hug Street. The current occupant (Wheel Chair Help) will be relocating. Adaptive reuse of the existing building was considered, but was ultimately determined not feasible due to the substantial cost needed for rehabilitation and lack of space within the existing building as compared with that needed for the development.

An on-site inspection by staff found the building appears to be in condition where rehabilitation would be feasible; however, the multiple expansions over time would make the process very challenging. Although the proposed structure is greater in height than those adjacent, the ground drops off to the north of Division Street, allowing a four-story building to be at a compatible height with adjacent structures.

The Division of Historic Preservation and Archaeology (DHPA) also noted in their review that both sides of East Street between Division Street and the Elkhart River were historically occupied by manufacturing facilities, and thus it has always retained a different character than the residential neighborhood to the south.

Staff concurs with the DHPA recommendation that, if a certificate of approval is granted, the certificate have the following conditions:

- 1) Documentation of the building at 515 East Street in accordance with the "DHPA Minimum Architectural Documentation Standards" to be completed by Indiana Housing and Community Development Authority and approved by DHPA before demolition commences.
- 2) One interpretive sign discussing the history of manufacturing on the subject property and within the surrounding neighborhood, developed by Indiana Housing and Community Development Authority, designed by qualified historic preservation professionals, and approved by DHPA prior to installation.
- 3) An archaeological survey of the proposed project area by a qualified professional archaeologist be performed.

Linley asked if there was anyone from 515 East LLC to speak to the project.

Meghann Thannikkunnath introduced herself from RealAmerican companies whom are the developers and intend to be the long term owners of the property. Thannikkunnath stated that first she wanted to share a little bit about them. Thannikkunnath stated that they are primarily developers that comes in and builds smaller workforce housing. In this case they were never planning in coming in and demoing something and building a high rise or of large stature. Thannikkunnath stated that in this case unfortunately, despite their experience with Historic preservation where they have done acquisition rehabilitation, worked with historic tax credit, and are familiar with the process of rehab Historic structures and weighing that the tremendous need of housing in the city of Elkhart they have decided that demolition was the most feasible option in order to move forward.

Thannikkunnath said that Wall Street Journal ranked Elkhart as the number three emerging housing market in the US last summer and it has consistently maintained a top five position in the emerging housing markets index report. However, behind this growth is increased cost of living and pent up demand for housing. Levon Johnson, president of the greater Elkhart Chamber said "Our greatest restriction point is not just people it's a place for them to live." 515 East is a significant step forward alleviating this problem and providing much needed workforce housing. Thannikkunnath said that is the thriving urban core.

Thannikkunnath said that looking at the pent up demand and the need for housing in the city that is so beautifully growing and thriving, they did have to outweigh that with how much of the building could possibly be saved if anything. Their construction and preconstruction teams, vice-president of construction and development, and their director of preconstruction toured the building and determined structurally, as you heard in Deb's report, that it was just not going to be feasible to build the amount of housing needed on the site. Thannikkunnath continued to say for that reason they were moving forward at the commission approval if granted. Thannikkunnath said

that they already received proposals from qualified archaeologists who have already visited the site and have sent them proposals for the process of creating the interpretive signage as well as doing an archaeological phase 1A as mentioned in the state report requirements. Thannikkunnath said that there is a plan for a mural on the back of the building to add possible references to the historic use of the site, the chewing gum factory, the planning process that they had there or whatever else they could find in those sandbar maps that were continuously combing through for inspiration.

Thannikkunnath said that she was happy to answer any questions that the board may have specifically to the project.

Zimmerman asked could you define what you are terming as affordable housing. Thannikkunnath responded yes, it will be housing that is income based and in this particular project we have housing that is both income based and market rate. Thannikkunnath stated that the pend of demand in the areas demanding for a mix of income levels and they utilize the low income housing tax credit program in order to provide that valuable workforce housing at a variety of levels.

Zimmerman asked if there would be elevators in the facility. Thannikkunnath responded yes. Zimmerman asked if they are rate and standard. Thannikkunnath said that she believed that just standard. Zimmerman asked how many elevators. Thannikkunnath said that they have not started their official design on the construction or on the architectural side yet that is contingent upon this approval because they wanted to make sure they were adhering to the architectural standards of the area and she believed that the current plan is for two elevators. Thannikkunnath said that she would get that information for Zimmerman.

Zimmerman asked how many parking spaces will be attached to that. Thannikkunnath responded we actually received a parking reduction variance from the city because it is so tight. Thannikkunnath continued as currently plan they have the allotted number accessible spaces right next to the building it will be on the west side as where is planned currently and they got an additional fourteen additional non accessible spaces in addition to the at least four spaces and along with the parking variance received by the city they were giving permission to use the adjacent parking garage next to the site.

Whitmer asked Thannikkunnath to remind her how many apartments there would be. Thannikkunnath responded sixty. Whitmer stated not much parking. Whitmer asked a question that was inaudible. Whitmer said that there was a picture in the packet that was eyesore in the Historic district. It reminded her of the song "Ticky-tacky little houses on the hillside." Whitmer said that is not a reflection of what our area is and she asked Thannikkunnath if there would be some flexibility on the architectural. Thannikkunnath responded yes, absolutely and she hesitated to bring any renderings because she knew that. Thannikkunnath stated that to submit the funding application they needed to submit rendering and those were preliminary rendering which made sense for the site and concept.

Thannikkunnath said that in their solicitation for proposals for architectural designers they specifically said they wanted someone who was experienced working in a historic district and who was open to working with local Historic preservation voices in the area and those plans were very



preliminary rendering and was absolutely up for discussion. Whitmer was glad to hear that because that is not what she wants for the Historic district.

Whitmer asked Trotter if the applicant needed to come back to the board to present the architectural design. Trotter responded yes and he explained that this was a two-step process, first step was the demolition request and then the applicant needed to come back as they developed and finalize their plans and have a second request before the commission.

Whitmer said that the state had five requirements but Parcell only had three. Whitmer asked Parcell if the other two were not necessary. Parcell responded that those were necessary.

Glassburn: If any archaeological artifacts or human remains are uncovered during construction, demolition, or earth moving activities, the discovery shall be reported to the Department of Natural Resources within two business days.

Parcell said that the other requirement is the certificate of approval is valid for two years but she assumed that it would start before the expiration date. Whitmer said that you would assume if the state found something they will report it and asked if they should have that concern. Parcell responded that the state will make sure that happens and she thinks that would not be a concern for the board. Thannikkunnath mentioned that is also in the contracts with the proposal received from the archeological team. Whitmer commented that she was sorry to see this building go because she liked the look of it.

### **Inaudible**

Thannikkunnath said that they will do justice to the building.

Glassburn asked Thannikkunnath if the Indiana preservation board approved it back in October when they heard it or they are waiting on the Historic commission approval prior to their action. Thannikkunnath responded that they heard it on January 24 and approved it. Linley added that it was approved with the conditions that Parcell listed.

Linley gave everyone a couple more minutes to look through the paperwork.

Glassburn asked Thannikkunnath if the board approved it did they have a timeline to start the project. Thannikkunnath responded that if they got approval for the demolition they have planned to meet with the architects in two weeks to begin the design process and they are still working with the city to when the demo would actually take place.

Whitmer asked is there going to be a knock it down or is there going to be any salvage because there's interesting stuff in the manufacturing facility or nothing is worth in there. Thannikkunnath said that was part of their recon. Glassburn said that he was in the building one time and it was like a pack rat full of random stuff, Zimmerman seconded that. Glassburn asked if the current tenant have relocated or started the process. Thannikkunnath said that they have started but is to be announce since she does not know. Glassburn asked if the demolition was going to take place after designs are approved for the new structure or the demolition would happen while renderings and plans are being made for the new space. Thannikkunnath responded that she would defer to Trotter because they are open to make sure they are in compliance. Trotter said that this being a new project and a new info project he assured the board that they would be working with staff with the

city and Indiana Landmarks to make sure that there's something that will be appropriate that the sport will approve at the end. Glassburn said that he was just curious on the timeline of it.

Linley asked for a motion to approve **24-COA-01 515 East Street** to approve the demolition based on the caveats by the Indiana Departments. Motion made by Zimmerman, seconded by Whitmer; motion carried.

**B: Deb Parcel and Indiana Landmarks Contract**

Trotter said the contract is for \$7,250 dollars plus \$35 per member of the commission and they will be break down in two installment payments of \$3,665 each. Linley asked the members if they have any questions.

Linley asked for a motion to approve the contract for services as proposed. Motion made by Whitmer, seconded by Zimmerman; motion carried.

**Announcements:**

**A: Neighborhood update/Progress Review/ Nominations**

Trotter made the board aware that they are in the process of updating the zoning ordinance to a unified development ordinance and as part of that was incorporating the preservation along with the zoning and subdivision. Trotter hoped to have a date from the consultant to mark their calendars and he apologized for not having a date. Trotter said that he would anticipate some working session to talk through the updates, ordinance and have some feedback to move forward into this new era of redevelopment in the area of the city. Trotter said that he will emailing the board members some tentative dates for meeting.

**Adjournment:**

Linley said that she would accept a motion to adjourn the meeting at 7:36 pm. Motion made Whitmer, seconded by Glassburn; motion carried.

  
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Ann Linley, Chair

**MINUTES**

February 27 2024 3:00 pm – City Annex Building Conference Room

**Members present:** James Gardner, Therese Geise, Bill Lavery, Arvis Dawson, Jeff Whisler, and Kristen Smole

**Also present:** Drew Wynes, Sherry Weber, and Ambrose Kamyra

This meeting was held in-person and via Webex. Mr. Garner called the meeting to order at 3:01 p.m.

**Approval of Minutes:**

Mr. Gardner asked for a motion to approve the Regular Meeting Minutes for January 16, 2024. It was moved by Ms. Smole and seconded by Ms. Geise. Voice vote, all in favor. Minutes approved.

**Election of Officers**

Ms. Smole made a motion to elect James Gardner as President. Seconded by Mr. Lavery. Mr. Gardner accepted this position. Voice vote carried with all in favor. Motion approved.

Mr. Gardner made a motion to elect Therese Geise as Vice-President. Seconded by Ms. Smole. Ms. Geise accepted this position. Voice vote carried with all in favor. Motion approved.

Ms. Smole made a motion to elect Bill Lavery as Treasurer. Seconded by Ms. Geise. Mr. Lavery accepted this position. Voice vote carried with all in favor. Motion approved.

**New Business**

Ms. Smole asked if we have heard anything about from Pennsylvania regarding the fraudulent check. We have not. Ms. Smole is going to reach out to the detective in Pennsylvania for an update

**Financials:**

Members were given a copy on the January 31, 2024 INOVA Bank Statement (\$241,490.22). Mr. Lavery made a motion to approve the financial statement. Seconded by Ms. Smole. Voice vote, all in favor. Motion approved.

**Other Business:**

Drew Wynes provided the Board with a handout regarding the businesses receiving the investment deduction (EX-@) property tax incentive. The Board asked questions regarding the EZ-2, the 501C3 and banking. Drew is looking into these things.

ELKHART URBAN



ENTERPRISE ZONE

MANAGED BY ELKHART URBAN ENTERPRISE ASSOCIATION

**Old Business**

- a) The Board discussed updates from the February 6 subcommittee meeting.
- b) The Board reviewed EUEA organizational pivot and plans moving forward. The Board asked for more information regarding building preservation and the Community Foundation.

**Adjournment:**

Mr. Gardner asked for a motion made to adjourn the meeting. Moved by Ms. Geise and seconded by Ms. Smole. Voice vote, all in favor. Meeting adjourned at 4:15 p.m.

**Next Meeting:**

Next Board meeting will be held on Monday, 3/18/2024 at 3:00 p.m. in the Annex Conference Room.

  
\_\_\_\_\_  
Jim Gardner, President

LERNER THEATRE BOARD  
Wednesday, February 14, 2024

President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, February 14, 2024. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Jamie Arce, Diana Lawson, Carrie Berghoff, Ashley Martin and Dina Harris attended in-person. Dallas Bergl was absent.

1. AGENDA

On motion by Dina Harris, seconded by Diana Lawson and carried 6-0, the agenda was approved as presented.

