

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, APPROVING THE EXPENDITURE OF FUNDS PURSUANT TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FORT WAYNE AND CSW ASSOCIATES, LLC FOR THE COLUMBIA STREET WEST PROJECT

WHEREAS, Community Development desires to enter into an Economic Development Agreement with CSW I, LLC and CSW Associates, LLC (the "Developer") wherein the Developer agrees to complete the development, construction and operation of a mixed-use facility at 135 W Columbia Street and 126 W Columbia Street in downtown Fort Wayne, that will include the development of 21,325 square feet of commercial space and twenty-one (21) mixed income (affordable and market rate) housing units at an anticipated cost of \$10.9 million (the "Project"); and

WHEREAS, Community Development desires to provide support to the Project in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000) from the 2021 County Economic Development Income Tax dollars allocated to Community Development by Common Council; and

WHEREAS, the completion of the Project will further the redevelopment and rehabilitation of the historic Landing District and will provide needed additional housing options and job opportunities for residents of Fort Wayne.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The Common Council finds, determines, ratifies and confirms that the project is in the best interests of the citizens of the City of Fort Wayne.

SECTION 2. The Common Council of the City of Fort Wayne, Indiana, hereby ratifies and approves available 2021 County Economic Development Income Tax Revenues allocated to the Division of Community Development in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000) be used in support of the Project pursuant to the terms and conditions outlined in the Development Agreement between the City of Fort Wayne and CSW I, LLC and CSW Associates, LLC, (a copy of which is attached hereto and made a part hereof as "Exhibit 1").

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of September, 2021 (the “Effective Date”), by and among **CSW I, LLC**, an Ohio limited liability company (“CSW”), and **CSW ASSOCIATES, LLC**, an Ohio limited liability company (“Associates”; and together with CSW, “Developer”), on the one hand, and the **CITY OF FORT WAYNE, STATE OF INDIANA** (the “City”), on the other hand. Developer and the City may be sometimes referred to herein individually as a “Party” and collectively as the “Parties”. The Office of Housing and Neighborhood Services (“OHNS”) is the designated department within the City for the execution of fiscal and programmatic control of this Agreement, and unless otherwise noted herein, all performance by the City of its rights and obligations hereunder shall be carried out by and through OHNS.

RECITALS

WHEREAS, CSW is or will be the owner of certain real estate located at 126 West Columbia Street, 135 West Columbia Street, 613 Harrison Street, and 617 South Harrison Street, Fort Wayne, Indiana 46802, as legally described and depicted in attached **Exhibit A** (the “Real Estate”); and

WHEREAS, CSW desires to develop, construct, and operate a mixed-use facility on the Real Estate as part of The Landing District redevelopment in downtown Fort Wayne, anticipated to include approximately 21,325 square feet of commercial space and twenty-one (21) housing units, as more particularly described in the Preliminary Plans, as defined herein, and as commonly known as Columbia Street West (the “Project”); and

WHEREAS, Developer has requested certain public incentives from the City to support the development, construction, and operation of the Project, in the form of a contribution of County Economic Development Income Tax (“CEDIT”) funds for development and construction financing and assistance with securing real and/or personal property tax abatement (collectively, “Support”); and

WHEREAS, the City has determined that using CEDIT funds allocated to Community Development to make a contribution towards construction and development costs, subject to further proceedings required by law, in order to induce Developer to develop, construct, and operate the Project on the Real Estate is in the best interests of the citizens of the City;

WHEREAS, the Parties desire to proceed with the development and construction of the Project and the provision of certain Support, as described herein, pursuant to the terms and conditions of this Agreement; and

WHEREAS, in connection with this Agreement and as a condition to the City’s provision of Support hereunder, the Parties shall also enter into a certain HOME Program Funding Agreement (the “HOME Agreement”), pursuant to which the City will provide funds for the Project in the estimated amount of \$750,000.00 through the HOME Investment Partnerships Program of the United States Department of Housing and Urban Development (the “HOME Funds”), as more specifically set forth in the HOME Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 RECITALS AND DEFINITIONS

Section 1.01 Recitals. The representations, covenants, and recitals set forth in the foregoing Recital paragraphs are material to this Agreement and are hereby incorporated into and made a part of this Agreement as if the same were fully set forth in this Section 1.01.

Section 1.02 Definitions. Certain terms used in this Agreement are defined in this Section 1.02; other terms are defined in the above Recitals or defined within the text of the Agreement.

“Agency” shall have the meaning set forth in Section 3.02.

“Business Day” means any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in Fort Wayne, Indiana.

“City Indemnitees” shall have the meaning set forth in Section 8.02.

