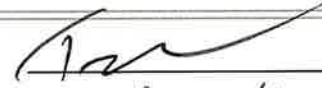





# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 08/05/2024  
FROM: Joseph Molnar  
SUBJECT: Donation Agreement –  
Studebaker Museum

 Pres/V-Pres  
ATTEST:  Secretary  
Date: 8-8-24

APPROVED  Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Approval of Donation Agreement with Studebaker National Museum

The Studebaker National Museum owns two lots in the Rum Village Neighborhood at 2117 S. Lafayette and 2113 S. Lafayette. Both lots are vacant single-family parcels. The Studebaker National Museum desired to transfer the lots to the City as they believed the City would have better luck with redeveloping the lots for residential housing. Staff believes that is true and there is a good opportunity to redevelop both lots.

Staff requests approval of the Donation Agreement.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;

Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_

\_\_\_\_\_ Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

**REAL ESTATE DONATION AGREEMENT**

This Real Estate Donation Agreement (“Agreement”) is made effective by and between Studebaker National Museum, a Indiana nonprofit corporation (the “MUSUEM”), with offices at 201 Chapin St, South Bend, IN 46601 and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, with an address of 227 W. Jefferson Boulevard, Suite 1400S, South Bend, Indiana 46601 (“Commission”) (each a “Party” and together the “Parties”).

**RECITALS**

A. Commission exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, cited as Indiana Code 36-7-14 (the “Act”).

B. MUSUEM owns certain real property and all improvements thereon located at 2113 S. Lafayette Blvd. and 2117 S. Lafayette Blvd. in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

c. MUSUEM desires to donate the Property to the Commission.

E. The Property is situated in the River West Development Area.

F. The Act allows the Commission to accept gifts of property needed for the redevelopment of redevelopment project areas.

G. MUSUEM desires to donate the Property to the Commission and the Commission desires to accept the donation of the Property from the MUSUEM upon the terms and conditions as set forth in this Agreement, and in accordance with the Act.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the Commission and MUSUEM agree as follows:

**1. DONATION OF THE PROPERTY**

A copy of this Agreement, signed by MUSUEM, constitutes MUSUEM’s agreement to donate and convey the Property and once signed by the Commission, constitutes the Commission’s acceptance of the donation and conveyance in accordance with the terms stated in this Agreement. A copy signed by the Commission shall be delivered to MUSUEM, in care of the following representative (“MUSUEM’s Representative”):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MUSUEM shall return a signed copy of this Agreement to the following representative (“Commission’s Representative”):

Caleb Bauer  
Executive Director  
Department of Community Investment  
City of South Bend  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed by Commission and MUSUEM (the “Effective Date”).

## **2. COMMISSION’S DUE DILIGENCE**

A. Investigation. MUSUEM acknowledges that the Commission’s determination to accept the Property requires a process of investigation (Commission’s “Due Diligence”) into various matters. Therefore, the Commission’s obligation to accept the transfer of the Property is conditioned upon the satisfactory completion, in the Commission’s discretion, of the Commission’s Due Diligence, including, without limitation, the Commission’s examination, at the Commission’s sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Authorizations During Due Diligence Period. MUSUEM authorizes the Commission, as of the Effective Date and continuing until the end of the Due Diligence Period (as defined below), to enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, however, that the Commission may not take any action upon the Property which reduces the value thereof; and further provided that the Commission shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify, and hold MUSUEM harmless, before and after the Closing Date, whether or not a closing occurs, and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by MUSUEM, including without limitation, reasonable attorney fees and costs arising from acts or omissions of the Commission or the Commission’s agents or representatives.

C. Due Diligence Period. The Commission shall have a period of sixty (60) days following the Effective Date to complete its examination of the Property in accordance with this Section 3 (the “Due Diligence Period”).

D. Termination of Agreement. If at any time within the Due Diligence Period, the Commission determines, in its sole discretion, not to proceed with the transfer of the Property, the Commission may terminate this Agreement by written notice to MUSUEM

and with no liability to the Commission, except as set forth herein. However, if such event occurs, the Commission and MUSUEM shall still be bound by the terms set forth in the Lease Agreement.

**3. PRESERVATION OF TITLE AND CONDITION**

A. After the date MUSUEM executes this Agreement and receives a counter-signed copy of this Agreement from the Commission as described in Section 1, MUSUEM shall not take any action or allow any action to be taken by others to cause the Property to become subject to any new interests, liens, restrictions, easements, covenants, reservations or other matters affecting MUSUEM's title (such matters are referred to as "Encumbrances").