2. MINUTES: Regular Meeting January 10, 2024

On motion by Ashley Martin, seconded by Dina Harris and carried 6-0, the Board approved the minutes from January 10, 2024.

3. TREASURER'S REPORT

Financials December 31, 2023

Michelle Adams of Kruggel, Lawton and Co. attended the meeting on WebEx. The December 31, 2023 financial report was submitted to the Board for review. Total operational expenses of \$1,726,616 were covered by a City contribution of \$956,638 (55%) and a Lerner contribution of \$769,978 (45%). This compared with 2022 City's contribution of 33% and the Lerner's contribution of 67%. The net income from Theatre operations only (shown as Gross Profit) at the end of the period was \$678,113 which was a decrease of (\$262,910) from 2022. The YTD net loss for all Lerner operations (including City expenses) at the end of the period was (\$6,638) which was a decrease of \$984,368 from the net income on last year's statement of \$977,730. On budgeted City Operational Expenses alone we were under-budget by \$559,631 year to date. On motion by Dina Harris, seconded by Ashley Martin and carried 6-0, the Financials from December 31, 2023 were approved.

Claims

On motion by Jamie Arce, seconded by Diana Lawson and carried 6-0, the Board approved the claims and allowance docket totaling \$118,949.51 as listed on the register consisting of 5 pages, prepared on February 12, 2024 at 2:51 p.m.

4. CRYSTAL BALLROOM CATERING

Kurt Janowsky attended the meeting on WebEx. He said January was a very good month for the Ballroom. The year is finished strong with \$1,006,737 in Total Commission Sales, and was a very good year, the second best year in the Ballroom. For the first time he could remember there were no events in the theater in January.

5. GENERAL MANAGER'S REPORT

The General Managers report has been inserted in the minutes as presented.

**GENERAL MANAGER REPORT PREPARED BY: MICHELLE FRANK**

Activity (February-April)	As % of 90 days	
<b>41 Events</b>	46%	<b>Activity in theatre</b>
<b>21 Ticketed Events</b>	23%	<b>Ticketed events</b>
8 Non-Ticketed Events	9%	Non-Ticketed events
<b>12 Rehearsal Dates</b>	13%	<b>Rehearsal Space</b>

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Compare to 2023 Board Report Ticketed Events: 12

Compare to 2023 Board Report Non-Ticketed Events +Rehearsals: 26

- January was light with events, as is customary. It was a blessing to be light with events, so it gave us time to get up to speed with Ticketmaster and allow our part-time staff better training time under the system. The team at Ticketmaster has been tremendous with helping our full-time staff navigate the system as well, including being on site for our first national tour to help our volunteers with scanners, assist Box Office staff and help Kruggel Lawton, Sarah Macer and myself with the settlement process.
- Under new business for this month, there is one policy change request for the LGB centered around safety and security. This policy request solidifying the standard number of ushers, event security and armed police per local or concert event. It also is establishing a weapon ban for promoters and/or events that require the venue to adhere to a no weapons policy for that event. After vetting other city and county owned facilities in the state of Indiana, the proposed policy change is what I am recommending to ensure that The Lerner meet the requests of any event organizer renting the facility that is requesting no weapons at their event, while also ensuring that the building itself as a city-owned venue, does not take an overall venue policy that would eliminate all weapons in the facility. This recommendation would allow the renter of an event to request via contract and designation form that they would like their event to eliminate weapons and The Lerner, as the rental facility, would ensure that their wishes be carried out.
- In the conversation centered around safety and security, I have been working on facilitating a community-wide safety and security preparedness seminar with Mark Herrera, Director of Safety and Security for the International Association of Venue Managers. This Venue and Event Safety & Security Training will be taking place at The Lerner Theatre on April 9<sup>th</sup>. We will be extending invitations to all City Departments, community event organizers, Downtown Merchants Association, our building groups, etc. This training will be focusing on situational awareness/mitigating risk through guest services, de-escalation training for frontline teams, active threat/active shooter preparedness and best practices for building your security culture. The goal of this training is to better equip our community and event organizers/facilitators in adopting policies for their events or organizations that ensure that our community is properly equipped and trained should an emergency arise. We are looking forward to this and hope that you'll join us! Invitations will be going out within the next few weeks.

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**DIRECTOR OF EVENTS PREPARED BY: SARAH MACER**

**Accomplished in January:**

- Our usual calendars are up to date, so the team is on the same page: Google Calendar, Show Manager, and the Lerner Show Folders. I've also updated the Facility Occupancy numbers so other city departments are aware of what's going on in the building.
- Facilitated shows and worked with promoters on getting details in place for successful events in the building next month.
- I've been working with TM and Michelle to figure out what reports are needed for closings. I'm attempting to get details in place in Show Manager as we get ready to dive into shows in February!
- Ticketmaster is in place and we're moving right along. Tristin, Brittany, and Holly have been doing a great job working on show builds and making sure everything is on our selling platforms and communicated to our patrons with Jenna and, again, Holly's help.

**Goals for February:**

**KultureCity!**

We have hit 50% trained! I've reached out KultureCity for our next steps and can't wait to get working on our story and receiving our products. Feedback was amazing during our part-time and volunteer training with a lot of great questions and excitement for the partnership. I can't wait to have this available for our patrons and our community and hope to have it in place by the end of the month.

**Ticketmaster and Show Closings:**

Now that we're getting ready to start having shows again, Rachel, Michelle and I will be working with TM and our accountants to begin closing shows according to internal controls with the City based on the issued contracts and agreements. We've worked with TM and have some reports ready to go and are preparing for the first few shows in the building. We'll have TM staff available via Zoom/phone calls for the Symphony on the 4<sup>th</sup> and they will be in the building on the 10<sup>th</sup> for Colin and Brad. We're so excited for this part of the transition!

**Volunteer Program – Prep for Banquet and upcoming members (including working on 100 years):**

I want to start working on getting things in place for the Annual Banquet since we'll have a big anniversary coming up towards the end of the year and want to include that amazing milestone with this group. I've had many Volunteers (and part time staff) asking how they can be involved and I would love to include the Peer Committee to get their opinions and make sure they feel included while also working through the program details. If we need changes to be made I would love to start implementing those, but I'm so proud of where the program is headed.

**OPERATIONS MANAGER**

PREPARED BY: WAYNE NEFF

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Overview:

For January had slower event month so was able to get many repairs done that would have been hard to do during very busy months. We lost one part time service person but added another the next day. We still need to add another.

**Accomplished in January:**

- Deep cleaning of carpet in crystal ball room
- Touch up painting in crystal ball room on all wall
- fire extinguisher inspection and retag for the year
- repair Premier Arts entry door heater
- started emergency lighting inspection
- painted and repaired walls in many parts of the building from minor damage from normal use
- started cleaning the brass in many parts of the building

**Upcoming Tasks:**

- reinstalling the lighting for the front rows of seats in the theater
- Hiring of new service coordinator
- Hiring of new Facilities manager
- completion of Emergency lighting

**TECHNICAL AND FACILITIES DIRECTOR**

PREPARED BY: DEEN TUGGLE

Overview:

Captains log, January 30<sup>th</sup>, 2024. It's January, the longest month of the year. With no scheduled events, it has been nice to have some much needed down-time to get some maintenance work completed. We had the seating portion of the flex space project completed and the first 5 rows are now on removable bases. I will be working on updating the seat tag availability so that the newly added armrests are reflected and can be made available for donation. We are currently underway with the re-roping of the fly rail on stage and the stage rigging inspection. Early in January we had the completion of the loop repairs done so that the entire theatre is now functioning properly. We were also able to get some much-needed routine maintenance on the tech and facilities side completed. We are also in the midst of hiring for our facilities and services departments, anxiously awaiting to once again be fully staffed.

**Accomplished in January:**

- Fly rail re-roping.
- Loop repairs completed.
- Routine maintenance.

**Upcoming tasks:**

- The return of events!
- Testing of the flex space changeover process.



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- Continuation of routine maintenance.

**COMMUNICATIONS & MARKETING COORDINATOR PREPARED BY: JENNA BROUILLETTE**

The transition to Ticketmaster has been a fun challenge to be a part of. As we've been learning more about the system and all its details, I know that it will be a fantastic tool from the marketing side and can't wait to fully utilize its services. In December, we focused on getting Account Manager up and running. Account Manager is the dedicated platform for purchasing and accessing tickets digitally. It will also be a great program for interacting with patrons and donors in the future. Throughout January, I specifically furthered my education in Ticketmaster's TM1 Engagement tool, which will be our new email service and communication platform. The more we know going into the tool, the better we'll be able to utilize it.

January did not have any shows, but I was still plenty busy catching up on furthering the beginning steps of idea-gathering for the 100<sup>th</sup> anniversary and collection of historical documents within the Lerner building. Stephanie Krol, SKPR and I met with the Elkhart County Historical Society toward the end of January to explore possible partnerships and connections that The Lerner could make there. It has been eye-opening to view so many primary sources of information about The Lerner, and a great experience to delve further into our history.

Snapshot of key social media metrics across all current platforms:

	November 2023	December 2023	January 2024	1-Month Change
Total Audience	36,165	36,238	36,428	0.5% Increase
Total Impressions	931,074	360,200	730,457	102.8% Increase
Total Engagement	43,341	21,949	25,365	16.8% Increase

**Done in January**

- Continued training Holly, our new media specialist, on her role at The Lerner and the details of her position.
- Facilitated the customization of The Lerner Theatre Account Manager website.
- Met with the Elkhart County Historical Society about 100 year opportunities and ideas for local involvement.

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### **Goals for February**

- Continue the transition to Ticketmaster and learning how to implement marketing tools that will help The Lerner, our promoters, and our customers.
- Finalize information for the creation of The Lerner's Promoter Guide – an informational document that can be sent to promoters with booking details and facility information.
- Continue work and Finalize the Lerner's "Year in Review," "Community Update," and mailing information for the 2023 year to be sent in March.
- Begin work on the KultureCity story and PR.

### **MEDIA SPECIALIST**

PREPARED BY: HOLLY COWAN

The month of January has been slow with shows, but has been an excellent time to define my new role. I've been spending the majority of this month building new show graphics for upcoming performers. One set I've been excited about is the Silent Film Series as this is something we design ourselves and I have given the series a new design overhaul.

I've also taken the time to learn the process of building a show from start to finish. I've been working with Tristin and Brittany to see what questions are asked of the promoters and then going through the steps to build the show within our new Ticketmaster platform. I've been feeling much more confident with this process and I'm understanding the flow of the show build to marketing process much better. By doing this I was also able to create a new Show Build Form that we can use with the promoters and have helped with the creation of an SOP for Ticketmaster show builds.

In the upcoming month, I'm excited to start working the shows that we have and see the routine with national tours. I think this will be helpful as I help out with floor management.

### **Accomplishments in January**

- Created logo ideas to celebrate 100 Years of The Lerner Theatre
- Created a new Show Build Form to send to promoters for show building
- Created several graphics for upcoming shows including dressing room graphics, lobby graphics, and graphics for both print and social channels – Very excited about the new graphics for our Silent Film Series
- In the process of creating a Restaurant Guide for our promoters for local establishments
- Helped Tristin and Brittany create an SOP for Ticketmaster builds

### **Upcoming Goals for February**

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- Kulture City training – Gather information/create graphics for website and social media release – **ONGOING**
- Create 2023 Year in Review document
- Create a Promoter Guide for The Lerner
- Working with local printers to create badges for crew and some lettering on windows for the building – in the process of obtaining quotes on these jobs
- Create Volunteer Newsletter template

**Addressing Conflict of Interest – EyeDart Creative Studio:**

Here is EyeDart Creative Studio statement about steps in agreement to take if there is notice a conflict of interest.