“Construction Plans” shall have the meaning set forth in Section 3.01(b).

“Development Closing” shall mean the date on which: (i) Developer closes on the Financing Package for the Project, (ii) all other conditions precedent set forth in Section 4.03 below have been and remain fulfilled, and (iii) the City advances the Development Loan to Associates.

“Development Closing Deadline” shall mean the date that is one hundred twenty (120) days after the Effective Date, unless otherwise mutually agreed upon by the Parties in writing.

“Development Loan” shall have the meaning set forth in Section 4.01.

“Development Loan Commitment” shall mean Five Hundred Thousand Dollars (\$500,000.00).

“Development Loan Note” shall mean that certain Promissory Note evidencing the Development Loan of even date herewith, duly executed by Associates and payable to the City in the amount of the Development Loan Commitment, including any amendment, modification, renewal, or replacement for such Promissory Note.

“Financing Deadline” shall mean the date ten (10) Business Days prior to the date of the Development Closing, as the same may be modified by the mutual written agreement of the Parties.

“Financing Package” shall have the meaning set forth in Section 3.03(b).

“Model” shall mean The Model Group, Inc., an Ohio corporation, and its successors and assigns.

“Model Guaranty” shall mean that certain unlimited, unconditional, continuing Commercial Guaranty executed by Model in favor of the City of even date herewith, as amended, modified, or restated and in effect from time to time, securing Associates’ obligations to the City under the Development Loan Note.

“Notice” shall have the meaning set forth in Section 8.09(a).

“Permitted Delays” shall have the meaning set forth in Section 5.03.

“Preliminary Plans” shall mean, at a minimum, for the Real Estate and the Project to be constructed thereon, a scaled and dimensioned site plan, floor plan, and building elevations which depict exterior materials and finishes, landscaping and screening, exterior lighting, entrances, signage, and parking space layouts, all as more particularly described in **Exhibit B** attached hereto.

“Project Completion” shall mean, inclusively: (1) construction and completion of the Project in compliance with all permits, specifications, and requirements of the applicable Agency; (2) construction and completion of the Project in accordance with the Construction Plans and this Agreement to the satisfaction of the City, whose approval shall not be unreasonably withheld, conditioned, or delayed; (3) National Park Service Part 3 approval for the rehabilitation of the historic buildings at the Project (*i.e.*, 135 West Columbia Street and 613 Harrison Street) in connection with the federal historic rehabilitation tax credit component of the Financing Package; and (4) issuance of a valid certificate of occupancy by the Allen County Building Department to Developer allowing legal occupation of the Project for its intended purpose.

“Project Completion Date” shall mean the date on which the City determines that Project Completion in accordance with this Agreement has been achieved.

“Reimbursement Obligation” shall have the meaning set forth in Section 8.04(c).

ARTICLE 2

MUTUAL ASSISTANCE

Section 2.01 Mutual Assistance. The Parties agree, subject to further proceedings required by law, to reasonably consider such actions, including the execution and delivery of such documents, instruments, petitions, and certifications (and, in the case of the City, the adoption of such ordinances and resolutions by the City), as may be necessary and appropriate, from time to time, to carry out the terms, provisions, and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions, and intent.

Section 2.02 Public Communications. The City and Developer acknowledge and agree that the development, construction, and operation of the Project shall be enhanced by consistent and coordinated public communications by the Parties regarding the Project. The Parties further agree to reasonably cooperate as to public communications regarding the Project, including, but not limited to, all public press releases, all public press conferences, and all similar communications and/or communication activities regarding the Project.

ARTICLE 3
PROJECT DEVELOPMENT AND CONSTRUCTION;
DEVELOPER OBLIGATIONS

Section 3.01 Project and Construction Plans.

(a) Subject to the satisfaction of all terms and conditions contained herein, CSW, at Developer's sole cost and expense, shall finance, develop, construct, own, and operate the Project, subject to and in accordance with the terms and provisions of this Agreement.

(b) Developer has prepared the Preliminary Plans which are attached hereto as **Exhibit B** and are hereby approved by the City. Developer shall cause construction plans, specifications, and a schedule for the construction of the Project (collectively, the "Construction Plans") to be prepared and submitted to the City for its review and approval, which approval the City agrees shall not be unreasonably withheld, conditioned, or delayed, provided the same do not materially deviate from the Preliminary Plans, and which, upon mutual agreement of the Parties, shall replace the Preliminary Plans.

(c) All material changes to the Construction Plans shall be subject to review and approval by the City, which approval the City agrees shall not be unreasonably withheld, conditioned, or delayed, provided such changes do not materially deviate from the Preliminary Plans.

