



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 9/25/23
FROM: Joseph Molnar
SUBJECT: Real Estate Purchase Agreement Lafayette Building

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Purchase Agreement for the Lafayette Building and 117/119 Lafayette for the purpose of restoration and redevelopment.

Specifics: The City of South Bend acquired the Lafayette Building from St. Joseph County in 2018 with the purpose of preserving the existing structure and returning it to productive use. The building at the time was in danger of becoming dilapidated beyond repair. City stabilization efforts since acquiring the building have included a full roof replacement, roof drain replacement, skylight replacement, and exterior masonry repair as well as other rehabilitation efforts. These repairs have stabilized the building and prepared it for the next stage of rehabilitation.

On September 22, 2022 the Redevelopment Commission (RDC) issued a Request for Proposal (RFP) for the rehabilitation and adaptive reuse of the Lafayette Building with a deadline for proposals of January 26, 2023. While numerous entities and individuals enquired and toured the building during the RFP process, no official bid was submitted.

RDC Staff are now pleased to present a Real Estate Purchase Agreement (Agreement) with Lafayette OpCo LLC (the “buyer”). The buyer intends to redevelop the building into a mixed-use building. The Agreement also include the sale of 117/119 Lafayette Blvd. which is the parking lot immediately south of the Lafayette Building.

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

1400S County-City Building | 227 W. Jefferson Blvd. | South Bend, Indiana 46601 | p 574.235.9371 | f 574.235.9021 | www.southbendin.gov

The submitted Agreement commits the buyer to the following:

- Sale price of \$10,000
- Begin construction within 12 months of the Closing Date
- Complete construction within 60 months of the Closing Date
- Expend no less than \$8 million on improvements to the site
- Redevelopment of the building must include ground floor retail spaces and a minimum

of thirty (30) apartments.

Furthermore, due to the historic architectural nature of the building, the buyer understands that the property improvements shall not include any reduction in the size of the open atrium space, which shall remain continuous from the ground floor to the fifth floor, nor shall the property improvements include any reduction to the size of the skylight. Restrictive covenants will be included on the deed of the property ensuring these safeguards.

The Lafayette Building is also a local Historic Landmark and any exterior alterations to the building will require approval of the Historic Preservation Commission of St. Joseph County and South Bend.

If the buyer fails to comply with the requirements of the Agreement, the RDC shall have the right to re-enter and retake possession of the building.

The Lafayette Building is one of the most unique buildings in downtown South Bend and rehabilitation of the building and returning it to active use will not only preserve a historic building but will also enhance the appearance and vitality of downtown.

Staff requests approval of this 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 \$ _____

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “Agreement”) is made on September 28, 2023 (the “Contract Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Lafayette OpCo LLC, an Indiana limited liability company (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

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

B. In furtherance of its purposes under the Act, Seller owns certain real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A (the “Property”)**, inclusive of the approximately 37,357 square foot building, surface parking areas, and drive areas located thereon, and all fixtures, easements, appurtenances, hereditaments, rights, powers, privileges, and other improvements thereon and/or appurtenant thereto.

C. Pursuant to the Act, Seller adopted its Resolution No. 3558 on September 22, 2022, whereby Seller established an offering price of Three Hundred Ninety-Two Thousand One Hundred Dollars (\$392,100.00) for the Property.

D. Pursuant to the Act, on September 22, 2023 Seller authorized the publication, on October 1, 2022, and October 8, 2022, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before January 26, 2023, at 9:30A.M.

E. As of January 26, 2023, at 9:30A.M., Seller received no bids for the Property, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Property to Buyer on the terms stated in this Agreement.

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, Buyer and Seller agree as follows:

1. RECITALS

The recitals above are hereby incorporated into this Agreement by reference.