Neither Eyedart nor Mayor Leichty holds an interest in interfering with or complicating political decisions in the city of Elkhart. We fully believe that there are plenty of resources and room for all parties to grow and help each other. While we don't believe this will be an issue and vow to be good neighbors, here is our plan in the case of a conflict of interest:

In the event of a conflict of interest, Eyedart agrees to adhere to a transparent and ethical decision-making process by following these key steps:

1. Acknowledge the Conflict: Recognize and openly acknowledge the existence of the conflict of interest.
2. Disclose Relevant Information: Provide full and accurate disclosure of all relevant details related to the conflict to the appropriate parties involved.
3. Seek Guidance: Consult with both teams and/or relevant stakeholders to obtain guidance on managing or resolving the conflict.
4. Recuse Eyedart From Services: Consider removing the Eyedart team from any decision-making processes or activities where the conflict may compromise impartiality or fairness.
5. Establish Mitigation Measures: Implement measures to mitigate the conflict, such as creating a firewall, recusing from specific decisions, or involving neutral third parties.
6. Document Actions Taken: Maintain thorough documentation of the steps taken to address the conflict, demonstrating transparency and accountability.
7. Periodic Review: Regularly review and reassess the conflict of interest situation to ensure that mitigation measures remain effective and appropriate.
8. Educate Stakeholders: Promote awareness and understanding of conflict of

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interest policies among all relevant stakeholders to foster a culture of ethical behavior.

By adhering to these steps, individuals can navigate conflicts of interest with integrity and promote a workplace environment that values transparency and ethical decision-making.

**BOX OFFICE MANAGER PREPARED BY: TRISTIN TUBBS**

- Box Office Manager Accomplishments for January 2024
- Helped to train all Part-Time Box Office Team Members on TicketMaster processes - This is still an ongoing process, especially for those who do not work weekly
- Created several SOPs that pertain to TicketMaster and will help the Box Office Assistant while I am away on Maternity Leave
- Effectively navigated all possible problems/issues with acquiring a new ticketing platform - This is still an ongoing process as we explore more aspects of TicketMaster, Account Manager, HOST, and TM1
- Successfully navigated Bluefin - we are able to take credit card payments!

**Box Office Assistant Accomplishment for January 2024**

- Learned how to pull the correct reports for Box Office Audits
- Processed all Premier Arts Season Subscriptions
- Successfully learned and created new Event/Show Builds

**Box Office Manager Goals for February 2024**

- Finish SOPs before Maternity Leave! (Due March 3rd)

**Box Office Assistant Goals for February 2024**

- Finish learning Box Office Audits - online sales
- Finish Archtics/TicketMaster training with Box Office Staff

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Date	Time	Event Name	On Sale Date	Sold	Net Revenue	Hist. Fee	Total Revenue
1/6/2024	7:30 PM	Magic of Motown (RESCHEDULED TO 2/17/2024)	11/9/2023	259	\$16,159.00	\$777.00	\$16,936.00
2/4/2024	4:00 PM	Elkhart County Symphony - Operatic Reveries	7/21/2023	344	\$2,959.00	\$1,032.00	\$3,991.00
2/10/2024	7:30 PM	Colin Mochrie & Brad Sherwood: Asking for Trouble	9/21/2023	271	\$12,861.00	\$813.00	\$13,674.00
2/11/2024	1:00 PM	Aurinko Ballet Valentine Ballet and Repertory	9/15/2023	68	\$1,102.90	\$204.00	\$1,306.90
2/11/2024	11:00 AM	Valentine Tea Party	9/15/2023	31	\$1,472.00	\$93.00	\$1,565.00
2/23/2024	7:00 PM	Rodney Carrington: The Greatest Tits Tour	10/20/2023	313	\$19,789.50	\$939.00	\$20,728.50
3/2/2024	8:00 PM	SCOTT BRADLEE'S POSTMODERN JUKEBOX - THE '10' TOUR	9/28/2023	220	\$11,852.00	\$660.00	\$12,512.00
3/8/2024	7:30 PM	The Magic of Bill Blagg Live!	1/18/2024	134	\$5,886.00	\$402.00	\$6,288.00
3/15/2024	7:30 PM	Premier Arts Friday Season Subscription Package (5 Shows)	1/1/2024	154	\$20,873.00	\$462.00	\$21,335.00
3/15/2024	7:30 PM	Premier Arts All-Youth Season Subscription Package (3 Shows)	1/1/2024	24	\$1,023.00	\$72.00	\$1,095.00
3/15/2024	7:30 PM	Premier Arts Saturday Season Subscription Package (5 Shows)	1/1/2024	109	\$12,438.00	\$327.00	\$12,765.00
3/15/2024	7:30 PM	Premier Arts FSunday Season Subscription Package (5 Shows)	1/1/2024	136	\$15,597.00	\$408.00	\$16,005.00
3/15/2024	7:30 PM	Premier Arts: Peter Pan	1/1/2024	12	\$247.00	\$36.00	\$283.00
3/16/2024	2:00 PM	Premier Arts: Peter Pan All-Youth Performance	1/1/2024	9	\$187.00	\$27.00	\$214.00
3/16/2024	7:30 PM	Premier Arts: Peter Pan	1/1/2024	8	\$168.00	\$24.00	\$192.00
3/17/2024	2:00 PM	Premier Arts: Peter Pan	1/1/2024	18	\$372.00	\$54.00	\$426.00
3/24/2024	4:00 PM	Elkhart County Symphony - Symphonic Horizons	7/21/2023	221	\$1,977.00	\$663.00	\$2,640.00
4/2/2024	7:30 PM	Croce Plays Croce	1/26/2024	77	\$5,297.50	\$231.00	\$5,528.50
4/6/2024	7:30 PM	KANSAS: 50th Anniversary Tour - Another Fork in the Road	9/12/2023	111	\$10,175.00	\$333.00	\$10,508.00
4/14/2024	7:00 PM	ZACH WILLIAMS A HUNDRED HIGHWAYS TOUR	11/2/2023	197	\$13,166.30	\$591.00	\$13,757.30
4/26/2024	8:00 PM	TUSK: The World's #1 Tribute to Fleetwood Mac	12/8/2023	73	\$2,934.00	\$219.00	\$3,153.00
5/3/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	19	\$395.00	\$57.00	\$452.00
5/4/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	8	\$168.00	\$24.00	\$192.00
5/6/2024	2:00 PM	Premier Arts: School of Rock	1/1/2024	11	\$224.00	\$33.00	\$257.00
5/12/2024	7:00 PM	SAXON & URIAH HEEP - HELL, FIRE, AND CHAOS	1/10/2024	195	\$13,818.50	\$585.00	\$14,403.50
5/19/2024	4:00 PM	Elkhart County Symphony - Fiesta Sinfonica	7/21/2023	228	\$2,061.00	\$684.00	\$2,745.00
5/30/2024	7:00 PM	Brad Williams Tour '24	11/16/2023	83	\$3,209.50	\$249.00	\$3,458.50
6/8/2024	10:00 AM	Conservatory of Dance Annual School Concert	9/15/2023	27	\$414.10	\$81.00	\$495.10
6/12/2024	7:00 PM	Aaron Lewis the American Patriot Tour	1/25/2024	908	\$64,066.00	\$2,724.00	\$66,790.00
7/19/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	19	\$395.00	\$57.00	\$452.00
7/20/2024	2:00 PM	Premier Arts: Oklahoma! All-Youth Performance	1/1/2024	9	\$192.00	\$27.00	\$219.00
7/20/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	8	\$168.00	\$24.00	\$192.00
7/21/2024	2:00 PM	Premier Arts: Oklahoma!	1/1/2024	11	\$224.00	\$33.00	\$257.00
10/18/2024	7:30 PM	Premier Arts: Dreamgirls	1/1/2024	19	\$395.00	\$57.00	\$452.00
10/19/2024	7:30 PM	Premier Arts: Dreamgirls	1/1/2024	8	\$168.00	\$24.00	\$192.00
10/20/2024	2:00 PM	Premier Arts: Dreamgirls	1/1/2024	11	\$224.00	\$33.00	\$257.00
12/13/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	15	\$315.00	\$45.00	\$360.00
12/14/2024	2:00 PM	Premier Arts: Elf the Musical All-Youth Performance	1/1/2024	9	\$187.00	\$27.00	\$214.00
12/14/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	8	\$168.00	\$24.00	\$192.00
12/15/2024	2:00 PM	Premier Arts: Elf the Musical	1/1/2024	15	\$304.00	\$45.00	\$349.00
<b>Total Ticket Revenue</b>					\$256,832.30		

**LERNER SERVICES COORDINATOR PREPARED BY: DIANA GALVES**

Prior to January 22, 2024, I was doing daily cleaning of the Lerner facility. After that, I assisted Wayne and Tom with emergency lighting locating and checking to make sure that they were functioning.

On January 29, 2024, I worked with our new part-time custodial hires, showed them what their duties will be and showed them around the building. As of February 1, 2024, the Lerner was resuming performances.

**Accomplished in January:**

- Cleaned and maintained, as well performed deep cleaning of The Lerner facility
- Help with checking emergency lighting
- Worked with part-time staff

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**Upcoming Tasks:**

- Preparing part-time staff for future performances
- Continuing to work on deep cleaning the facility
- Working on organizing janitorial closets

Date	Time	Event Name	On Sale Date	Sold	Net Revenue	Hist. Fee	Total Revenue
12/2/2023	3:30 PM	Epic HoliDaze!	11/7/2023	122	\$2,658.00	\$366.00	\$3,024
12/7/2023	7:30 PM	Top of the World - A Carpenters Christmas Show	8/24/2023	29	\$926.50	\$87.00	\$1,013
12/15/2023	7:30 PM	A Lerner Christmas (12/15/23 - 12/17/23 - 3 performances)	1/1/2023	723	\$15,239.25	\$2,169.00	\$17,408
12/16/2023	3:00 PM	A Fairy Tale Christmas Carol (All-Youth Production)	11/13/2023	257	\$5,993.00	\$771.00	\$6,764
1/6/2024	7:30 PM	Magic of Motown	11/9/2023	197	\$15,694.25	\$591.00	\$16,285
2/4/2024	4:00 PM	Elkhart County Symphony - Operatic Reveries	7/21/2023	13	\$317.00	\$39.00	\$356
2/10/2024	7:30 PM	Colin Mochrie & Brad Sherwood: Asking for Trouble	9/21/2023	90	\$5,604.25	\$270.00	\$5,874
2/11/2024	1:00 PM	Aurinko Ballet Valentine Ballet and Repertory	9/15/2023	2	\$61.00	\$6.00	\$67
2/11/2024	11:00 AM	Valentine Tea Party	9/15/2023	6	\$345.00	\$18.00	\$363
3/2/2024	8:00 PM	SCOTT BRADLEE'S POSTMODERN JUKEBOX - THE '10' TOUR	9/28/2023	94	\$7,299.25	\$282.00	\$7,581
3/24/2024	4:00 PM	Elkhart County Symphony - Symphonic Horizons	7/21/2023	5	\$212.00	\$15.00	\$227
4/6/2024	7:30 PM	KANSAS: 50th Anniversary Tour - Another Fork in the Road	9/12/2023	161	\$16,665.00	\$483.00	\$17,148
2/23/2024	7:00 PM	Rodney Carrington: The Greatest Tits Tour	10/20/2023	155	\$14,028.25	\$465.00	\$14,493
4/14/2024	7:00 PM	ZACH WILLIAMS A HUNDRED HIGHWAYS TOUR	11/2/2023	128	\$12,733.30	\$384.00	\$13,117
4/26/2024	8:00 PM	TUSK: The World's #1 Tribute to Fleetwood Mac	12/8/2023	235	\$13,533.50	\$705.00	\$14,238
5/30/2024	7:00 PM	Brad Williams Tour '24	11/16/2023	184	\$9,681.00	\$552.00	\$10,233
<b>Total Ticket Revenue</b>							\$128,193.55

**7. NEW BUSINESS**

Stephanie Krol Public Relations Contract

The Communications and Marketing Coordinator for the Lerner Jenna Brouillette explained the contract to the Board. On motion by Diana Lawson, seconded by Dina Harris and carried 6-0, the Board approved the Stephanie Krol Public Relations Contract as presented.