Section 3.02 Project Construction Requirements. CSW shall, at Developer's cost, construct the Project in accordance with the Construction Plans and the permits, specifications, and other requirements of all federal, state, county, and local governmental units, agencies, divisions, and departments having jurisdiction over the Project (individually, each an "Agency" and collectively, the "Agencies"). In the event of a conflict between the Construction Plans and the specifications and requirements of any Agency, the specifications and requirements of said Agency shall prevail. Any and all public streets, sidewalks, sanitary sewers, and potable water and stormwater management systems and facilities to be constructed and installed by CSW shall be subject to the City's standard and customary requirements, and, as determined by the appropriate Agency, accepted into the City's public street, public utility systems, and stormwater drainage systems.

Section 3.03 Project Financing.

(a) HOME Agreement. As a condition to the City's obligation to provide Support under this Agreement, the City and Developer shall enter into the HOME Agreement under which the City will provide HOME Funds for the development and construction of the Project. The City's obligation to provide Support under this Agreement is expressly conditioned on Developer's continued compliance with the terms of the HOME Agreement, and Developer's default under the HOME Agreement beyond any applicable cure period shall constitute a breach of this Agreement.

(b) **Financing Package.** Developer shall provide to the City written commitments for all financing necessary to fully fund the development and construction of the Project, subject to customary and standard conditions to funding issued by a financial institution and/or other sources of funds capable of fulfilling said commitments, in amounts which, if funded, would, together with the Development Loan, the HOME Funds, and other funds available to Developer, be sufficient to fund the development and construction of the Project. Developer's total sources of funding sufficient to cover all costs of development and construction of the Project, other than the Development Loan and HOME Funds (collectively referred to herein as the "**Financing Package**"), is described in **Exhibit C** attached hereto.

Section 3.04 Approvals. Developer, at its sole cost and expense, shall obtain all zoning and development plan approvals required for development and construction of the Project. The City agrees to provide assistance, upon request of Developer, in the preparation of such petitions and applications as may be necessary to secure such zoning and development plan approvals. OHNS agrees to support the Project, as appropriate, before public bodies reviewing such zoning and development plans.

Section 3.05 E-Verify Program. Developer shall, in accordance with I.C. § 22-5-1.7, enroll and verify work eligibility status of all newly hired employees of Developer through the E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of Homeland Security. Developer further understands that it is not required to verify work eligibility status of newly hired employees of Developer through the E-Verify program if the E-Verify program no longer exists. Developer certifies that it does not knowingly employ any individual who is ineligible for employment under applicable statutes, rules and regulations.

Section 3.06 Other Obligations of Developer. Developer agrees to use its good faith efforts to pursue qualified, price competitive contracts from businesses located within northeast Indiana, and to use its good faith efforts to utilize qualified and competitive contractors and trade organizations, including minority-owned and women-owned business enterprises, located within Allen County and the surrounding areas for the construction of the Project.

ARTICLE 4

DEVELOPMENT LOAN; OTHER SUPPORT

Section 4.01 Development Loan. Subject to the terms and conditions set forth in this Agreement, the City shall make a loan of CEDIT funds allocated to Community Development to Associates (the "**Development Loan**"), pursuant to the following terms:

(a) **Loan Advance.** Subject to the terms, conditions, and limitations set forth in this Agreement, including, without limitation, the conditions precedent set forth in Section 4.03 below, upon the Development Closing, the City shall advance the Development Loan to Associates in an amount not to exceed the Development Loan Commitment.

(b) **Use of Proceeds.** Associates shall use the proceeds of the Development Loan solely to make loans and/or equity contributions, directly or indirectly, to CSW Leverage Lender, LLC, an Ohio limited liability company, which is making a leverage loan into a federal new markets tax credit structure, that will eventually be used by CSW for costs of development and construction of the Project.

(c) **Repayment of the Development Loan.** Subject to Section 4.01(g) hereof, the entire balance of principal and all accrued and unpaid interest under the Development Loan shall be due and payable in full on _____, 20__ (the “Maturity Date”).

(d) **Interest on the Development Loan.** Prior to any breach of this Agreement which remains uncured, or the Maturity Date, the outstanding principal balance of the Development Loan shall bear interest at the rate of zero percent (0%) per annum. After the maturity of the Loan, whether by acceleration or otherwise, and/or while there shall exist any uncured breach under this Agreement, the Development Loan shall bear interest at a rate of eight percent (8%) per annum. At no time shall the interest rate in effect for the Development Loan exceed the maximum interest rate permitted by applicable law.

