

## **PERSONAL PROPERTY TRANSFER AGREEMENT**

This Personal Property Transfer Agreement (this “Agreement”), is entered into as of May 11, 2017 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend, Department of Redevelopment, with offices at 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 (the “Commission”), and RDistrict One LLC, an Indiana limited liability company with its registered office at 635 S. Lafayette Blvd., South Bend, Indiana 46601 (the “Company”) (each a “Party” and together the “Parties”).

### RECITALS

A. The City of South Bend (the “City”), acting by and through its Board of Public Works, and the Commission are parties to various agreements with Union Station Properties, LP and Studebaker Building 84, LLC (collectively, the “Affiliated Companies”) concerning the Affiliated Companies’ redevelopment of the real property and improvements located in the City commonly known as Studebaker Buildings 84, 112, and 113 and more particularly described in attached **Exhibit A** (the “Project Site”).

B. The Company is an affiliate of the Affiliated Companies, owns portions of the Project Site, and is engaged in the redevelopment of the Project Site with the Affiliated Companies.

C. The Commission owns certain personal property comprising, in a disassembled state, a guardhouse formerly installed at the Studebaker Corporation site in the City, along with certain fencing and columns associated with the guardhouse, as further described in attached **Exhibit B** (collectively, the “Guardhouse Property”).

D. To enhance and beautify the vehicular entrance from Lafayette Boulevard onto the Project Site, the Company desires to place the Guardhouse Property on the Project Site as depicted in attached **Exhibit C** (the “Installation Location”).

E. The Commission desires to convey ownership of the Guardhouse Property to the Company for the Company’s use in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the Parties agree as follows:

1. **Transfer; No Warranties.** The Commission hereby conveys to the Company all of the Commission’s right, title, and interest in and to the Guardhouse Property. The Commission conveys the Guardhouse Property, and the Company accepts the same, as-is, where-is, and without any representation or warranty of any kind. Without limiting the generality of the foregoing sentence, the Commission specifically disclaims any representation or warranty of merchantability or fitness for any particular use or purpose.

2. **Possession.** The Company hereby acknowledges that all of the Guardhouse Property is in the Company’s possession as of the Effective Date of this Agreement and that the

Commission's execution of this Agreement constitutes its constructive delivery of the Guardhouse Property to the Company, which will effect the Commission's conveyance of the Guardhouse Property to the Company without any further action by the Commission or the City.

3. Reversion to Commission. In the event the Company fails to perform any of its obligations under this Agreement, and such failure continues for a period of fifteen (15) days following the date of a written notice to the Company from the Commission or the City identifying such failure and demanding a cure of such failure, the Commission will be entitled, at its option, to take any one or more of the following actions: (a) take possession and control of the Guardhouse Property; (b) enter upon the Project Site to preserve, protect, or maintain the Guardhouse Property; (c) declare that the Company has abandoned ownership of the Guardhouse Property in favor of the Commission and accept ownership of the Guardhouse Property; and (d) pursue any and all rights or remedies available at law or in equity. Notwithstanding the foregoing sentence, the Commission will be entitled to pursue any of its rights and remedies under the foregoing sentence, without any requirement of notice or an opportunity to cure, in the event that the Company ceases to own a fee simple interest in Lot 1 of the Project Site.

4. Nature of Guardhouse Property. Notwithstanding anything to the contrary, the Parties acknowledge and agree that the Guardhouse Property will forever constitute personal property only and will not constitute real property or a fixture to real property.

5. Placement. Within a reasonable time after the Effective Date of this Agreement, the Company will use the Guardhouse Property to reconstruct the guardhouse and its associated elements on the Installation Location using building practices appropriate for materials of the kind and age of the Guardhouse Property. The state of the reconstructed guardhouse and its associated elements will adhere as closely as reasonably practicable to the original construction of the guardhouse and its associated elements. The Company will place the reconstructed guardhouse on the Installation Location in such a manner that it will remain easily and openly visible to the public from the public rights-of-way in the immediately vicinity of the Installation Location, and such placement will be subject to prior review and approval by the City's Department of Community Investment. The Company will bear all costs associated with the handling, reconstruction, and placement of the Guardhouse Property. Once placed, the Company will not relocate the guardhouse or its associated elements without the prior written approval of the City's Department of Community Investment.

6. Inspection; Events. The Company will allow the City's Department of Community Investment (or its designee) to enter the Project Site at all reasonable times to inspect the state and condition of the Guardhouse Property. In addition, the Company will permit the Commission or the City to host public events on or in the immediate vicinity of the Installation Location upon terms reasonably agreed by the Parties.