LGB Resolution Adopting Event Security Policies

Michelle Frank explained the revisions to the 2018 Security Policy currently in place. The first revision is the number of security personnel at local and concert events. The second request is for a weapon ban upon request of a renter of the theater. The NFBA and industry practice is one trained crowd manager per 250 attendees of an event which is what we have always carried out and abided by. Now we want to specify event personnel into this policy, in addition to the armed security that was already in place in the 2018 policy. The policy separates local events and concerts, so now clearly specified here is the metric for local events, here is the metric for concerts. We have specified ushers for crowd management and life safety. We have added event security and event personnel for crowd management and event safety plus armed officers for each event. It is specified in the policy as 1 per x amount of attendees, and insures that we are meeting the standards for crowd

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management under the NFBA and industry practice. Lastly, as part of the rental agreement, all costs associated are passed on to the renter at the closing for the facility. Jamie asked if this policy is just for the theater or if it spills over to the ballroom as well. Michelle said for right now, this is just for the theater. Jamie added, with the suggestion that the Ballroom would follow this as best practice. The last part of this policy request is listed as a weapon or firearms ban at the request of the renter. This policy and practice would establish a firearm or weapon ban at the request of promoters and or events that require that the rented venue adhere to a no-weapons or no firearms policy for that specific event. This request is being made after we nearly lost a sold out show last year due to the lack of a weapons ban at the Lerner, and with several upcoming requests at our facility. After vetting other City and County-owned venues in the State of Indiana, this policy change is what Michelle recommended to ensure that the Lerner meet the request of renters that are renting the facility. This policy also ensures as a City-owned building we are not enforcing an overall venue policy that would eliminate all weapons within Federal Law. We are allowing the contracted renter to specify what their wishes are for the venue. Michelle made it clear the Lerner is not taking a position on banning weapons or firearms. We are facilitating the position of the renter and their wishes that the event they are holding in our venue will have no weapons at it. Operationally, patrons will be alerted when they purchase the ticket that it will be a no weapons event and they will receive know before you go emails. They will pass through metal detectors and scanners before they enter the facility on the day of the event. Lastly, there is a policy exception that applies to Law Enforcement. This policy has been vetted by City Legal. On motion by Ashley Martin, seconded by Jamie Arce and carried 6-0, the LGB adopted the Lerner Resolution approving the Event security Policy.

Full Compass Systems, Ltd. Purchase

On motion by Dina Harris, seconded by Ashley Martin and carried 6-0, the Board approved the invoice from Full Compass Systems, Ltd. For the purchase of Tech equipment in an amount not to exceed \$13,823.84.

Event Contract and Rate Sheets

Michelle explained the details in the revised contracts and rate sheets item by item. On motion by Dina Harris, seconded by Ashley Martin and carried 6-0, the Board approved the forms and event contract with the change of wire transfer on item 40 to electronic funds transfer, and change of written/ wired to issued.

Brightly Software, Inc. Asset Management Software

On motion by Dina Harris, seconded by Jamie Arce and carried 6-0, the Board approved the Brightly Software, Inc. Asset Management Software in the amount of \$8,410.74 for the first year, \$6,288.77 in the second year, \$6,477.43 in the third year, and \$6,671.75 in the fourth year.

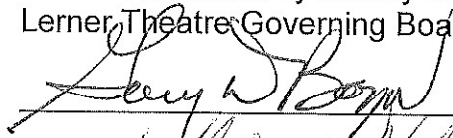
Comcast Business Agreement

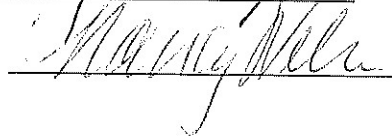
On motion by Ashley Martin seconded by Carrie Berghoff and carried 6-0, the Board approved a secondary internet service line through Comcast Business for a cost of \$132.95/month.

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8. ADJOURNMENT

On motion by Ashley Martin, seconded by Jamie Arce and carried 6-0, the Lerner Theatre Governing Board was adjourned at 10:46 a.m.

  
Gary Boyn, President

Attest:  Nancy Wilson, Clerk of the Board



# City of Elkhart Parks & Recreation Park Board Minutes



DATE: February 20, 2024

TIME: 5:00 PM

City of Elkhart Parks & Recreation  
Annex Conference Room

LOCATION: 201 S. 2<sup>nd</sup> Street, Elkhart, IN 46516

Call to Order at 5:00 PM.

## 1. Roll Call- Quorum Present BOARD MEMBERS PRESENT

Nekeisha Alayna Alexis President	Christopher Baiker Vice President	Sarah Santerre Secretary	Bil Murray Treasurer
<b>Absent</b> Eric Trotter, Proxy	<b>Absent</b> Joe Foy, Proxy		

## 2. Approval of Agenda

Motion to Approve Agenda  
Motion: ET  
Second: BM  
Motion passes with unanimous voice vote

## 3. Approval of Minutes

January 16, 2024  
Motion: BM  
Second: ET  
Motion passes with unanimous voice vote

## 4. Approval of Financials

Claims: \$45,600.25                      Donations: \$3,340  
Grants: \$0

Motion to discuss, approve, and place on file  
Motion: JF  
Second: ET  
Motion passes with unanimous voice vote

Mr. Foy inquires if the canoe purchase is an annual purchase.  
Mr. Czarnecki states that this purchase was to replace some older canoes as the Department is looking to do more programming with them. He anticipates this purchase would be along the lines of once every ten years.

## 5. New Business

### a. Matthew Moyers

Mr. Moyers, Special Projects Manager, informs the Board that he is working on a project he wants to inform them about. He is working on department manuals and will bring them to the Board for approval when finished. He is available to answer questions at any time.

# City of Elkhart Parks & Recreation

## Park Board Minutes



**b. Entertainment Contracts**

Ms. Krask presented the Board with nine entertainment contracts. Six are for Rhapsody Arts and Music Festival entertainment, and three are for Summer Chill entertainment. The Legal Department has reviewed the contracts, and the bands have all signed them.

Mr. Foy inquires how the bands are chosen. Ms. Krask states that bands are submitted throughout the year, and the department tries to select diverse acts.

**Motion to approve**

Motion: BM

Second: ET

Motion passes with unanimous voice vote

**c. Lamar Billboard Contract**

Ms. Krask states that the contract is for a billboard for the Elkhart Farmers Market, located at 215 Prarie Street.

**Motion to approve**

Motion: JF

Second: BM

Motion passes with unanimous voice vote

**d. JPR Structural Engineering Investigation at Woodlawn Nature Center**

Mr. Czarnecki states that the Department is looking to progress with improvements and programming at Woodlawn Nature Center. JPR will be doing a structural analysis.

**Motion to approve**

Motion: JF

Second: BM

Motion passes with unanimous voice vote

**e. Play it Again Sports Quote**

Mr. Czarnecki states that the Department will be doing some disc golf programming, so the quote is for nine disc golf holes.

**Motion to approve**

Motion: BM

Second: ET

Motion passes with unanimous voice vote

**f. Michiana Rental Contract**

Ms. Krask states the contract is for a tent used at the Frosty Five Run. Due to the record number of runners this year, the pavilion capacity was exceeded. Ms. Alexis already signed the contract due to the sudden need.

**Motion to ratify**

Motion: JF

Second: ET

Motion passes with unanimous voice vote

**g. 2024 Use and Event Permit**

Ms. Rivera requests that the Board table this item.

**Motion to table**

Motion: JF

Second: BM

Motion passes with unanimous voice vote

**h. MOU Dwight Weber & Nic Cron**

Mr. Czarnecki states that this is executive training for Mr. Cron.

**Motion to approve**

Motion: JF

Second: ET

Motion passes with unanimous voice vote

# City of Elkhart Parks & Recreation

## Park Board Minutes



### 6. Old Business

- a. None

### 7. Use and Event Permit

- a. **Community Easter Egg Hunt – March 30, 2024 – Walker Park**

Ms. Matthews is unable to present her permit due to a medical emergency. Ms. Kobie informs the board that this is the event's second year, and the City Event Committee has approved it.

**Motion to approve**

Motion: ET

Second: BM

Motion passes with unanimous voice vote

- b. **First Fridays Community Fest – Various Dates – Ullery Park**

Ms. Spencer is unable to attend the meeting. The Board asks to table the permit until Ms. Spencer can attend.

**Motion to table**

Motion: JF

Second: SS

Motion passes with unanimous voice vote

- c. **EPD 5K-9 Run – May 18, 2024 – American Park & RiverWalk**

Cpl. Jared Davies presents the permit. This is an annual event held by the Elkhart Police Department.

**Motion to approve**

Motion: BM

Second: ET

Motion passes with unanimous voice vote

- d. **Stemm Lawson Peterson Memorial Walk – May 18, 2024 – Walker Park**

Ms. Sally Nielsen of Stemm Lawson Peterson Funeral Home presents the permit. This is the fourth year for the event. It is open to all families that the funeral home has served.

**Motion to approve**

Motion: JF

Second: ET

Motion passes with unanimous voice vote

- e. **A Taste of Black Excellence – June 1, 2024 – Roosevelt Park**

Ms. Spencer is unable to attend the meeting. The Board asks to table the permit until Ms. Spencer can attend.

**Motion to table**

Motion: JF

Second: ET

Motion passes with unanimous voice vote

- f. **Pollinator Promenade – July 13, 2024 – Stage Use Only**

Ms. Annie Klehforth of The Elkhart Environmental Center presents the permit. The EEC is requesting the use of the stage for their event.

**Motion to approve**

Motion: JF

Second: ET

Motion passes with unanimous voice vote

- g. **EnviroFest – August 10, 2024 – Island Park**

Ms. Klehforth presents the permit. This is the 27th year for the event, which will feature environmentally focused booths, food vendors, a kids' area, and a silent auction.

**Motion to approve**

Motion: ET

# City of Elkhart Parks & Recreation Park Board Minutes



Second: JF

Motion passes with unanimous voice vote

**h. Rockin' the Rails – August 24, 2024 – Stage Use Only**

The Railroad Museum is requesting the use of the stage for their event.

**Motion to approve**

Motion: JF

Second: BM

Motion passes with unanimous voice vote

**i. Waggin' in the Woods – September 29, 2024 – Risers use only**

The EEC is requesting the use of the risers for their event.

**Motion to approve**

Motion: JF

Second: BM

Motion passes with unanimous voice vote

**8. Department Report**

Mr. Czarneci reports that NIBCO Water and Ice Park will be closing for the season this weekend. Conceptual designs for Pierre Moran Pool are coming. Seasonal hiring has started for the summer. Ms. Ixmattahua provides programming updates. Bingo was successful. Futsal and volleyball are being extended for another month at Beacon Heath and Fitness. The Tolson Sports Club sees an average of 20 to 30 participants daily.

Ms. Krask provides event updates. The last Winter Farmers Market was last weekend. Vendors are being surveyed for feedback on the winter markets. The Frosty Five Run had over 340 runners. Theme skates were successful at NIBCO Water and Ice Park. The Eras Skate and the Frozen Skate were both very popular.

Ms. Krask provides volunteer updates. The Frosty Five Run had 18 volunteers who worked 54 hours total. Adopt a Park signs are in and will be installed in adopted parks.

Ranger Danh provides Park Ranger updates.

**9. Public Input/Privilege of the Floor**

Mrs. Santerre opens the privilege of the floor.

Mrs. Santerre closes the privilege of the floor.

**10. Approval for Adjournment**

Motion to adjourn

Motion: JF

Second: ET

Motion passes with unanimous voice vote

Adjourn 5:48 pm

**PARKS & RECREATION STAFF MEMBERS IN ATTENDANCE**

Jamison Czarneci, Superintendent Luisa Ixmattahua-Garay, Program Coordinator Nick Cron, Operations Manager Nhim Danh, Lead Park Ranger	Sherry Krask, Event Coordinator Jennifer Kobie, Recording Secretary Matthew Moyers, Special Projects Manager
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**ADDITIONAL CITY EMPLOYEES AND GUESTS IN ATTENDANCE**

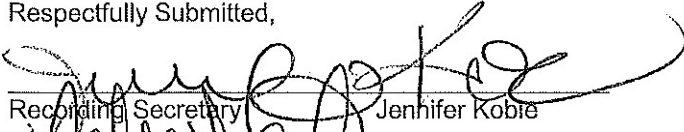
Ms. Sally Nielsen Ms. Annie Klehforth, EEC, via Webex	Ms. Rose Rivera, Legal Department Councilwoman Latonya King, Council Liaison	Cpl. Jared Davies, K-9 Unit
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# City of Elkhart Parks & Recreation Park Board Minutes

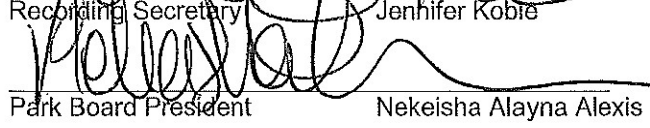


## Minutes Certification:

Respectfully Submitted,

  
Recording Secretary      Jennifer Koble

3/19/24  
Date

  
Park Board President      Nekeisha Alayna Alexis

3/19/24  
Date

  
Park Board Secretary      Sarah Santerre

3.19.24  
Date



City of Elkhart  
*Redevelopment Commission*

REGULAR MEETING  
ELKHART REDEVELOPMENT COMMISSION  
LOCATION: CITY HALL, 2<sup>ND</sup>. FLOOR, COUNCIL CHAMBERS  
Tuesday, February 13, 2024  
4:00 p.m.