2. OFFER AND ACCEPTANCE

A copy of this Agreement, signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement and shall be delivered to Seller, in care of the following representative (“Seller’s Representative”):

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

WITH COPY TO: South Bend Legal Department
Attn: Corporation Counsel
City of South Bend
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, Indiana 46601

This offer shall expire thirty (30) days after delivery unless accepted by Seller. To accept Buyer's offer, Seller shall return a copy of this Agreement, counter-signed by Seller in accordance with applicable laws, to the following ("Buyer's Representative"):

TO BUYER: Lafayette OpCo LLC
333 Greene Ave, 12A
Brooklyn, NY 11238
Attention: Rachel Brandenberger

WITH COPY TO: Barnes & Thornburg LLP
201 South Main Street, Suite 400
South Bend, Indiana 46601
Attention: Timothy A. Emerick

3. PURCHASE PRICE AND EARNEST MONEY DEPOSIT

A. Purchase Price. The purchase price for the Property shall be Ten Thousand Dollars (\$10,000.00) (the "Purchase Price"), payable by Buyer to Seller by ACH, wire transfer or other immediately available funds at the closing described in **Section 11** below (the "Closing," the date of which is the "Closing Date").

B. Earnest Money Deposit. Within fifteen (15) days after the Contract Date, Buyer will deliver to the Title Company (as defined below) the sum of One Thousand Dollars (\$1,000.00), which Seller will hold as an earnest money deposit (the "Earnest Money Deposit"). The Earnest Money Deposit shall be credited against the Purchase Price at the Closing or, if no Closing occurs, refunded or forfeited as provided below.

C. Termination During Due Diligence Period. If Buyer exercises its right to terminate this Agreement by written notice to Seller in accordance with **Section 4** below, Seller shall cause the Earnest Money Deposit to be promptly refunded to Buyer. If Buyer fails to exercise its right to terminate this Agreement by written notice to Seller within the Due Diligence Period, then the

Earnest Money Deposit shall become non-refundable.

D. Liquidated Damages. If Seller complies with its obligations hereunder and Buyer, not having terminated this Agreement during the Due Diligence Period in accordance with **Section 4** below, fails to purchase the Property on or before the Closing Date, the Earnest Money Deposit shall be forfeited by Buyer and retained by Seller as liquidated damages in lieu of any other damages.

4. BUYER'S DUE DILIGENCE

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to develop the Property into a mixed-use building including residential and commercial spaces (the "Buyer's Use"). Seller acknowledges that Buyer's determination of whether Buyer's Use is feasible requires investigation into various matters at the Buyer's sole discretion. Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's due diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and similar matters as determined by Buyer.

B. Due Diligence Period. Unless extended by the mutual agreement of the Parties, Buyer shall have a period of ninety (90) days commencing on the Contract Date to complete its examination of the Property (the "Due Diligence Period").

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, upon Buyer providing Seller with evidence that Buyer has general liability insurance reasonably acceptable to Seller, in the amount of at least One Million Dollars (\$1,000,000), naming Seller as an additional insured and covering the activities, acts, and omissions of Buyer and its representatives at the Property, to

(i) enter upon the Property or to cause agents to enter upon the Property for purposes of conducting buyer diligence; provided, that (i) Buyer will not take any action upon the Property which reduces the value thereof or conduct any invasive testing at the Property without Seller's express prior written consent, which will not be unreasonably withheld or delayed; and (ii) if the transaction contemplated by this Agreement is not consummated, Buyer shall promptly restore the Property to its condition prior to entry. Buyer agrees to defend, indemnify and hold Seller 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 Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives, provided that Buyer shall not be required to indemnify Seller for any condition (including, but not limited to, any environmental condition) existing on the Property prior to Buyer's or Buyer's agents access to the Property; and

(ii) file any application with any federal, state, county, municipal, regional or other agency relating to the Property for the purpose of obtaining any approval necessary

for Buyer's anticipated use, ownership or operation of the Property. If Seller's written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any such application, Buyer may request from Seller such consent or signature, which Seller shall not unreasonably withhold. Notwithstanding the foregoing, any zoning commitments or other commitments that would further restrict the future use or development of the Property, beyond the restrictions in place as a result of the current zoning of the Property, shall be subject to Seller's prior review and written approval.