7. Maintenance; Alterations. The Company will, at its sole expense, keep and maintain the Guardhouse Property in a good state of repair at all times after the Effective Date of this Agreement. The foregoing obligation will include maintenance of the reconstructed guardhouse and its associated elements in the state in which they were placed on the Installation Location in accordance with the terms of Section 5 above. The Company will make no substantial

alterations to the Guardhouse Property, or to the guardhouse and its associated elements once reconstructed, without the prior written approval of the Commission.

8. Risk of Loss. Commencing on the Effective Date, the Company will bear all risk of loss, damage, destruction, and theft to or of the Guardhouse Property from any cause whatsoever (a "Loss"). The Company will notify the Commission in writing within five (5) days of any such Loss.

9. Compliance with Law. The Company will, at its sole expense, (a) comply with all applicable laws, regulations, and ordinances and (b) maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

10. Indemnification. The Company will indemnify, defend, and hold harmless the Commission and the City and their respective officers, directors, employees, agents, affiliates, and successors against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, arising out of or occurring in connection with the Guardhouse Property, whether in its disassembled form or reconstructed form, or the Company's negligence, willful misconduct, or breach of this Agreement.

11. Insurance. The Company will, at its sole expense, maintain and carry all appropriate insurance, which includes, but is not limited to, commercial general liability insurance in a sum no less than Five Million Dollars (\$5,000,000.00), inclusive of the dollar limit of any umbrella policy following the form of the commercial general liability policy, with a financially sound and reputable insurer. Upon the Commission's request, the Company will provide the Commission with a certificate of insurance from the Company's insurer evidencing the insurance coverage specified in this Agreement. The Company will require its insurer to waive all rights of subrogation against the Commission's insurers and the Commission.

12. Entire Agreement; Recitals. This Agreement, including and together with any attached exhibits constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The above recitals are hereby incorporated into the operative provisions of this Agreement.

13. Notices. All notices, requests, consents, claims, demands, waivers, summons and other legal process, and other similar types of communications hereunder must be in writing and addressed to the relevant Party at the address set forth on the first page of this Agreement (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section 13). All notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). A notice is effective only (i) upon receipt by the receiving Party and (ii) if the Party giving the notice has complied with the requirements of this Section 13.

14. Severability. If any term or provision of this Agreement is judicially determined to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement.

15. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

16. Waiver. No waiver by any Party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

18. Assignment; Successors and Assigns. The Company's rights and obligations under this Agreement are exclusive to the Company, and the Company may not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of the Commission. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the Company of any of its obligations hereunder. The Commission may at any time assign any or all of its rights or obligations under this Agreement without the Company's consent. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Choice of Law and Choice of Forum. This Agreement and all matters arising out of or relating to this Agreement are governed by, and will be construed in accordance with, the laws of the State of Indiana, without regard to the conflict of laws provisions of such State. Any legal suit, action, or proceeding arising out of or relating to this Agreement must be instituted in the courts of St. Joseph County, Indiana, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

21. Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including exhibits, schedules, attachments and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in

respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments or appendices attached to this Agreement, or the transactions contemplated hereby.

22. Limitation of Liability. In no event will the Commission be responsible or liable for any consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of any provision of this Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not the Commission was advised of the possibility of such damages and (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

23. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

24. Headings. Headings in this Agreement are for convenience of reference only, and are not to be used in any interpretation of the agreement between the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the Effective Date state above.

COMMISSION:

City of South Bend, Department of Redevelopment,  
by and through its governing body, the South Bend  
Redevelopment Commission

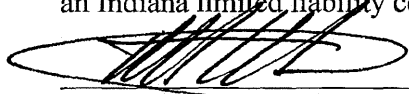
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Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

COMPANY:

RDistrict One LLC,  
an Indiana limited liability company



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Printed: Martin V. Shrader  
Its: Authorized Agent  
Dated: May 5<sup>th</sup>, 2017

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**EXHIBIT A**

**Description of Project Site**

Lots 1, 2, and 3 of the recorded plat of Renaissance Minor Subdivision recorded on October 1, 2015, as Document No. 1526269 in the Office of the Recorder of St. Joseph County, Indiana.