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PRESENT: Dina Harris, Gerry Roberts, Wes Steffen, Alex Holtz, Gary Boyn, Adam Fann, Mike Huber, Sherry Weber (Recording Secretary), Corrine Straight, Drew Wynes, Mary Kaczka, Lewis Anne Deputy, Bob Deputy, Dave Osborne

PRESENT BY WEBEX: Chris Pottratz, Sandi Schreiber, Corrine Straight, Erin Koons, Jamie Arce, Kevin Bullard, Lori Harris, ML, T, Jack

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CALL TO ORDER

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:02 p.m. by Mr. Steffen, Vice-President.

AMENDMENT OF FEBRUARY 13, 2024 AGENDA

Mr. Steffen asked for a motion to amend the February 13, 2024 Agenda. Moved by Mr. Roberts. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved.

APPROVAL OF JANUARY 9, 2024 REGULAR MEETING MINUTES

Ms. Schreiber asked for a motion to approve the January 9, 2024 Regular Meeting Minutes. Moved by Mr. Roberts. Seconded by Ms. Harris. Roll call vote, all in favor. Minutes approved.

NEW BUSINESS

A. OPENING OF BIDS

No bids were submitted

B. 824 REN STREET

Mr. Adam Fann addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the contract with Environmental Restrictive Covenant (ERC) to perform environmental testing services at 824 Ren Street and appropriating \$35,299.05 from Consolidated South Elkhart Economic Development/Redevelopment Tax Allocation Area Special Fund. Moved by Ms. Harris. Seconded by Mr. Roberts. Roll call vote. All in favor, motion approved.

**C. 117 FREIGHT STREET AND 214 ST JOSEPH STREET PURCHASE AGREEMENT**

Mr. Mike Huber addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the purchase agreement for 117 Freight Street. Moved by Ms. Harris. Seconded by Mr. Roberts. Kevin Bullard, Lewis Anne Deputy, Dave Osborne, Mike Huber and Sandi Schreiber all made comments about this item. Roll call vote. All in favor, motion approved.

**D. PROPERTY APPRAISALS FOR FRANKLIN AND 4<sup>TH</sup> STREET PROPERTY**

Mr. Adam Fann addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve employment of Iverson Grove and Steve Sante, independent appraisers, to provide fair market value appraisals for Franklin and 4<sup>th</sup> Street property and appropriate \$1,800 from Downtown Allocation Area No. 1 Special Fund. Moved by Mr. Roberts. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved

**E. ESTABLISH OPERATING ACCOUNT AND SECURITY DEPOSIT ACCOUNT FOR WOODLAND CROSSING**

Ms. Mary Kaczka addressed the commission and answered their questions. Mr. Steffen asked for a motion to establish certain operating procedures for lots 1, 2, 5, and 6 in Woodland Crossing. Moved by Mr. Roberts. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved.

**F. CDBG YWCA AMENDED AGREEMENT**

Ms. Mary Kaczka addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the amendment to the CDBG sub-recipient agreement for the YWCA. Moved by Ms. Harris. Seconded by Mr. Roberts. Roll call vote. All in favor, motion approved.

**G. WOODLAND CROSSING RFP**

Mr. Mike Huber addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the request for proposals for Master Developer for the Woodland Crossing Shopping Center and authorizing its issuance. Moved by Ms. Harris. Seconded by Mr. Roberts. Roll call vote. All in favor, motion approved.

**H. BOARD OF WORKS CENTRAL PARK OVERSIGHT**

Mr. Adam Fann addressed the commission and answered their questions. Mr. Steffen asked for a motion to authorize the Board of Public Works to continue to lease out and manage the site pending final determination of the proposed amphitheater project. Moved by Mr. Roberts. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved.

**STAFF UPDATES**

Mr. Adam Fann addressed the commission with updates on projects around the city

- SR 19 – moving along INDOT safety meeting scheduled just to make sure everything is all right.
- 1000 block of South Main – Demolition continues
- Roundhouse – Waiting on contractor that IDEM hired to put together a cost estimate for removal of asbestos found on site.

- 1101 Beardsley – We do have a signed PSA and proof of insurance. They are currently going through the IFA documents and signing those in a week or so. We should be able to have a contract to start the remediation process.
- New kiosk on main Street and Marion is installed and operational.
- 1918 Markel – Working with Milmark on closing. Public Works has asked Milmark to do a bit of work with their on-site storm water retention.

#### **OTHER BUSINESS**

Mr. Boyn stated the current work amount on the Warrick and Boyn invoice is for \$43,517.72. Mr. Steffen asked for a motion to approve the Warrick and Boyn invoice in the sum of \$43,517.72. Moved by Mr. Roberts. Seconded by Ms. Harris. Roll call vote. All in favor, invoice approved.

The commissioners have the current TIF Reports for December 2023.

#### **PUBLIC COMMENT**

No one from the public was there at address the Commission.

#### **ADJOURNMENT**

There being no further discussion, Mr. Steffen asked for a motion to adjourn the meeting. It was moved by Ms. Harris. Seconded by Mr. Roberts. Roll call vote. All in favor, motion approved. The meeting adjourned at 4:42 p.m. Next meeting is on Tuesday, March 12, 2024 at 4:00 p.m. in Council Chambers.



Wes Steffen, Vice-President





**City of Elkhart**  
*Redevelopment Commission*

**Elkhart Redevelopment Commission  
Pre-Agenda Meeting Summary  
For February 9, 2024**

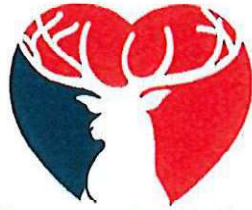
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**PRESENT:** Dina Harris, Wes Steffen, Gary Boyn, Mike Huber, Adam Fann,  
Jacob Wolgamood, Sherry Weber, Mary Kaczka, Corrine Straight  
and Drew Wynes.

**PRESENT BY WEBEX:** Chris Pottratz, Sandi Schreiber and Gerry Roberts

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The Commission reviewed each agenda item and staff explained the status of each matter to date and the need for and purpose of the proposed Resolution to be acted upon at the upcoming Elkhart Redevelopment Commission meeting on February 9, 2024.



**City of Elkhart**  
*Redevelopment Commission*

**SPECIAL MEETING**  
**ELKHART REDEVELOPMENT COMMISSION**  
**LOCATION: CITY HALL, 2<sup>ND</sup>. FLOOR, COUNCIL CHAMBERS**  
**Tuesday, February 27, 2024**  
**4:30 p.m.**

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**PRESENT:** Sandi Schreiber, Willie L. Brown, Dina Harris, Wes Steffen, Dorisanne Nielsen, Gary Boyn, Mike Huber, Adam Fann, Jacob Wolgamood, Sherry Weber (Recording Secretary), Corinne Straight, Drew Wynes, Mary Kaczka, Alex Holtz, Arvis Dawson, Brent Curry, Tonda Hines, LaTonya King, Jamison Czarnecki, Nakeisha Alayna Alexis, Dave Weaver, Lewis Anne Deputy, Bob Deputy, Levon Johnson, Rex Martin, Lori Harris, Mike Ciera, Jason Moreno

**PRESENT BY WEBEX:** Chris Pottratz, Gerry Roberts, Jamie Arce, Mayor Roberson, WSBT 22, Guest, #, db

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**CALL TO ORDER**

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:31 p.m. by Mr. Steffen, Vice-President.

**AMENDMENT OF FEBRUARY 13, 2024 AGENDA**

Mrs. Schreiber asked for a motion to amend the February 27, 2024 Agenda by removing item f - Amphitheater Development Agreement. Moved by Mr. Brown. Seconded by Mr. Steffen. Roll call vote. All in favor, motion approved.

**NEW BUSINESS**

**A. ICE MILLER FEE PROPOSAL**

Mr. Mike Huber addressed the commission and answered their questions. Mrs. Schreiber asked for a motion to approve the employment of Ice Miller to provide services regarding LaBour Pump and G&W VRP closure and appropriating \$41,000 from Consolidated South Elkhart Economic Development/Redevelopment Tax Allocation Area Special Fund (\$25,000 for G&W services and \$16,000 for LaBour Pump services). Moved by Ms. Harris. Seconded by Mr. Steffen. Roll call vote. All in favor, motion approved.

#### B. 515 HUG STREET USE AGREEMENT

Mr. Adam Fann addressed the commission and answered their questions. Mrs. Schreiber asked for a motion to approve the M.I.B.C.O., Inc. access agreement. Moved by Mr. Steffen. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved.

#### C. CONCORD MALL PARKING LOT LEASE

Mr. Mike Huber addressed the commission and answered their questions. Mrs. Schreiber asked for a motion to authorize staff to submit a \$1.4 mil offer to lease the parking lot at Concord Mall. Moved by Mr. Steffen. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved. Mr. Bob Deputy addressed the Commission asking if this is the original appropriation or and additional appropriation and is this a yearly lease or a onetime lease. Mr. Mike Huber let him know this is part of the original appropriation, we are not asking for additional resources. This is a one time, five year lease with two one year renewals which puts this incentive in line with the five year tax phase in benefit and the five year flexibility period for the loan.

#### D. CONCORD MALL

Mr. Mike Huber addressed the commission and answered their questions. Mrs. Schreiber asked for a motion to ratify and approve the employment of Iverson Grove and Steve Sante as independent appraisers to provide fair market rental appraisal for that real estate and appropriate \$,2000 from Consolidated South Elkhart Economic Development/Redevelopment Area Allocation Area Special Fund. Moved by Mr. Steffen. Seconded by Ms. Harris. Roll call vote. All in favor, motion approved

#### E. WOODLAND CROSSING SERVICE CONTRACT AND 2024 CAM BUDGET

Ms. Mary Kaczka addressed the commission and answered their questions. Mr. Boyn clarified there are 5 new proposals to be approved by the Board.

- Shambaugh and Son for fire sprinkler inspection
- Advanced Security, Inc. for fire flow switch monitoring,
- Himco common area trash containers and collection,
- Tri-State Protection, Inc. for onsite global security patrol services
- Cressy Commercial Real Estate for property management services.

DS Ground Care contracts are existing and the proposal is to assume those existing contracts for landscaping, snow removal, salt treatment and sweeping services contracts.

Mrs. Schreiber asked for a motion to approve Woodland Crossing service contracts and 2024 Common Area Maintenance Budget. Moved by Ms. Harris. Seconded by Mr. Steffen. Roll call vote. All in favor, motion approved.

#### F. AMPHITHEATER DEVELOPMENT AGREEMENT

Removed from agenda.

#### PUBLIC COMMENT

Jason Moreno addressed the Commission regarding the Kelby Love mural. Jason asked to pause the demolition of the building which holds the mural so he can have conversations moving forward.

Nakeisha Alayna Alexis addressed the Commission regarding the Kelby Love mural asking the Commission to do everything they can to save the mural and leave no stone unturned.

**ADJOURNMENT**

There being no further discussion, Mrs. Schreiber asked for a motion to adjourn the meeting. It was moved by Ms. Harris. Seconded by Mr. Steffen. Roll call vote. Four in favor, one opposed, motion approved. The meeting adjourned at 5:04 p.m.