D. Environmental Site Assessment. Buyer may, at Buyer's sole expense, obtain a Phase I and any non-invasive Phase II environmental site assessment of the Property pursuant to and limited by the authorizations stated in this **Section 4**.

E. Termination of Agreement. If at any time within the Due Diligence Period Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller's Representative, and Buyer shall be entitled to a full refund of the Earnest Money Deposit.

5. SELLER'S DOCUMENTS

Within five (5) days of the Contract Date, Seller will provide Buyer a copy of all environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative.

6. HISTORIC LANDMARK STATUS

Buyer acknowledges that the Property was designated an historic landmark per Ordinance No. 9082-00 passed by the South Bend Common Council on January 24, 2000. As such, the Property is subject to the Historic Preservation Ordinance as codified in the Municipal Code of the City of South Bend, Indiana and the related standards and guidelines for stand-alone historic landmarks.

7. PRESERVATION OF TITLE

Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for title insurance on the Property (the "Title Commitment") and an ALTA survey of the Property (the "Survey") identifying all interests, liens, restrictions, easements, covenants, reservations, or other matters affecting Seller's title (such matters are referred to as "Encumbrances") as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in **Section 9** below).

8. TITLE COMMITMENT AND POLICY REQUIREMENTS

Buyer shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days after the Contract Date. The Title Commitment shall (i) agree to insure good, marketable, and indefeasible fee simple title to the Property (including public road access) in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a

special warranty deed (the “Deed”) in the form attached as **Exhibit B**, from the Seller to the Buyer, and (ii) provide for issuance of a final ALTA owner’s title insurance policy removing all standard exceptions thereto, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company’s title search charges and all costs of the Title Commitment and owner’s policy.

9. REVIEW OF TITLE COMMITMENT AND SURVEY

Within twenty (20) days after Buyer’s receipt of the Title Commitment and Survey (the “Title and Survey Review Period”), Buyer shall give Seller written notice of any objections to the Title Commitment and 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 the Seller is unable or unwilling to correct the Buyer’s title and survey objections within the Title and Survey Review Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Title and Survey Review Period, in which case the Earnest Money Deposit shall be refunded to Buyer. If Buyer fails to so terminate this Agreement, then such objections constitute “Permitted Encumbrances” as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

10. NOTICES

Any notice or other communication required or permitted under this Agreement will be in writing and will be deemed to have been given, (i) when received, if personally delivered, (ii) three (3) working days after being deposited, if placed in the United States mail for delivery by registered or certified mail, return receipt requested, postage prepaid, (iii) one (1) working day after being provided to a reputable, national overnight delivery service, if sent by overnight courier, charges prepaid, or (iv) on the day sent, if emailed prior to 4:00 p.m., recipient’s local time on a working day; or if sent later or not on a working day, the next working day, in each case addressed at the addresses set forth in **Section 2** above. Addresses may be changed by written notice given pursuant to this **Section 10**, however any such notice will not be effective, if mailed, until three (3) working days after depositing in the United States mail or when actually received, whichever occurs first.

11. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than sixty (60) days after the end of the Due Diligence Period. The Buyer may extend the Closing for an additional thirty (30) days by providing notice of such extension to Seller.

B. Obligations at Closing.

(i) Of Seller. At Closing, Seller will deliver: (i) the fully executed Deed, conveying and warranting to Buyer good, indefeasible, and marketable fee simple title to the Property, subject to no liens or encumbrances other than real estate taxes which are a lien on the Property but are not yet due and payable and the Permitted Exceptions; (ii) an executed Vendor’s Affidavit in form and substance satisfactory to the Title Company and sufficient to cause the removal of the general exceptions from the Title Policy; (iii) an executed Non-Foreign Affidavit in form required by the Internal Revenue Code; (iv) an

executed Indiana Sales Disclosure Form; (v) an executed Bill of Sale conveying to Buyer the Personal Property; and (vi) any and all other documents contemplated by this Agreement or appropriate to consummate the sale of the Property or reasonably requested by Buyer or the Title Company.