B. MUSUEM hereby covenants that MUSUEM will not alter the condition of the Property at any time after the date MUSUEM receives a counter-signed copy of this Agreement from the Commission as described in Section 1. Further, MUSUEM will not release or cause to be released any hazardous substances on or near the Property and will not otherwise collect or store hazardous substances or other materials, goods, refuse or debris at the Property in violation of applicable laws.

**4. TITLE COMMITMENT AND SURVEY**

The Commission shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by the Commission and reasonably acceptable to MUSUEM (the "Title Company") within twenty (20) days after the Effective Date. The Commission, at its option, may obtain a survey of the Property, at its sole expense. The Property shall be conveyed to the Commission free of all encumbrances, including but not limited to mortgages, judgments, and taxes, unless otherwise waived in writing by the Commission. The Title Commitment will be issued by a title company selected by the Commission and reasonably acceptable to MUSUEM (the "Title Company"). The Title Commitment shall:

(1) Agree to insure good, marketable and indefeasible fee simple title to the Property in the name of the Commission for the amount of Ten Thousand Dollars (\$10,000.00) upon delivery and recordation of a special warranty deed from MUSUEM to the Commission.

(2) Provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by the Commission, subject only to any encumbrances waived by the Commission.

Regardless of whether this transaction closes, the Commission shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy as well as any endorsements thereto. Within thirty (30) days after the Commission's receipt of the Title Commitment, the Commission shall give MUSUEM written notice of any objections to the Title Commitment. Within thirty (30) days after the Commission's receipt of the Survey, the Commission shall give MUSUEM written notice of any objections to the Survey. Any

exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If MUSUEM is unable or unwilling to correct the Commission's title and survey objections within the Due Diligence Period, the Commission may terminate this Agreement by written notice to MUSUEM prior to expiration of the Due Diligence Period. If the Commission fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and the Commission shall acquire the Property without any effect being given to such title and survey objections.

## **5. MUSUEM'S REPRESENTATIONS AND WARRANTIES**

The undersigned MUSUEM Representative represents and warrants to the Commission that MUSUEM is duly organized, validly existing, and in good standing under the laws of the State of Indiana and that MUSUEM owns in fee simple title to the Property and has not granted any option or right of first refusal to any person or entity to acquire the Property or any interest therein. The undersigned MUSUEM Representative further represents and warrants it is fully empowered to donate the Property to the Commission under the terms and conditions stated in this Agreement, and that it has disclosed to the Commission any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Property. MUSUEM shall provide the Commission a copy of all known environmental inspection reports, engineering, title, and survey reports and documents in MUSUEM's possession relating to the Property. In the event the Closing does not occur, the Commission will immediately return all such reports and documents to MUSUEM's Representative.

## **6. CLOSING**

A. Timing of Closing. Unless this Agreement is earlier terminated, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

### **B. Closing Procedure.**

(1) At Closing, MUSUEM shall deliver the special warranty deed, substantially in the form attached hereto as **Exhibit B**, conveying the Property to the Commission, subject only to Permitted Encumbrances, and the Title Company's delivery of the Title Commitment to the Commission in accordance with Section 5 above.

(2) The possession of the Property shall be delivered to the Commission at Closing, in substantially the same condition as it exists on the Effective Date, ordinary wear and tear and casualty excepted.

C. Closing Costs. The Commission shall pay the Title Company's closing fee and all recordation costs associated with the transaction contemplated in this Agreement.

D. Personal Property. Any personal property remaining at the Property after Closing will be deemed to be abandoned by MUSUEM, and the Commission, in its sole discretion, may choose to exercise possession of and control over any such personal property.

E. MUSUEM's Due Diligence. MUSUEM acknowledges that MUSUEM has conducted its own due diligence and waives any right that MUSUEM may have to an appraisal or to contest or challenge the donation conveyed under this Agreement.

**7. ACCEPTANCE OF PROPERTY "AS-IS"**

Except as otherwise set forth herein, the Commission agrees the Property will be conveyed "as-is, where-is" and without any representations or warranties by MUSUEM as to the condition of the Property or its fitness for any particular use or purpose. MUSUEM offers no such representation or warranty as to condition or fitness, and nothing in this Agreement shall be construed to constitute such a representation or warranty as to condition or fitness.

**8. TAXES**

MUSUEM shall be responsible for all taxes related to the Property accruing through the Closing Date, if any, even if such taxes are not yet due and payable. The Commission, or the Commission's successors and assigns, shall be liable for all real property taxes accruing against the Property after the Closing Date, if any.

**9. COMMISSIONS**

The Parties acknowledge that neither the Commission nor MUSUEM are represented by any broker in connection with the transaction contemplated in this Agreement. The Commission and MUSUEM agree to indemnify and hold one another harmless from any claim for commissions in connection with the transaction contemplated in this Agreement.