**Sandra Schreiber, President**

**Roderic Roberson**  
Mayor

**Jamie Arce**  
City Controller



*City Controller's Office*  
229 S. Second St.  
Elkhart, IN 46516

574.294.5471  
Fax: 574.294.8491

# Memo

To: Elkhart Common Council  
From: Jamie Arce, City Controller *JA*  
Regarding: Fiscal Year Report as of December 31, 2023  
Date: March 12, 2024

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At the end of each fiscal year fiscal officers for cities and towns across the state have several key reporting requirements that are embedded in state statute. Of all the responsibilities there are four (4) key reports that must be completed. They are:

- Employee Compensation by Unit (100R) [IC 5-11-13] due on or before January 31
- Publication of the receipts and expenditures within 60 days after the close of each calendar year [IC 5-3-1-3]
- Submission of the annual financial report on the Gateway portal with the state board of accounts no later than sixty (60) days after the close of the year
- submit under oath to the city's legislative body a report of the accounts of the city published in pamphlet form showing revenues, receipts, expenditures, and the sources of revenues.

As is required under IC 36-4-10-5(b)(5), I hereby submit under oath that the following statements are an accurate representation of the city's finances. Included with this memo you will find:

- Treasurers Report for all funds
- Summary Report of income and expenditures by enterprise.

I hope that you find this information helpful, and I welcome any questions, comments, or concerns that you may have regarding this information and encourage you to reach out directly to me. The employee compensation report and the annual financial report that has been submitted in compliance with IC 5-3-1-4 can be located on the State of Indiana's transparency site – Indiana Gateway ([gateway.ifionline.org](http://gateway.ifionline.org)).



**Summary of Revenues and Expenses by Enterprise  
For the Calendar Year Ended December 31, 2023**

Revenue	Governmental Activities	Water	Waste Water	Storm Water	Aquatics	Total
	Fiscal Activity	Fiscal Activity	Fiscal Activity	Fiscal Activity	Fiscal Activity	Fiscal Activity
Taxes & Intergovernmental	\$ 125,099,062	\$ 402,995	\$ -	\$ -	\$ -	\$ 125,502,056
Licenses & Permits	\$ 364,090	\$ -	\$ -	\$ -	\$ -	\$ 364,090
Charges for Services	\$ 7,826,304	\$ 7,022,580	\$ 15,334,966	\$ 1,011,850	\$ -	\$ 31,195,699
Fines & Forfeitures	\$ 382,532	\$ -	\$ 26	\$ -	\$ -	\$ 382,558
Other Receipts						
Earning on Investments	\$ 9,024,775	\$ 80,566	\$ 1,709,864	\$ -	\$ -	\$ 10,815,205
Transfers In	\$ 5,819,121	\$ 6,843,497	\$ 14,193,794	\$ 300,000	\$ 60,000	\$ 27,216,412
Proceeds from Long-Term Debt	\$ -	\$ 818,195	\$ 23,725,000	\$ -	\$ -	\$ 24,543,195
Other Receipts	\$ 13,240,230	\$ 281,959	\$ 1,025,460	\$ -	\$ 87,500	\$ 14,635,149
City Clerk Trust Fund	\$ 1,298,458	\$ -	\$ -	\$ -	\$ -	\$ 1,298,458
<b>Total Revenue</b>	<b>\$ 163,054,571</b>	<b>\$ 15,449,791</b>	<b>\$ 55,989,110</b>	<b>\$ 1,311,850</b>	<b>\$ 147,500</b>	<b>\$ 235,952,823</b>
<b>Expense</b>						
Personnel Services	\$ 77,839,563	\$ 3,938,811	\$ 4,472,593	\$ 334,261	\$ 40,555	\$ 86,625,783
Supplies	\$ 8,083,175	\$ 1,196,136	\$ 1,961,816	\$ 99,888	\$ 10,052	\$ 11,351,067
Other Services & Charges	\$ 38,600,553	\$ 1,360,726	\$ 3,332,172	\$ 145,396	\$ 29,489	\$ 43,468,335
Capital Outlay	\$ 7,887,417	\$ 1,071,274	\$ 15,999,688	\$ 831,302	\$ 24,903	\$ 25,814,585
Miscellaneous						
Purchase of Investments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer to Other Funds	\$ 5,884,115	\$ 6,811,000	\$ 14,161,297	\$ 300,000	\$ -	\$ 27,156,412
Unappropriated	\$ 20,443	\$ 222,603	\$ 2,237,679	\$ -	\$ -	\$ 2,480,724
City Clerk Trust Fund	\$ 1,257,757	\$ -	\$ -	\$ -	\$ -	\$ 1,257,757
	\$ 139,573,022	\$ 14,600,550	\$ 42,165,245	\$ 1,710,846	\$ 105,000	\$ 198,154,663
<b>Surplus (deficit)</b>	<b>\$ 23,481,549</b>	<b>\$ 849,242</b>	<b>\$ 13,823,866</b>	<b>\$ (398,997)</b>	<b>\$ 42,500</b>	<b>\$ 37,798,159</b>

**Elkhart Civil City, Elkhart County, Indiana**  
**Cash & Investments Combined Statement - 2023**

Local Fund	Local Fund Name	Beg Cash & Inv Bal		Receipts	Disbursement	End Cash & Inv Bal
		Jan. 1, 2023	Dec. 31, 2023			
1101	GENERAL	\$46,461,013.84	\$71,684,349.90	\$54,501,931.25	\$63,643,432.49	
2201	MVH	\$2,488,909.49	\$7,915,963.60	\$7,816,411.36	\$2,588,461.73	
2202	LOCAL ROAD & STREET	\$972,226.73	\$1,038,868.68	\$1,500,000.00	\$511,095.41	
2203	MVH RESTRICTED	\$864,387.99	\$1,161,146.66	\$1,405,451.00	\$620,083.65	
2204	PARK & RECREATION	\$3,941,121.07	\$2,891,747.97	\$2,997,118.92	\$3,835,750.12	
2205	CEMETERY	\$540,453.67	\$884,971.82	\$855,139.53	\$570,285.96	
2206	AVIATION	\$941,869.78	\$1,453,639.39	\$1,408,008.11	\$987,501.06	
2214	PROBATION USERS FEE	\$252,844.96	\$113,709.31	\$145,211.89	\$221,342.38	
2222	THEFT PROGRAM	\$224,048.14	\$27,665.00	\$538.81	\$251,174.33	
2226	COMMUNITY DEVELOPMENT	\$31,875.88	\$616,228.13	\$851,263.93	-\$203,159.92	
2228	LAW ENFORCEMENT EDUCATION	\$184,088.04	\$50,777.90	\$28,324.97	\$206,540.97	
2230	RECORD PERPETUATION	\$95,479.19	\$35,425.68	\$14,286.00	\$116,618.87	
2234	UNSAFE BUILDING	\$624,521.00	\$230,390.00	\$545,613.40	\$309,297.60	
2235	RIVERBOAT FUND	\$1,147,536.11	\$840,704.81	\$0.00	\$1,988,240.92	
2236	RAINY DAY FUND	\$10,804,690.34	\$887,027.73	\$0.00	\$11,691,718.07	
2240	LOIT PUBLIC SAFETY	\$2,183,098.56	\$7,943,287.00	\$5,955,141.00	\$4,171,244.56	
2248	LOIT SPEC DISTR - 2016	\$1,641,058.69	\$459,763.92	\$944,848.25	\$1,155,974.36	
2256	Opioid Settlement Unrestricted	\$87,394.24	\$15,637.53	\$0.00	\$103,031.77	
2257	Opioid Settlement Restricted	\$203,919.89	\$56,514.91	\$0.00	\$260,434.80	
2300	GENERAL DONATION	\$45,326.75	\$795.00	\$19,382.10	\$26,739.65	
2301	MAYOR'S DONATION	\$9,464.29	\$11,000.00	\$6,131.72	\$14,332.57	
2302	FOOD DRIVE DONATION	\$4,452.63	\$0.00	\$0.00	\$4,452.63	
2303	AVIATION DONATION	\$4,748.28	\$11,026.18	\$10,846.48	\$4,927.98	
2304	FIRE DONATION FUND	\$16,866.49	\$0.00	\$113.00	\$16,753.49	
2305	FIRE EDUCATIONAL DONATION	\$1,638.44	\$0.00	\$0.00	\$1,638.44	
2306	AMBULANCE ESCROW DONATION	\$10,035.00	\$0.00	\$0.00	\$10,035.00	
2307	SURVIVE ALIVE DONATION	\$4,726.15	\$3,718.00	\$1,955.64	\$6,488.51	
2308	EMS DONATION	\$1,782.69	\$0.00	\$0.00	\$1,782.69	
2309	POLICE DONATION	\$31,046.70	\$9,652.00	\$2,837.78	\$37,860.92	
2310	BEARDSLEY MEM DONATION	\$4,537.10	\$0.00	\$0.00	\$4,537.10	
2311	COMMUNICATION DONATION	\$4,911.16	\$0.00	\$199.00	\$4,712.16	
2312	NYC RR MUSEUM DONATION	\$10,253.39	\$8,600.04	\$14,058.10	\$4,795.33	
2313	CEMETERY DONATION	\$41,765.80	\$0.00	\$0.00	\$41,765.80	
2314	PARKS DONATION	\$125,376.85	\$46,906.85	\$43,004.43	\$129,279.27	
2315	LERNER THEATER DONATION	\$32,491.30	\$0.00	\$0.00	\$32,491.30	

**Governmental Activities**

**Elkhart Civil City, Elkhart County, Indiana  
Cash & Investments Combined Statement - 2023**

2316	ELCO THEATRE BLD INDIANA	\$17,274.41	\$0.00	\$0.00	\$17,274.41
2317	ENVIRO CTR - EDUCATION	\$27,032.51	\$14,703.96	\$10,574.99	\$31,161.48
2318	PUBLIC WORKS DONATION	\$3,174.12	\$0.00	\$1,001.20	\$2,172.92
2384	RIVERWALK COMMONS DONATION	\$2,874.73	\$0.00	\$0.00	\$2,874.73
2385	COMM VIOLENCE PJT DONATIO	\$175.97	\$0.00	\$0.00	\$175.97
2386	SAFETY CHAMPIONS DONATION	\$141.74	\$0.00	\$0.00	\$141.74
2387	BAYER CORP DONATION	\$1,126.77	\$0.00	\$0.00	\$1,126.77
2388	CIVIL RIGHTS DONATION	\$691.83	\$0.00	\$0.00	\$691.83
2389	BUILDING DONATION	\$251.49	\$0.00	\$0.00	\$251.49
2390	GEN DOWNTOWN DONATION	\$1,253.20	\$0.00	\$0.00	\$1,253.20
2391	INTERSECTION DONATION	\$650.00	\$0.00	\$0.00	\$650.00
2392	TOLSON YOUTH	\$7,561.95	\$0.00	\$0.00	\$7,561.95
2393	HISTORIC PRES DONATION	\$5,379.64	\$0.00	\$0.00	\$5,379.64
2394	TREE PLANTING DONATION	\$679.00	\$0.00	\$0.00	\$679.00
2396	DESS DONATION FUND	\$373.97	\$0.00	\$0.00	\$373.97
2398	TOLSON SCHOLARSHIP	\$2,221.25	\$0.00	\$0.00	\$2,221.25
2400	CARES PROVIDER RELIEF	\$0.89	\$0.00	\$0.00	\$0.89
2401	HUMAN RELATIONS GRANT	\$158,336.48	\$85,900.00	\$86,059.02	\$158,177.46
2402	CD REHAB/REVOLVING LOAN	\$405,283.43	\$1,200.00	\$57,335.02	\$349,148.41
2403	CD BUSINESS LOAN GRANT	\$211,871.58	\$69,493.00	\$24,288.76	\$257,075.82
2404	State Matching Grants	\$642,600.00	\$27,000.00	\$642,600.00	\$27,000.00
2410	FACT (FATAL ACCIDENT CRAS	\$195.76	\$0.00	\$0.00	\$195.76
2411	BCCE / SEAT BELT	\$0.00	\$12,555.31	\$0.00	\$12,555.31
2412	DEA ASSET SHARING	\$9,468.85	\$62,992.39	\$25,933.22	\$46,528.02
2413	DEPT OF HOMELAND SECU	\$57.84	\$0.00	\$0.00	\$57.84
2414	POLICE GRANT FUND	\$0.00	\$37,582.47	\$28,332.40	\$9,250.07
2420	FIRE DEPT FEMA GRANT	\$0.00	\$300,000.00	\$300,000.00	\$0.00
2472	COVID-19 GRANT - CDBG	-\$33,008.92	\$62,110.11	\$29,080.69	\$20.50
2473	DOJ COVID-19 GRANT - PD	\$2,293.82	\$0.00	\$0.00	\$2,293.82
2474	ARP GRANT	\$17,016,837.05	\$0.00	\$1,824,744.23	\$15,192,092.82
2476	DISASTER RELIEF	\$0.00	\$24,957.77	\$0.00	\$24,957.77
2477	FLOOD RELIEF - CDBG	\$15.00	\$0.00	\$84.75	-\$69.75
2487	ST GRT IDEM SMALL MENTOR	\$61,012.82	\$0.00	\$0.00	\$61,012.82
2488	HIGH DIVE PARK GRANT	\$19,644.22	\$0.00	\$0.00	\$19,644.22
2489	PARK GRANTS	\$4,424.89	\$0.00	\$0.00	\$4,424.89
2490	ST GRT ST JOE RIVER	\$17,292.19	\$0.00	\$0.00	\$17,292.19
2492	RIVERWALK COMMONS	\$1,760.00	\$0.00	\$0.00	\$1,760.00
2494	RR SAFETY BLD INDIANA	\$76,830.44	\$0.00	\$0.00	\$76,830.44