(ii) Of Buyer. At Closing, Buyer will deliver: (i) the Purchase Price less any credits, reductions, and prorations and less the Earnest Money Deposit; (ii) an executed Indiana Sales Disclosure Form; and (iii) any and all other documents contemplated by this Agreement or appropriate to consummate the purchase of the Property or reasonably requested by Seller or the Title Company.

C. Closing Costs. Buyer shall pay all of the Title Company's closing and/or document preparation fees and all recordation costs associated with the transaction contemplated in this Agreement.

D. License Agreement. At Closing, the Parties shall execute a license agreement for temporary use (the "License Agreement") in the form attached as **Exhibit C** for the portion of the Property commonly known as 117 119 LAFAYETTE (the "Parking Lot"), which will grant access to the Seller to continue using the Parking Lot for purposes of employee parking until such time as Buyer begins substantial work towards implementing the Property Improvements that will require use of the Parking Lot.

12. REPRESENTATIONS OF SELLER.

Seller covenants, represents, and warrants to Buyer that, both now and as of the Closing Date:

A. Seller has good, indefeasible, and marketable fee simple title to the Property, subject to no liens or encumbrances; Seller has the right to convey the Property pursuant to the terms of this Agreement; and no person (other than Buyer pursuant to this Agreement) has a right to acquire any interest in the Property;

B. This Agreement has been duly executed and delivered by Seller, and constitutes the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, and this Agreement does not violate any other agreement, oral or written, which may exist with respect to the Property;

C. Seller has the full right, power, and authority to enter into this Agreement and to consummate the transaction contemplated herein and the individual executing this Agreement on behalf of Seller has the power and authority to bind Seller to the terms and conditions of this Agreement;

D. So far as is known by Seller after reasonable investigation, there is no action, suit, litigation, or proceeding of any nature pending or threatened against or affecting the Property, or any portion thereof, by any third party, in any court, or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality;

E. Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, or any regulations promulgated thereunder;

F. So far as is known by Seller after reasonable investigation, Seller has not received written notice from any governmental authorities or any political or quasi-political, subdivision, agency, authority, department, court, commission, board, bureau, or instrumentality of any of the foregoing, stating that the Property is or may be in violation of any applicable federal, state, or municipal law, ordinance, or regulation regarding Hazardous Substances (as hereinafter defined) or the alleged violation of any Environmental Law (as hereinafter defined). As used herein, the term “Hazardous Substances” will mean: (i) those substances included within the definitions of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes,” and “toxic pollutants,” as such terms are defined under the Environmental Laws (as hereinafter defined), or any of them; (ii) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (iii) natural gas, synthetic gas and any mixtures thereof; (iv) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable; (v) polychlorinated biphenyl (“PCBs”) or PCB-containing materials or fluids; (vi) radon; (vii) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (viii) any other substance with respect to which any Environmental Law (as hereinafter defined) or governmental authority requires environmental investigation, monitoring, or remediation. As used herein, the term “Environmental Laws” will mean all federal, state, and local laws, statutes, ordinances, and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees, and binding judgments relating to the regulation and protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and any federal, state, or local transfer of ownership notification or approval statutes.

The representations contained in this Section 12 shall survive Closing.

13. BUYER’S POST-CLOSING DEVELOPMENT OBLIGATIONS

A. Property Improvements; Proof of Investment. On or before the date that is Forty-Eight (48) months after the Closing Date (the “**Projected Completion Date**”), as such date may be extended pursuant to **Section 13D**, the Buyer will expend an amount not less than Eight Million Dollars (\$8,000,000.00) on improvements to the site, as well as the cost of equipment and design, needed to redevelop the Property for the uses set forth herein including ground floor retail spaces and a minimum of thirty (30) apartments (“Property Improvements”). Buyer understands and agrees that the Property Improvements shall not include any reduction in the size of the open

atrium space, which shall remain continuous from the ground floor to the fifth floor, nor shall the Property Improvements include any reduction to the size of the skylight. Buyer further understands that restrictive covenants shall be included in the Deed regarding these limitations. Promptly upon completing the Property Improvements, Buyer will submit to Seller satisfactory records, as determined in Seller's sole discretion, proving the above required expenditures and will permit Seller (or its designee) to inspect the Property to ensure that Buyer's Property Improvements were completed satisfactorily.