(e) **Development Loan Note.** The obligation of Associates to repay the Development Loan to the City, as more particularly set forth herein and in the Development Loan Note, shall be evidenced by the Development Loan Note, the terms and conditions of which are incorporated herein by reference. In the event of a conflict between the terms of the Development Loan Note and the terms of this Agreement, the terms of this Agreement shall control.

(f) **Collateral Security for Development Loan Note.** The obligations of Associates under the Development Loan Note shall be secured by, without limitation, the Model Guaranty.

(g) **Development Loan Note Forgiveness.** If, in the sole discretion of the City, there has been no breach of this Agreement which remains uncured, there has been no acceleration of the Development Loan, and Developer remains in compliance with all of the terms and conditions of this Agreement, the Loan Documents, and the HOME Agreement, the City will forgive Associates’ obligations under the Development Loan and Development Loan Note upon the Maturity Date and the City will release the Model Guaranty.

(h) **Development Loan Prepayment.** Associates may prepay the Development Loan at any time, in whole or in part, without premium or penalty.

Section 4.02 Other Incentives. Developer may pursue, and the City agrees to cooperate in such pursuit of, any or all available state or local incentives, including but not limited to abatement of real and personal property taxes, all subject to applicable law. The Parties acknowledge that the obligations of Developer under this Agreement are expressly contingent upon Developer’s obtaining, prior to the Development Closing, a Financing Package containing incentives in such amounts and upon such terms as are reasonably necessary to construct the Project.

Section 4.03 Conditions Precedent. Developer and the City agree that the City’s Support, including, without limitation, the funding of the Development Loan, is subject to the satisfaction (or waiver by both Parties) of the following contingencies and conditions on or prior to the Financing Deadline and, if not so satisfied, then either the City or Developer may terminate this Agreement without liability to the other Party (except as otherwise expressly provided herein):

(a) The City shall have approved or otherwise obtained from all applicable government bodies and other third parties all necessary approvals and authorizations for the Support, including, without limitation, approval by the Common Council of the City of Fort Wayne

for use of CEDIT funds to make the Development Loan. For avoidance of doubt, the Support described herein is granted *only* after completing any and all required statutory procedures.

(b) Developer shall have provided the City with evidence satisfactory to the City that Developer has obtained or, upon the Development Closing will receive, all necessary approvals, permits, licenses, and other supporting agreements for the construction of the Project upon the Real Estate in compliance with the Construction Plans and the other requirements set forth in this Agreement.

(c) Developer shall have obtained the City's approval of the Construction Plans as provided in Section 3.01(b).

(d) Developer shall have delivered to the City the Development Loan Note, duly executed by Associates, and the Model Guaranty, duly executed by Model, each dated as of the Effective Date and in form prepared by the City.

(e) Developer shall have executed and delivered to the City the HOME Agreement pursuant to Section 3.03(a) hereof, and all conditions precedent to the closing of the HOME Agreement shall be and remain fulfilled;

(f) Developer shall have delivered to the City evidence of the Financing Package, in form and substance acceptable to the City, and the City shall have approved the Financing Package.

(g) Developer and its lenders and/or investors, as applicable, are cleared to close on the Financing Package concurrently with the Development Closing.

(h) All representations and warranties of Developer under this Agreement remain true and accurate in all material respects, and there is no default under this Agreement by Developer that is continuing beyond any applicable cure period.

ARTICLE 5

DEVELOPMENT TERMS

Section 5.01 Project Development and Construction.

(a) General. CSW shall construct the Project in accordance with the Preliminary Plans and the Construction Plans which shall be prepared and approved pursuant to this Agreement.

(b) Project Changes. Substantial deviations from the expectations provided herein are not anticipated and any material modification to the development, design, and/or construction of the Project may occur only with the City's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the changes do not materially deviate from the Preliminary Plans, the Construction Plans, and the City's economic development objectives and policies.

(c) Timing of Development.

(i) Approval of Preliminary Plans. Developer has provided and the City has approved the Preliminary Plans.

(ii) Approval of Construction Plans. Developer shall complete and submit to the City the Construction Plans as soon as is reasonably practicable after the Effective Date but in no event later than thirty (30) calendar days prior to the Development Closing date. The Construction Plans shall be subject to approval by the City, which approval, if granted, shall be provided by the City within ten (10) business days after receipt thereof, and which approval shall not be unreasonably withheld provided that the Construction Plans do not materially deviate from the Preliminary Plans; *provided, however*, that if the City rejects all or any portion of the Construction Plans, then (A) the City shall provide written notice to Developer identifying with reasonable specificity the reason for such rejection; and (B) Developer shall have a period of fifteen (15) business days following receipt of such notice within which to submit Construction Plans revisions to the City for its approval. The foregoing process shall continue until such time as the City has approved all construction documents, drawings, and schedules.