**Elkhart Civil City, Elkhart County, Indiana**  
**Cash & Investments Combined Statement - 2023**

2495	NEIGHBORHOOD STABILIZATIO	\$816.53	\$0.00	\$0.00	\$816.53
2496	NSP 3	\$308.50	\$0.00	\$0.00	\$308.50
2497	IHCDA IN HOUSING COMM DEV	\$608.20	\$0.00	\$0.00	\$608.20
2500	CENTRAL GARAGE	\$1,475,471.68	\$2,356,863.48	\$2,794,068.17	\$1,038,266.99
2501	MAUSOLEUM OPERATIONS	\$65,296.84	\$17,570.00	\$10,877.81	\$71,989.03
2502	ENVIRONMENTAL CENTER	\$112,096.17	\$625,542.80	\$341,708.11	\$395,930.86
2503	GREATER ELKHART FUND	\$729,556.45	\$108,943.47	\$0.00	\$838,499.92
2504	LICENSE EXAMINATION	\$36,956.58	\$3,900.50	\$0.00	\$40,857.08
2505	E 911	\$118,000.97	\$72,638.50	\$76,680.91	\$113,958.56
2510	NYC RR MUSEUM	\$203,466.45	\$162,496.50	\$281,619.10	\$84,343.85
2511	LERNER THEATRE	\$1,186,906.53	\$1,818,578.37	\$1,729,186.55	\$1,276,298.35
2520	PARK PROGRAM	\$843,615.64	\$226,579.70	\$247,913.60	\$822,281.74
2530	LERNER CONCESSIONS	\$1,098.03	\$0.00	\$0.00	\$1,098.03
2531	NYC RR CONCESSIONS	\$28,349.82	\$11,724.84	\$14,075.71	\$25,498.95
2540	STU STATLER CRIME FUND	\$60,951.40	\$1,088.80	\$0.00	\$62,040.20
2542	PARKING ENFORCEMENT	\$235,088.23	\$25,670.00	\$0.00	\$260,758.23
2543	ANIMAL CONTROL ORDINANCE	\$36,905.32	\$112,584.01	\$140,450.00	\$9,039.33
2544	DUI/OPERATING UNDER INFLU	\$0.00	\$568.82	\$0.00	\$568.82
2545	NOISE ORDINANCE	\$35,268.06	\$7,237.41	\$0.00	\$42,505.47
2550	HORIZON FUND	\$312,546.29	\$0.00	\$0.00	\$312,546.29
2551	TAX ABATEMENT	\$665,461.84	\$139,534.91	\$0.00	\$804,996.75
2552	REDEVELOPMENT	\$0.00	\$44,068.50	\$440.88	\$43,627.62
2553	ECON DEV REVOLVING FUND	\$0.00	\$2,000,000.00	\$2,000,000.00	\$0.00
2554	Foundry Settlement Proceeds	\$1,340,821.24	\$155,000.00	\$519,773.61	\$976,047.63
2575	COMMUNITY PROMOTION	\$0.00	\$10,000.00	\$6,890.99	\$3,109.01
2596	TOLSON DRUG ELIMINATION	\$35.32	\$0.00	\$0.00	\$35.32
2597	UMPTA	\$11,166.63	\$0.00	\$0.00	\$11,166.63
2598	COVID-19 EMERGENCY RESPNS	\$130,725.95	\$97,360.63	\$0.00	\$228,086.58
2599	URBAN WOOD PROGRAM	\$2,730.30	\$0.00	\$0.00	\$2,730.30
3322	PARK BOND 2019 RESERVE	\$283,295.18	\$0.00	\$0.00	\$283,295.18
3323	PARK BOND 2019 ALLOCATION	\$407,113.30	\$0.00	\$0.00	\$407,113.30
3324	TIF RESERVE DWNTWN FUND	\$1,043,563.24	\$704,495.40	\$718,450.00	\$393,158.70
4401	CUM CAPITAL IMPROVEMENT	\$225,624.29	\$97,880.91	\$164,868.31	\$158,636.89
4402	CUM CAPITAL DEVELOPMENT	\$547,077.80	\$1,298,035.82	\$1,038,032.61	\$807,081.01
4425	CUM FIRE EQUIP & POLICE	\$2,809,795.15	\$1,829,512.82	\$1,241,879.66	\$3,397,428.31
4428	CUMULATIVE SEWER	\$548,223.53	\$310,958.81	\$222,714.75	\$636,467.59
4436	CEDIT	\$4,593,906.63	\$7,407,441.13	\$6,933,491.60	\$5,067,856.16
4440	MAJOR MOVES CONSTRUCTION	\$5,262,158.37	\$380,622.79	\$0.00	\$5,642,781.16

**Elkhart Civil City, Elkhart County, Indiana**  
**Cash & Investments Combined Statement - 2023**

4445	TIF DOWNTOWN ALLOCATION	\$4,648,085.92	\$3,283,232.67	\$2,625,257.07	\$5,306,061.52
4446	TIF ALLOCATION PIERRE MOR	\$0.00	\$361,071.92	\$178,813.69	\$182,258.23
4447	TIF SOUTHWEST ALLOCATION	\$0.00	\$1,347,198.06	\$704,388.95	\$642,809.11
4448	TIF AEROPLEX ALLOCATION	\$1,407,076.75	\$500,778.17	\$12,562.06	\$1,895,292.86
4449	TIF ALLOCATION STERLING E	\$0.00	\$377,255.19	\$187,693.81	\$189,561.38
4450	TIF ALLOCATION CASS ST AR	\$12,412,196.31	\$4,665,247.37	\$1,923,395.82	\$15,154,047.86
4451	TIF BAYER/TECH PARK ALLOC	\$996,801.90	\$267,316.45	\$20,488.53	\$340,350.46
4452	TIF ALLOCATION S MAIN GAT	\$0.00	\$531,052.52	\$190,702.06	\$1,243,629.82
4453	TIF CONSOLIDATED S ALLOCA	\$6,790,995.59	\$1,293,954.31	\$1,831,125.32	\$6,253,824.58
4500	AVIATION FEDERAL	\$79,134.84	\$474,008.75	\$448,592.60	\$104,550.99
4501	LOCAL RD & BRIDGE MATCH	\$394,581.41	\$0.00	\$43,289.77	\$351,291.64
4599	RR OVERPASS	\$927,924.64	\$0.00	\$0.00	\$927,924.64
4650	ELKHART CAPITAL OUTLAY	\$21,071,813.95	\$1,190,755.46	\$777,229.29	\$21,485,340.12
4651	LENER CAPITAL	\$115,710.59	\$0.00	\$0.00	\$115,710.59
4688	PARK BOND ANTICIPATION NO	\$4,986.37	\$0.00	\$0.00	\$4,986.37
4692	TIF DOWNTOWN CAPITAL	\$68,478.32	\$0.00	\$0.00	\$68,478.32
4694	PARK CAPITAL	\$6,524.19	\$0.00	\$0.00	\$6,524.19
4696	HIGHWAY IMPROVEMENT	\$94,864.34	\$0.00	\$0.00	\$94,864.34
4697	DOWNTOWN DEVELOPMENT	\$8,176.63	\$0.00	\$0.00	\$8,176.63
7704	GROUP INSURANCE	\$1,832,610.12	\$10,172,550.79	\$10,970,817.65	\$1,034,343.26
7726	FLEX SPENDING	\$67,139.59	\$240,692.38	\$246,555.57	\$81,276.40
7727	INSURANCE AVIATION	\$2,952.17	\$0.00	\$0.00	\$2,952.17
7728	INSURANCE FIRE DEPT	\$21,832.16	\$0.00	\$0.00	\$21,832.16
7729	INSURANCE POLICE DEPT	\$118,289.67	\$0.00	\$32,404.00	\$85,885.67
7730	INSURANCE PUBLIC WORKS	\$77,171.12	\$20,055.77	\$86,427.19	\$10,799.70
7731	INSURANCE MOTOR VEH	\$17,799.54	\$2,071.78	\$1,638.99	\$18,232.33
7732	INSURANCE CEMETERY	\$100.00	\$0.00	\$0.00	\$100.00
7733	INSURANCE PARK & REC	\$54,303.03	\$0.00	\$0.00	\$54,303.03
7734	INSURANCE BLDG & GRNDS	\$6,660.91	\$0.00	\$0.00	\$6,660.91
7735	INSURANCE ESCROW	\$31,926.66	\$0.00	\$0.00	\$31,926.66
7736	INSURANCE CENT GARAGE	\$76,012.20	\$119,021.25	\$74,990.22	\$120,043.23
7737	INSURANCE SEWER	\$14,677.45	\$0.00	\$0.00	\$14,677.45
7738	HRA GROUP INSURANCE FUND	\$488,793.48	\$0.00	\$0.00	\$488,793.48
7739	LIABILITY INSURANCE TRUST	\$3,824,283.94	\$1,886,038.09	\$2,011,429.11	\$3,698,892.92
7740	SALES TAX	\$1,870.59	\$18,718.24	\$18,386.98	\$2,201.85
7741	COUNTY COURT FEES	\$10,093.12	\$167,605.46	\$171,919.06	\$5,779.52
8801	FIRE PENSION	\$2,715,810.71	\$2,485,231.23	\$2,706,915.24	\$2,494,126.70
8802	POLICE PENSION	\$1,466,133.57	\$2,002,445.81	\$2,093,163.01	\$1,375,416.37