B. Post-Closing Buyer Commitments. The Buyer shall:

(i) Commence construction of the project within 12 months of the Closing Date, for the sake of clarity, demolition of a portion of the Property shall be deemed to satisfy these this requirement;

(ii) Complete construction of the project and Property Improvements by the Projected Completion Date (as such date may be extended pursuant to **Section 13D**);

(iii) In its development of the Property, Buyer shall comply with all applicable federal, state, and local laws, including, but not limited to, the applicable requirements of the City of South Bend Zoning Ordinance, including variances as necessary.

(iv) Provide the design, plans, and specifications for Property Improvements contemplated for the exterior portions of the Property, including the exterior of the building, surface parking areas, and drive areas, consistent with City standards for the review and comment by the City's Planning Director or his designee, who, in his sole discretion, may request revisions or amendments to be made to the same. Acceptance of the design and plans by the Planning Director or his designee prior to construction shall be a prerequisite for the issuance of a Certificate of Completion.

C. Certificate of Completion. Promptly after Buyer completes the Property Improvements and satisfactorily proves the same in accordance with the entirety of this **Section 13**, Seller will issue to Buyer a certificate acknowledging such completion and releasing Seller's reversionary interest in the Property (the "Certificate of Completion"). The Parties agree to record the Certificate of Completion immediately upon issuance, and Buyer will pay the costs of recordation.

D. Remedies Upon Default; Extension of Projected Completion Date. In the event Buyer fails to comply with **Section 13.A** or **Section 13.B** above, then, in addition to pursuing any other remedies available at law or in equity, Seller shall have the right to re-enter and take possession of the Property and to terminate and re-vest in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer. Notwithstanding the foregoing, Buyer may extend the Projected Completion Date by an additional twelve (12) months – to the date that is Sixty (60) months after the Closing Date (the "Extended Projected Completion Date"). In order to extend the Projected Completion Date to the Extended Projected Completion Date, Buyer shall (i) provide written notice to Seller of the extension on or before the date that is Forty-Two (42) months after the Closing Date,

and (ii) complete at least seventy-five percent (75%) of the Property Improvements by the Projected Completion Date.

The Parties agree that Seller's conveyance of the Property to Buyer at Closing will be made on the condition subsequent set forth in the foregoing sentence and the terms of this **Section 13** will be referenced in the deed.

14. SELLER'S POST-CLOSING OBLIGATIONS

On and after the Closing Date, the Seller commits to working with the Buyer to finalize plans, designs, and specifications for Property Improvements to the satisfaction of the City departments, consistent with City standards.

15. ACCEPTANCE OF PROPERTY AS-IS

Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Seller as to the condition of the Property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement will be construed to constitute such a representation or warranty as to condition or fitness.

16. OPERATION; RISK OF LOSS; DAMAGE AND CONDEMNATION

Between the Contract Date and the Closing, Seller will (i) operate the Property in all material respects in the same manner in which Seller operated the Property prior to the Contract Date, including, but not limited to, keeping the Property fully insured, (ii) maintain the Property in its present order and condition and deliver the Property at Closing, and (iii) not enter into any new lease involving the Property. Seller will bear all risk of loss, destruction, and damage to all or any portion of the Property and to persons or property upon the Property prior to the Closing. If any time after the Effective Date: (i) the Property or any portion thereof will be damaged or destroyed, (ii) the Property is condemned, in whole or in part, or (iii) any notice of condemnation will be given, then Seller will promptly notify Buyer of such event and Buyer, at its sole discretion, may terminate this Agreement by written notice to Seller or proceed with Closing. In the event that Buyer elects to terminate this Agreement, Buyer and Seller will no longer have any obligation hereunder to each other, except for those obligations that expressly survive the termination of this Agreement. If Buyer elects to proceed with Closing, then Buyer may accept an assignment of the proceeds of any condemnation award or insurance policy held by Seller or may apply the same as a credit reducing the Purchase Price.