(d) Project Construction. Developer shall diligently pursue all applicable legal and/or regulatory permits, licenses, or approvals as are required to commence construction of the Project from each federal, state, county, and municipal governmental unit, agency, department, and authority having jurisdiction over the Real Estate and the Project from and after the Effective Date. Developer agrees to commence construction of the Project within a commercially reasonable period following the Development Closing, but not later than sixty (60) days thereafter, subject to Permitted Delays. In the event Developer has not commenced and diligently pursued construction of the Project within such sixty (60) day period, through no fault of the City, Developer shall be in default under the terms of this Agreement and the City shall have the rights set forth in Section 8.04 herein.

Section 5.02 Legal Compliance and Completion. Developer acknowledges and agrees that compliance with all applicable federal, state, county, and municipal laws, regulations, codes, and ordinances with respect to the development and construction of the Project shall be the sole responsibility of Developer. Developer agrees to complete, or cause to complete, in all material respects construction of the Project as soon as reasonably possible after the Development Closing, but in no event later than December 31, 2022, subject to Permitted Delays.

Section 5.03 Permitted Delays. Whenever performance is required of either Party, such Party shall use all due diligence and take all necessary measures in good faith to timely perform; *provided, however*, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty or similar event beyond the reasonable control of a Party (other than for financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually and directly caused by such event (each a "Permitted Delay", and collectively, "Permitted Delays"). If: (a) there should arise any Permitted Delay for which Developer or the City is entitled to delay its performance under this Agreement, and (b) Developer or the City anticipates that the Permitted Delay will cause a delay in its performance under this Agreement, then Developer or the City, as the case may be, shall provide written notice to the other Party of the nature and the anticipated length of such Permitted Delay. In the case of such a Permitted Delay, the other deadlines set forth in this Agreement contemplated to occur after the Permitted Delay shall be extended accordingly.

Section 5.04 Potential Streetscape Improvements. The City may, in its sole discretion, develop and construct or install certain streetscapes adjacent to the Property on Harrison Street (the “Streetscape Improvements”). If the City provides written notice to Developer of planned Streetscape Improvements, including plans for such Streetscape Improvements, Developer agrees to cooperate with the City and coordinate construction of the Project with the construction of the Streetscape Improvements so that, to the extent possible, the Project and Streetscape Improvements may be constructed and completed simultaneously without interference by or damage to work of the other.

ARTICLE 6
AUTHORITY

Section 6.01 Actions. Each of the Parties hereto represents and warrants that it has taken or will use good faith efforts to take such action(s) as may be required and necessary to enable it to execute this Agreement and to carry out fully and perform the terms, covenants, duties, and obligations on its part as provided by the terms and provisions hereof.

Section 6.02 Powers. Subject to the conditions described herein and subject to such procedures as may be required by law, each Party represents and warrants that it has full constitutional and lawful right, power, and authority under currently applicable law to execute, deliver, and perform its obligations under this Agreement, including but not limited to the right, power, and authority, subject to such procedures as may be required by law, to carry out the terms and conditions of this Agreement.

ARTICLE 7
TERMINATION

In addition to the termination rights set forth in Section 8.04 and elsewhere in this Agreement, the City will be entitled to terminate this Agreement with no further obligation to Developer in the following circumstances:

- (i) Developer is unable to obtain the Financing Package upon terms reasonably acceptable to Developer and the City, on or before the Financing Deadline; or
- (ii) The Development Closing does not occur on or before the Development Closing Deadline, unless the Development Closing is extended beyond the Development Closing Deadline by mutual written agreement of the Parties.

ARTICLE 8
GENERAL PROVISIONS

Section 8.01 No Joint Venture. Nothing in this Agreement creates a joint venture or partnership between the Parties. This Agreement does not: (a) authorize either Party to comment or act as agent, employee, or legal representative of the other Party, except as may be expressly authorized by this Agreement, or (b) empower either Party to control the activities and operation of the other Party. The Parties are independent contractors with respect to each other under this Agreement. Neither Party shall represent itself as having any power or authority contrary to this Section 8.01.

Section 8.02 Indemnification. Developer shall, jointly and severally, indemnify, defend, and hold harmless the City and its officers, members, representatives, and agents (collectively, “City Indemnitees”) from and against any and all liability, injury, loss, claims, damages, costs, reasonable

attorney's fees, and expenses of any kind or nature, which the City may sustain, suffer, or incur or be required to pay by reason of:

(a) Any act, omission, wrongdoing, misconduct, want of care or skill, negligence, or default on the part of Developer or any of its contractors, subcontractors, sub-subcontractors, materialmen, suppliers, or laborers in the execution or performance of this Agreement;

(b) Fraud, defalcation, or dishonesty on the part of any person representing, employed by, contracted by, or subcontracted by Developer; or

(c) A judgment, regardless of whether such judgment is covered by insurance, arising out of Developer's actions under this Agreement.