**Elkhart Civil City, Elkhart County, Indiana  
Cash & Investments Combined Statement - 2023**

8806	PENSION TRUST FUND	\$2,111,341.69	\$8,516,399.25	\$8,626,226.06	\$2,001,514.88
8811	CEMETERY PERPETUAL CARE	\$91,904.43	\$7,030.00	\$0.00	\$98,934.43
8812	MAUSOLEUM PREP CARE	\$53,247.96	\$7,924.01	\$0.00	\$61,171.97
8813	PRAIRIE ST CEMETERY PREP	\$75,657.26	\$0.00	\$0.00	\$75,657.26
8851	CONSTRUCTION RETAINAGE	\$883,560.96	\$767,681.57	\$500.00	\$1,650,742.53
8852	CURB & GUTTER/BCND DEPOSIT	\$63,361.32	\$12,700.00	\$12,000.00	\$64,061.32
8853	LERNER THEATRE BOX OFFICE	\$564,179.02	\$1,913,664.80	\$1,757,379.61	\$720,464.21
9997	ELKHART CITY COURT ODYSSEY ACCOUNT	\$144,916.40	\$1,298,458.01	\$1,257,757.49	\$185,616.92
	<b>SubTotal</b>	<b>\$179,904,726.83</b>	<b>\$163,054,571.25</b>	<b>\$139,573,022.47</b>	<b>\$203,386,275.61</b>
6301	STORM WATER	\$1,211,015.51	\$1,011,849.84	\$879,544.14	\$1,343,321.21
6304	STORMWATER CAPITAL	\$1,452,581.97	\$300,000.00	\$831,302.27	\$921,279.70
	<b>SubTotal</b>	<b>\$2,663,597.48</b>	<b>\$1,311,849.84</b>	<b>\$1,710,846.41</b>	<b>\$2,264,600.91</b>
6201	WWTP OPERATING	\$3,345,494.74	\$7,504,082.05	\$8,162,568.15	\$2,687,008.64
6202	WWTP BOND & INTEREST	\$428,110.70	\$3,701,895.58	\$3,545,102.69	\$584,903.59
6203	SEWER REPLACEMENT	\$4,148,650.02	\$3,372,578.00	\$1,675,948.66	\$5,845,279.36
6204	WWTP TRUNK LINE EXT	\$922,988.40	\$225,497.83	\$137,152.03	\$1,011,334.20
6205	SEWER GUARANTEE DEPOSITS	\$111,563.64	\$22,223.07	\$0.00	\$133,786.71
6206	WWTP REVENUE FUND	\$1,427,609.52	\$14,956,323.51	\$14,161,297.00	\$2,222,636.03
6207	SEWER INS FUND	\$818.85	\$428,244.22	\$424,577.86	\$4,485.21
6208	SEWER BOND SINKING FUND	\$2,559,642.57	\$522,280.10	\$0.00	\$3,081,922.67
6209	CSO-LTCP FUND	\$975.07	\$0.00	\$0.00	\$975.07
6210	SEWER DEPREC & SURPLUS	\$21,975,729.52	\$846,162.46	\$12,067,684.00	\$10,754,207.98
6211	WW OAKLAND CONSTRUCTION 23	\$0.00	\$21,318,685.60	\$1,990,914.00	\$19,327,771.60
6212	WW BROWNFIELD CONSTRUCTION 23	\$0.00	\$3,091,137.75	\$0.00	\$3,091,137.75
	<b>SubTotal</b>	<b>\$34,921,583.03</b>	<b>\$55,989,110.17</b>	<b>\$42,165,244.39</b>	<b>\$48,745,448.81</b>
6101	WTR OPERATING	\$1,222,481.07	\$6,786,305.43	\$6,222,952.71	\$1,785,833.79
6103	WTR DEPRECIATION	\$2,053,830.98	\$0.00	\$596,654.18	\$1,457,176.80
6104	WTR GUARANTEE DEPOSIT	\$232,675.22	\$27,481.77	\$6,000.00	\$254,156.99
6105	WTR MAIN EXTENSION	\$969,252.61	\$78,481.98	\$352,376.02	\$695,358.57
6106	WTR REVENUE	\$673,688.51	\$7,739,326.75	\$7,397,025.91	\$1,015,989.35
6108	WATER TANK MAINTENANCE	\$1,135,924.57	\$0.00	\$0.00	\$1,135,924.57
6109	WTR ELKHART BAN 23	\$0.00	\$818,195.00	\$25,541.00	\$792,654.00
	<b>SubTotal</b>	<b>\$6,287,852.96</b>	<b>\$15,449,790.93</b>	<b>\$14,600,549.82</b>	<b>\$7,137,094.07</b>
6607	AQUATIC FISHERIES FUND	\$176,160.99	\$147,500.00	\$105,000.26	\$218,660.73
	<b>SubTotal</b>	<b>\$176,160.99</b>	<b>\$147,500.00</b>	<b>\$105,000.26</b>	<b>\$218,660.73</b>
	<b>GRAND TOTAL</b>	<b>\$223,953,921.29</b>	<b>\$235,952,822.19</b>	<b>\$198,154,663.35</b>	<b>\$261,752,080.13</b>

Rod Roberson  
Mayor

Dustin McLain  
Department Head

ELKHART CITY



911  
COMMUNICATIONS

574.293.2175  
Fax: 574.294.5530

Elkhart City Communications  
135 E Franklin Street  
Elkhart, IN 46516

Date: March 18, 2023  
To: Mayor Rod Roberson  
Elkhart City Board of Public Safety  
Common Council  
From: Dustin McLain, Department Head  
Elkhart Communications Center  
Re: **February 2024 Month End Report**

We processed 7,143 7784 incoming & outgoing emergency and non-emergency phone calls. This was a decrease of 641 calls from February of 2023. Below is a summary of the calls we handled in Communications.

CALL SOURCES	911 *This includes Landlines, Wireless, VoIP, TextTY, and abandoned.* (as reported by ECats State reporting online)	Administrative Incoming/Outgoing (non-emergency)	TOTAL
	1637	5506	7143
2023 TOTALS	1787	5997	7784

By shift, we entered 6549 calls into the CAD, a decrease of 333 calls from February of 2023. Below is a breakdown of the call volume by shift.

	POLICE CALLS	FIRE CALLS	OTHER	TOTALS
Day Shift	2158	329	279	2766
Afternoon Shift	1955	329	343	2627
Midnight Shift	920	156	80	1156
All Shifts	5033	814	702	6549
2023 Totals	5288	851	743	6882

\*Other Calls refers to calls made to communications that either required a response by other departments, such as Parks Dept., Street Dept., etc. This also includes calls that are dispatched out as attempts to locate, repossessions and/or private impounds.

**OTHER BUSINESS**

- For the month of February 2024, we handled 27 AUDIO REQUESTS for the Prosecutor’s Office and Police Dept. We provided 21 (FOIA) Public Records Requests to individuals.

*The Honorable*  
**Rod Roberson**  
*Mayor*

**Jamison Czarnecki**  
*Parks Superintendent*



**Parks & Recreation**  
1320 Benham Ave.  
Elkhart, IN 46516

574.295.7275  
Fax: 574.522-7808

## MEMO

To: Board of Elkhart Parks and Recreation

From: Jamison Czarnecki, Superintendent

Date: 3-19-24

Re: Parks Department Report

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### Superintendent's Update (Jamison Czarnecki)

- We are full swing into the spring season with lots of programs, new events, and cleaning up our parks from the winter. We are still hiring for umpires and many seasonal positions!
- We are sad to announce that Sommer Bowers, our office manager, has moved over to the controller's office. She will be greatly missed on the team, but excited to have her still in the city. We are currently interviewing candidates and hope to make a decision for replacement soon.
- NIBCO Ice Season has closed and the numbers have been tallied. We had \$68,852.75 in revenue and had 8,465 total admissions. The revenue also includes private rentals. Thank you again to all of our staff there for their continued service!
- We are finishing our design and cost for Walker Park and will be bringing that to the board next month.
- The Park Foundation is becoming more active and we will have a website up soon to link to our city page and can begin accepting donations on the Park's behalf.

### Events Report (Sherry Krask)

- The 4<sup>th</sup> annual Spring Fabulous Pop-Up Market is set to take place on Saturday, March 16<sup>th</sup> at McNaughton Park Pavilion from 9AM-2PM. We have 22 vendors set to attend, including a breakfast food truck.
- We are trying something new this year for the Easter Egg Hunt. In the past we have hidden wooden eggs throughout a few parks with messages inside directing participants to come to the office for a prize. Because we tend to lose a few eggs every year, we have made small yard signs with Easter eggs on them and a QR code where participants can enter their information to be drawn for a prize. Eggs will be "hidden" in the following parks: Edgewater, High Dive, Langle, McNaughton, Sterling, Studebaker, Ullery, Walker, Willowdale, and Woodlawn Nature Center. One person will be drawn from each park encouraging participants to visit each park to get more entries. The hunt runs from March 25<sup>th</sup> to April 8<sup>th</sup> which will include both Easter weekend as well as Spring Break.

### Volunteers Report (Maddy Gordon)

- We have two new adoptions in our Park System. A 2 mile section of the River Greenway Trail running from the intersection of Sterling Ave and Hively to Studebaker Park has been adopted by Bike Elkhart County. Riverview Park has also been adopted by a cluster of hotels owned by JSK Hospitality. Both of these organizations are in the works of planning service days and regular clean-ups in their adopted parks.
- There are two drop-in clean-ups planned for the month of April. We will be hosting a clean-up on Good Deeds Day (April 3<sup>rd</sup>) at Edgewater Park and a clean-up on Earth Day (April 22<sup>nd</sup>) at Woodlawn Nature Center. Projects

*The Honorable  
Rod Roberson  
Mayor*

**Jamison Czarnecki**  
*Parks Superintendent*



**Parks & Recreation**  
1320 Benham Ave.  
Elkhart, IN 46516

574.295.7275  
Fax: 574.522-7808

will include wood chip spreading at playgrounds, trash clean-up, stick pick-up, and cleaning up stray branches hanging over trails. People interested in participating can sign-up online through our CivicRec portal.

#### Programs and Recreation Report (Luisa Ixmatlahua)

##### Programs Ended Since Last Meeting:

- "Skate Lesson" at NIBCO Water and Ice Park for ages 5-12 from 5:30-6:30 pm. The program runs from December 6- February 20. We had 17 registered.
- "Landscape Watercolor Series" at Studebaker Pavilion from 6:00-7:30 pm. The program runs Tuesdays from February 13- February 27.

##### Current Programs

- "Passport Program" open to the public.
- "Futsal," at Elkhart Health and Aquatics for ages 12-18 from 4:30-6:00 pm program runs from December 5- February 27. We currently have 20 registered.
- "Volleyball," at Elkhart Health and Aquatics for ages 13 and over from 6:00-8:00 pm, runs from December 1- February 23. We currently have 50 participants.
- "Intro to Recreational Sports" at Tolson Community Center for youth from 2:30-5:30 pm. The program runs from January 8 to May 31.
- "STEAM Camp," at Studebaker Pavilion for ages 5-12 from 8:00-3:00pm. The program runs from April 1-5. We currently have 38 registered participants.
- "Basketball Camp," at Tolson Community Center for ages 5-7 from 10:00-11:30am. The program runs on Saturdays, March 16 to March 30. We currently have 54 registered.
- "Line Dancing," at various pavilions for ages 18 and over from 6:30-7:30pm. The program runs on Thursdays from March 21 to April 25.
- "Photography Group," at McNaughton for ages 16 and over from 6:00 – 8:00pm. The program runs the first Thursday of the month from March through May.
- "Minute to Win it," at McNaughton for all ages from 5:30-6:30pm. On March 26, April 12, 29.

#### Ranger Report (Ranger Nhim Danh)

February 1-29, 2024

##### Citations

- None written.

##### Various Park Activities and number of people participating.

- Baseball/Softball (2), Basketball (9), Biking (20), Boating/Kayak (1), Grilling/Picnic (8), Dancing/Music (0), Dog Walking (73), Fishing (6), Frisbee/Catch (6), Football (0), Ice Skating (15), Pickleball (8), Playground (302), Scooter

*The Honorable*  
**Rod Roberson**  
*Mayor*

**Jamison Czarnecki**  
*Parks Superintendent*



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(6), Sitting/Parking (235), Skateboarding/Rollerblading (48),  
Soccer (71), Swimming/Splash Pad (0), Tennis (4), Walking/Jogging (268), Other (1). Grand Total of 1083  
patrons.

#### Ranger Engagement

- Graffiti reporting (1), Homeless Encampment (0), Ordinance-related (5), Park concern (12), Park-Goer Assistance (12), Trash pickup (27), Vandalism reporting (0). Total of 57 Ranger Engagements.

#### Events

- February 1st, 2024 -- Ranger Nhim represented the department at the Homeless Coalition held at the Elkhart Public Library.
- February 10<sup>th</sup>, 2024—Rangers Nhim, Larry, and Nathan assisted in the Frosty 5K Event.

#### Damage

- None.

#### Other

- February 22<sup>nd</sup>, 2024 – While on patrol, Ranger Nathan spoke to an individual on a moped who said they were being followed by an SUV from Walgreens nearby. The person asked Ranger Nathan to wait with them, which he did, until they had a friend come and meet them.
- February 24<sup>th</sup>, 2024 – Ranger Nathan responded to a report that there were several gun shell casings at High Dive Park near the north end of the park by the pond. After Ranger Nathan notified dispatch, EPD were sent to investigate. Because no damage was found, they suggested disposing of the casings.
- February 26<sup>th</sup>, 2024 – While on patrol, Ranger Larry found graffiti on the walls at Pierre Moran pavilion. He took pictures and reported the graffiti on MyElkhart311.

## End of Report ##