17. TAXES

Buyer, and Buyer's successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. Seller shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller's liability therefor.

18. 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.

19. COMMISSIONS

The Parties mutually acknowledge and warrant to one another that neither Buyer nor Seller is represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement.

20. INDEMNITY

The Parties agree to indemnify, save harmless, and defend each other from and against 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 of any of the representations contained in this Agreement by the other party.

21. INTERPRETATION; APPLICABLE LAW

As both Parties have participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this Agreement be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

22. 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 to be 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.

23. 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.

24. 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.

25. 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.

26. ENTIRE AGREEMENT

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

27. ASSIGNMENT

Buyer may assign its right under this Agreement to an entity (i) wholly owned by Buyer, or (ii) under common control with the owners of Buyer as of the Contract Date.

28. 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 Buyer and Seller. This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

29. AUTHORITY TO EXECUTE; EXISTENCE

The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, the undersigned representative of Buyer represents and warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of Indiana.

30. **TIME**

Time is of the essence of this Agreement.

[Signature page follows.]

EXHIBIT A

Description of Property

Parcel No. 71-08-12-151-003.000-026

Tax ID: 018-3009-0288

Legal Description: LOT 393 EX 60'W END ORIGINAL PLAT SOUTH BEND

Commonly Known As: 115 LAFAYETTE

Parcel No. 71-08-12-151-004.000-026

Tax ID: 018-3009-0289

Legal Description: 42 1/2' N SIDE LOT 394 ORIGINAL PLAT SOUTH BEND

Commonly Known As: 117 119 LAFAYETTE

EXHIBIT B

Form of Special Warranty Deed

AUDITOR'S RECORD

TRANSFER NO. _____

TAXING UNIT _____

DATE _____

KEY NO. 018-3009-0288

018-3009-0289

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to LAFAYETTE OPco LLC (the "Grantee"), for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

Parcel No. 71-08-12-151-003.000-026

Tax ID: 018-3009-0288

Legal Description: LOT 393 EX 60'W END ORIGINAL PLAT SOUTH BEND

Commonly Known As: 115 LAFAYETTE

Parcel No. 71-08-12-151-004.000-026

Tax ID: 018-3009-0289

Legal Description: 42 1/2' N SIDE LOT 394 ORIGINAL PLAT SOUTH BEND

Commonly Known As: 117 119 LAFAYETTE

The 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.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's 2019 River West Development Area Plan, as thereafter amended from time to time.

The Grantor conveys the Property to the Grantee subject to the limitations that the Grantee, and its successors and assigns, shall not:

- a. discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property;
 - b. reduce in size the open atrium space inside the building structure on the Property, which shall remain continuous from the ground floor to the fifth floor; or
 - c. reduce the size of the skylight constructed on the building structure,
- all of which shall be deemed covenants running with the land.

Pursuant to Section 13 of the Purchase Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 13 of the Purchase Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revert in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 13 of the Purchase Agreement will forever release and discharge the Grantor's reversionary interest stated in this paragraph.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

[SIGNATURE PAGE FOLLOWS]

GRANTOR:

SOUTH BEND
REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Vivian Sallie, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Special Warranty Deed being authorized so to do.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2023.

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. Danielle Campbell Weiss.

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, City of South Bend, Indiana, Department of Law, 227 W. Jefferson Boulevard, Suite 1200S, South Bend, IN 46601. .

EXHIBIT C

License Agreement for Temporary Use