The indemnity hereunder shall survive expiration or termination of this Agreement. In the event that any action, suit, or proceeding is brought against any City Indemnitee(s) upon any liability arising out of this Agreement, or any other matter indemnified against, the City shall promptly give notice in writing thereof to Developer. Upon receipt of such notice, Developer, at its own expense, shall defend against such action and take all such steps as may be necessary or proper to prevent the obtaining of a judgment against such City Indemnitee(s). The indemnity set forth in this Section 8.02 shall not include any matters arising by reason of the willful or grossly negligent act or omission of the City.

Section 8.03 Time of Essence. Time is of the essence with respect to each and every provision of this Agreement; *provided, however*, that notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any notice or item required under this Agreement shall expire on a day other than a business day, such time period shall be extended automatically to the next business day. The Parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 8.04 Breach.

(a) **Breach; Limited Right to Cure.** Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the non-breaching Party shall notify the breaching Party in writing, specifying the alleged breach and demanding a cure. No breach of this Agreement may be found to have occurred if the breaching Party has commenced a cure of the alleged breach within thirty (30) days of the receipt of such notice and diligently proceeds to cure said alleged breach. If after said notice, the breaching Party fails to cure the alleged breach to the non-breaching Party's satisfaction within sixty (60) days of the receipt of such notice, the same shall constitute a breach of this Agreement. Notwithstanding the foregoing, the cure provisions of this Section 8.04(a) shall not apply to the City's termination rights as set forth in ARTICLE 7 above, nor to a breach of this Agreement resulting from a default under the HOME Agreement as set forth in Section 3.03(a) hereof.

(b) **Prior to Development Closing.** In the event of a breach by either Party before the Development Closing, the non-breaching Party may terminate this Agreement and recover from the breaching Party the direct out-of-pocket expenses incurred by the non-breaching Party as a result of such breach, which shall be the non-breaching Party's sole remedy at law or equity.

(c) After Development Closing; Repayment of Development Loan. In the event of a breach by a Party after the Development Closing, the non-breaching Party or Parties may pursue any remedy available to said non-breaching Party or Parties at law or in equity, including injunctive relief and the right to seek damages directly resulting from the breach. In addition to and without limitation of the foregoing, in the event that Developer breaches this Agreement after the Development Closing, Associates shall promptly repay the full amount of the Development Loan to the City upon the City's demand therefor. In no event, however, shall any party to be liable to any other for any punitive, incidental, consequential, special, or indirect damages, including loss of future revenue or income or opportunity relating to the breach or alleged breach of this Agreement.

Section 8.05 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties and, if necessary, by the adoption of an ordinance or resolution of the City approving such amendment, as provided by law and by the execution of such amendment by the Parties or their respective permitted successors in interest.

Section 8.06 Entire Agreement. Except for the terms of the HOME Agreement, if any, and as otherwise expressly provided herein, this Agreement constitutes the entire agreement of the Parties, and supersedes all prior agreements, negotiations, and discussions between the Parties, relative to the subject matter hereof.

Section 8.07 Governing Law; Severability. This Agreement shall be governed by and accrued in accordance with the laws of the State of Indiana, without giving effect to any conflicts-of-law principles. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected terms or provisions at any other time or in any other jurisdiction.

Section 8.08 Venue. Any litigation or other court action, arbitration, or similar adjudicatory proceeding sought, taken, instituted, or brought by the Parties to enforce their rights under this Agreement shall be brought in a court of applicable jurisdiction in Allen County, Indiana. The covenants contained in this Section 8.08 shall survive the expiration or termination of this Agreement and the Development Closing.

Section 8.09 Notices.