**10. INTERPRETATION; APPLICABLE LAW; JURISDICTION**

Both Parties having participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana.

**11. NOTICES**

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to MUSUEM in care of MUSUEM's Representative, or to the Commission in care of the Commission's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn:

Corporation Counsel) at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

**12. REMEDIES**

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties' respective rights and remedies concerning this Agreement and the Property are cumulative.

**13. DISPUTE RESOLUTION; WAIVER OF JURY TRIAL**

Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

**14. INDEMNITY**

The Parties agree to reimburse each other for any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense and settlement), which either party may subsequently incur, become responsible for, or pay out as a result of a breach by the other party in default of this Agreement. In the event of legal action initiated by a third party as a result of a breach of this Agreement, the breaching party shall assume the defense of the non-breaching party, including all costs associated therewith.

**15. WAIVER**

Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with

respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

**16. SEVERABILITY**

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

**17. FURTHER ASSURANCES**

The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

**18. TIME**

Time is of the essence of this Agreement.

**19. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between MUSUEM and the Commission and supersedes all prior discussions, understandings, or agreements between MUSUEM and the Commission concerning the transaction contemplated in this Agreement, whether written or oral.

**20. BINDING EFFECT; COUNTERPARTS; SIGNATURES**

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed and delivered by the Commission and MUSUEM. This Agreement may be separately executed in counterparts by the Commission and MUSUEM, and the same, when taken together, will be regarded as one original Agreement. Facsimile signatures will be regarded as original signatures.

**21. AUTHORITY TO EXECUTE; EXISTENCE**

The undersigned persons executing and delivering this Agreement on behalf of the Parties each represent and certify that they are the duly authorized representatives of the respective Parties and have been fully empowered to execute and deliver this Agreement and that all necessary action has been taken and done.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the 8 day of August 2024.

COMMISSION:

South Bend Redevelopment  
Commission

By:

  
\_\_\_\_\_  
Troy Warner, President

ATTEST:

By:

  
\_\_\_\_\_  
Vivian G. Sallie, Secretary

MUSUEM:

Studebaker National Museum

By:

\_\_\_\_\_

**EXHIBIT A**

**Description of Property**

Commonly Known: 2117 S. Lafayette

Parcel ID: 018-8012-0556

State ID: 71-08-13-351-021.000-026

Legal Description: Lot 21 Plat of Southlawn

Commonly Known: 2113 S. Lafayette

Parcel ID: 018-8012-0555

State ID: 71-08-13-351-020.000-026

Legal Description: Lot 20 Plat of Southlawn

**EXHIBIT B**

**Form of Special Warranty Deed**

**AUDITOR'S RECORD**  
TRANSFER NO. \_\_\_\_\_  
TAXING UNIT \_\_\_\_\_  
DATE \_\_\_\_\_  
KEY NO. See Attachment

**SPECIAL WARRANTY DEED**

THIS INDENTURE WITNESSETH, that Studebaker National Museum the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400S County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana 46601 (the "Grantee"),

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate in St. Joseph County, Indiana (the "Property"):

**See Attached Exhibit 1**

Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise. Further, Grantor hereby conveys the Property to the Grantee free and clear of all liens, leases, or licenses; subject to real property taxes and assessments; subject to all right of ways, easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads; subject to the Permitted Encumbrances set forth in Exhibit 2 attached hereto; and subject to all applicable building codes and zoning ordinances.

The undersigned person executing this deed on behalf of the Grantor represents and certifies that they are a duly authorized representative of the Grantor and has been fully empowered and authorized to execute and deliver this deed, and that all necessary action to complete this conveyance has been taken and done.

*Signature Page Follows*

GRANTOR:

Studebaker National Museum

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

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Studebaker National Museum and acknowledged the execution of the foregoing Special Warranty Deed as their true act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_ day of \_\_\_\_\_, 2024.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Residing in St. Joseph County, Indiana

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Danielle Campbell Weiss

This instrument was prepared by Danielle Campbell Weiss, Senior Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT 1

Description of Property

Commonly Known: 2117 S. Lafayette  
Parcel ID: 018-8012-0556  
State ID: 71-08-13-351-021.000-026  
Legal Description: Lot 21 Plat of Southlawn

Commonly Known: 2113 S. Lafayette  
Parcel ID: 018-8012-0555  
State ID: 71-08-13-351-020.000-026  
Legal Description: Lot 20 Plat of Southlawn

EXHIBIT 2

Permitted Encumbrances