## **EXHIBIT B**

### **Description of Guardhouse Property**

All the materials and components comprising the Studebaker guardhouse and its associated columns and fencing, including the following:

1. Approximately three thousand eight hundred sixty-three (3,863) bricks, including column bricks;
2. Approximately twenty-eight linear feet (28') of fencing approximately five feet, four inches (5'4") high;
3. One (1) gate approximately sixteen feet (16') long;
4. One (1) gate approximately three feet (3') long;
5. Four (4) limestone column caps; and
6. Crafted roofing material.

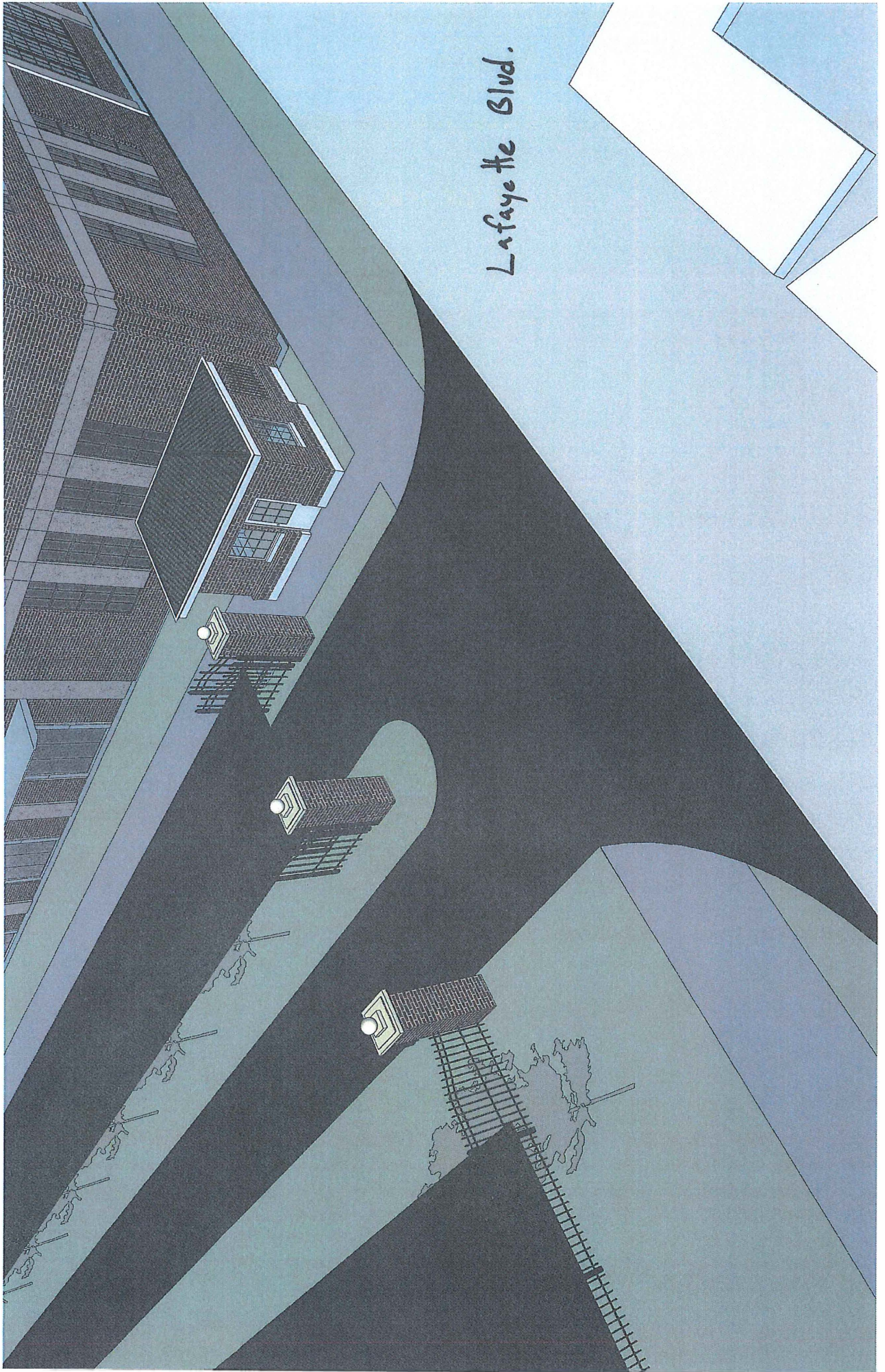


**EXHIBIT C**

**Depiction of Installation Location**

[See attached.]

Lafayette Blvd.



Lafayette Blvd.