(a) Method of Delivery. All notices, requests, demands and other communications (each a "Notice") required or permitted to be given or served to the other Party pursuant to this Agreement shall be in writing and shall be delivered (i) in person, (ii) by certified U.S. mail, with postage prepaid and return receipt requested, (iii) by nationally recognized overnight courier service with next day delivery guaranteed, or (iv) by facsimile transmittal (if facsimile number is provided below), with a verification copy sent on the same day by any of the methods set forth in clauses (i), (ii) and (iii), to the other Party to this Agreement at the following addresses or facsimile numbers (or to such other addresses or facsimile numbers as the Developer or the City may designate from time to time pursuant to this Section):

If to CSW: CSW I, LLC
c/o The Model Group, Inc.
Attn: Robert L. Maly
1826 Race Street
Cincinnati, Ohio 45202
Telephone: (513) 559-5854
Facsimile: n/a
Email: bmaly@modelgroup.net

If to Associates: CSW Associates, LLC
c/o The Model Group, Inc.
Attn: Robert L. Maly
1826 Race Street
Cincinnati, Ohio 45202
Telephone: (513) 559-5854
Facsimile: n/a
Email: bmaly@modelgroup.net

In either case,
with a copy to: Keating Muething & Klekamp PLL
Attn: Geoffrey G. Leder
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
Telephone: (513) 562-1403
Facsimile: (513) 579-6457
Email: gleder@kmlaw.com

If to the City: City of Fort Wayne
c/o Office of Housing and Neighborhood Services
Attn: Grant Administrator
200 East Berry Street, Suite 320
Fort Wayne, Indiana 46802
Telephone: _____
Facsimile: _____
Email: _____

with a copy to: Rothberg Law Firm
Attn: Alexander J. Platte
P.O. Box 11647
505 East Washington Boulevard
Fort Wayne, Indiana 46859-1647
Telephone: (260) 422-9454
Facsimile: (260) 422-1600
Email: aplatte@rothberg.com

(b) Receipt of Notices. All Notices sent by either Party under this Agreement shall be deemed to have been received by the Party to whom such Notice is sent upon (i) delivery to the

address or facsimile number of the recipient Party, provided that such delivery is made prior to 5:00 p.m. (local time for the recipient Party) on a business day, otherwise the following business day, or (ii) the attempted delivery of such Notice if: (A) such recipient Party refuses delivery of such Notice, or (B) such recipient Party is no longer at such address or facsimile number, and such recipient Party failed to provide the sending Party with its current address or facsimile number pursuant to this Section.

Section 8.10 **Counterparts**. Facsimile or emailed signatures appearing hereon shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 8.11 **Consent or Approval**. Except as otherwise provided herein, whenever consent or approval of any Party is required, such consent or approval shall not be unreasonably withheld.

Section 8.12 **Assignment**. The rights and obligations contained in this Agreement may not be assigned by Developer or any affiliate thereof without the express prior written consent of the City, except that Developer may assign this Agreement and its rights and obligations hereunder to any lender to whom Developer has granted a mortgage on the Project as security for Project financing.

Section 8.13 **Term**. Unless terminated earlier pursuant to its terms, this Agreement shall be effective as of the Effective Date and shall remain in effect until the Project Completion Date (or such earlier termination of this Agreement), after which this Agreement and the obligations of all parties hereto shall terminate, except for the obligations of the Developer under Section 8.02, which shall continue in full force and effect notwithstanding any expiration or termination of this Agreement.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first written above.

“DEVELOPER”

“CSW”

CSW I, LLC,
an Ohio limited liability company

By: _____

Printed: _____

Title: _____

Date: _____

“ASSOCIATES”

CSW I ASSOCIATES, LLC,
an Ohio limited liability company

By: _____

Printed: _____

Title: _____

Date: _____

“CITY”

CITY OF FORT WAYNE, INDIANA

By: _____

Thomas C. Henry, Mayor

Date: _____

EXHIBIT A

Real Estate

EXHIBIT B

Preliminary Plans

[see attached]

EXHIBIT C

Financing Package

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, approving the expenditure of funds pursuant to the Development Agreement between the City of Fort Wayne and CSW Associates, LLC for the Columbia Street West Redevelopment Project.

DEPARTMENT REQUESTING RESOLUTION. Community Development

SYNOPSIS OF RESOLUTION. This resolution approves funding in the amount of \$500,000 toward the redevelopment of the former Columbia Street West Bar and Grill (135 W Columbia St), along with improvements to 126 W Columbia Street (the "Nawa building"). This project is being completed by The Model Group doing business as CSW Associates, LLC ("CSW").

The \$500,000 will be allocated from the already budgeted 2021 Community Development Incentive Fund - there will be no impact on the overall City budget.

The project includes the development, construction and operation of a mixed-use facility on the real estate as part of The Landing District redevelopment in downtown Fort Wayne, and will include 21,325 square feet of commercial space and twenty-one (21) mixed income (affordable and market rate) housing units at an anticipated cost of \$10.9 million. The former Columbia Street Bar and Grill building will be completely rehabilitated, a portion of the rear of building will be demolished to allow for new construction both behind and alongside (east side) the existing building.

CSW has site control and anticipates closing on the project financing within the next 4 to 5 weeks.

EFFECT OF PASSAGE. This funding is part of the project capital stack and is necessary for closing on project financing and to complete the project.

EFFECT OF NON-PASSAGE. The project will not be fully funded and there will not be a financial closing on the project.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). The developer is seeking \$750,000 in HOME funding from the City's HUD allocation, along with real and personal property tax phase in.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802

260-427-2150 fwcommunitydevelopment.org

September 9, 2021

MEMO

To: City of Fort Wayne Common Council

From: Nancy Townsend, Community Development, 427-2323

Re: Resolution approving funding pursuant to a Development Agreement between the City of Fort Wayne and CSW I, LLC and CSW Associates, LLC

Community Development (CD) is seeking approval of the expenditure of \$500,000 from its 2021 CEDIT allocation (Incentive Fund) to be used toward the cost of the Columbia Street West project being undertaken by The Model Group, dba CSW I, LLC. Approval of funding from this source will have no impact on the overall City budget, as these funds have been allocated to CD.

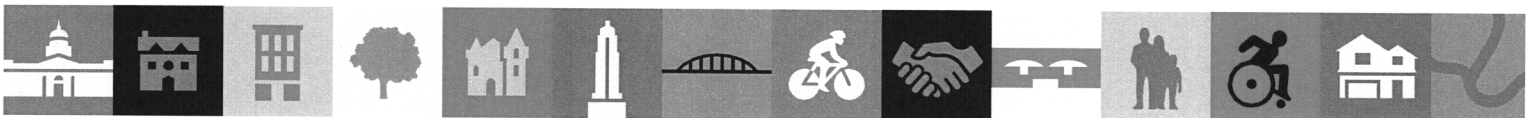
The project includes the renovation of the existing Columbia Street West Bar and Grill Building, including some demo to the rear of the building with new building construction at the rear and along a portion of the east side of the building. It also includes renovation of upper floors of the "Nawa Building" across the street. The completed project will result in 21,326 sq feet of new commercial/retail space and 21 new housing units that include a mix of affordable and market rate units.

In addition to this \$500,000 request, the project is seeking \$750,000 in HOME dollars and will be seeking personal and property tax phase in.

Model Group anticipates closing on the financing within the next 4 to 5 weeks, subject to receiving all necessary approvals, and starting construction by the end of this year.

Please let me know if you have any questions or need additional information. Thank you for your consideration.

Vibrant. Prosperous. Growing.



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Hines.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Hines, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: September 28, 2021



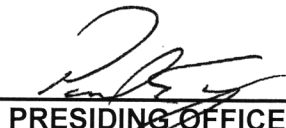
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
 Resolution No. R-21-09-10 on the 28th day of September, 2021

ATTEST:



 LANA R. KEESLING
 CITY CLERK



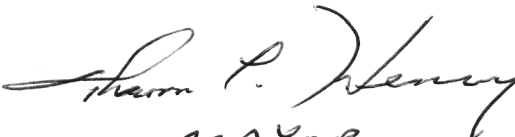
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
 the _____ 29th
 of September 2021, at the hour of _____
 of _____ 11:20 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 30TH day of SEPTEMBER 2021, at the
 hour of 12:00 o'clock Pm . E.S.T.



 MAYOR

BILL NO. R-21-09-10

REPORT OF COMMITTEE ON FINANCE

September 21, 2021


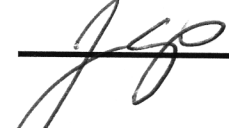

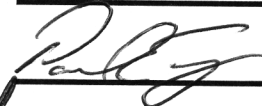
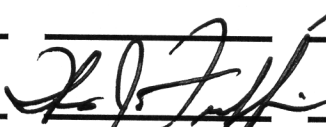
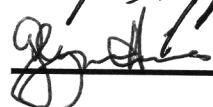
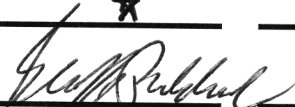
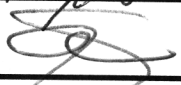
Glynn Hines Chair

Jason Arp Co-Chair

All Council Members

A Resolution of the Common Council of the City of Fort Wayne, Indiana, approving the expenditure of funds pursuant to a Development Agreement between the City of Fort Wayne and CSW Associates, LLC for the Columbia Street West Project

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
<u>ARP</u>			
<u>CHAMBERS</u>			
<u>DIDIER</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HINES</u>			
<u>JEHL ELECTRONIC</u>	*		
<u>PADDOCK</u>			
<u>TUCKER</u>			

**LANA R. KEESLING
CITY CLERK**

