



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 9/25/23  
FROM: Joseph Molnar  
SUBJECT: Temporary Use Agreement 117/119 Lafayette

\_\_\_\_\_ 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: Temporary Use Agreement for the use of the parking lot at 117/119 Lafayette

Specifics: Staff has submitted a purchase agreement for the Lafayette Building with Lafayette OpCo LLC. In that purchase agreement, the sale of the building also includes the parking lot to the immediate south of the building at 117/119 Lafayette. That parking lot will provide critical parking spaces for the Lafayette Building rehabilitation.

Currently, the parking lot is used by City of South Bend employees. This Temporary Access Agreement allows City staff to still park at 117/119 Lafayette until construction begins at the Lafayette Building. The agreement shall commence immediately upon sale of the property and expire December 31, 2024 or Lafayette OpCo may terminate the agreement and provide thirty (30) days notice.

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

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

## LICENSE AGREEMENT FOR TEMPORARY USE

This License Agreement for Temporary Use (this “Agreement”) is made on September 28, 2023, (the “Effective Date”), by and between Lafayette OpCo LLC, an Indiana limited liability company (“Owner”), and the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“City”), (each a “Party” and collectively the “Parties”).

### RECITALS

A. Owner and City are parties to that certain Real Estate Purchase Agreement, dated September 28, 2023 (the “Purchase Agreement”), wherein Owner purchased from City certain real property in South Bend, Indiana, inclusive of the approximately 37,357 square foot building (the “Lafayette Building”) and surface parking area, commonly known as 117 & 119 Lafayette and more particularly described in Exhibit 1 (the “Parking Lot”).

B. Owner intends to implement at a future date (the “Construction Commencement Date”) certain property improvements to the Lafayette Building which will require the use of the Parking Lot.

C. City desires to occupy and use the Parking Lot prior to the Construction Commencement Date, for the limited purposes described herein.

D. Owner agrees to allow City to occupy and use the Parking lot prior to the Construction Commencement Date, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and representations made in this Agreement, the legal adequacy of which are hereby acknowledged, Owner and City agree as follows:

1. Temporary License; No Lease or Easement. Owner hereby grants to City a non-exclusive, temporary license to occupy and use the Parking Lot for the limited purpose of ordinary parking by City’s employees but for no other use except upon the express advance written consent of Owner, which consent may be withheld at Owner’s sole discretion. The Parties mutually acknowledge and agree that this Agreement does not constitute a lease of or easement over the Parking Lot. Notwithstanding to the contrary contained herein, City and its invites shall have no right or license to use, enter or access any other property owned by Owner other than the Parking Lot.

2. Term. The license granted to City hereunder shall commence on the Effective Date and expire on December 31, 2024, unless earlier terminated in accordance with this Agreement.

3. Termination. Owner may terminate this Agreement at any time by delivering written notice to City at least thirty (30) days prior to Owner’s elected Construction Commencement Date, in which case the license granted hereunder shall automatically terminate on the Construction Commencement Date.

4. Compliance with Law, Personal Property. City’s activities in and on the Parking Lot shall be in compliance with all applicable laws, codes and regulations. It is the City’s responsibility to know

and conform to these laws, codes or regulations and to obtain all required permits. City's personal property shall be removed by City prior to the expiration or termination of this Agreement. The City may not construct or install any improvements of any kind or description on the Parking Lot without Owner's prior written consent.

5. Maintenance; Restoration. City, at its sole cost, will at all times maintain and keep in good order and condition the Parking Lot, including, but not limited to, clearing snow and ice from all sidewalks or other public rights-of-way on or abutting the Parking Lot, including any tree lawn area, in accordance with applicable zoning, building, property maintenance, and other regulations and authorities. In the event the City (or any of the City's licensees or invitees) disturbs or damages any part of the Parking Lot, the City will promptly restore such area(s) to substantially the same condition that existed immediately prior to such disturbance or damage, to Owner's satisfaction.

6. Security. City understands and agrees that Owner shall not be liable for any loss, damage, destruction, or theft of any of the City's personal property, or any bodily harm or injury that may result from the City's use of the Parking Lot.

7. Hazardous Materials. City will not cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted upon the Parking Lot.

8. Indemnification. City agrees to indemnify and hold Owner (and its members, manager, employees, agents, and contractors) harmless from and against any and all claims, demands, judgments, losses, fines, penalties, costs, damages, and liabilities of any kind resulting or arising from (i) the violation by City of any law, ordinance or statute, (ii) any accident or other occurrence directly or indirectly arising from the use and occupancy of the Parking Lot by City's agents, employees, guests, invitees and assigns; or (iii) City's failure to comply with the terms and conditions of this Agreement.

9. Reservation of Rights. Owner reserves for itself the free use of the Parking Lot in any manner that does not substantially interfere with or obstruct the License under this Agreement.

10. Interpretation; Governing Law. This Agreement has been negotiated and drafted equally by both Parties and shall not be more strictly construed, nor ambiguities Agreement be presumptively resolved, against either Party. This Agreement will be governed and construed in accordance with the laws of the State of Indiana.

11. Assignment. City shall have no right to assign this Agreement or the licenses granted herein to any other person or party without Owner's prior written consent. The parties acknowledge and agree that the license herein granted is personal to City and shall not inure to the benefit of any other party.

12. Notices. All notices, consents, requests, demands and other communications hereunder are to be in writing, and are deemed to have been duly given or made: (i) when delivered in person; (ii) three days after deposited in the United States mail, first class postage prepaid; or (iii) in the case of overnight courier services, one business day after delivery to the overnight courier service with payment provided:

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

With a copy to: South Bend Legal Department  
1200 S County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Attn. Corporation Counsel

Owner: Lafayette OpCo LLC  
333 Greene Ave, 12A  
Brooklyn, NY 11238  
Attn: Rachel Brandenberger

With a copy to: Barnes & Thornburg LLP  
201 South Main Street, Suite 400  
South Bend, IN 46601  
Attn: Timothy A. Emerick

13. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the City and Owner with respect to the subject matter hereof, and shall supersede all prior discussions, understandings, or agreements, whether written or oral, between the City (or any representative of the City) and the Owner concerning the same. None of the covenants, terms or conditions of this Agreement shall in any manner be amended, altered, waived, modified, changed or abandoned, except by a written instrument, duly signed and acknowledged, by the City and Owner.

14. 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, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of 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.

15. Authority; Counterparts; Signatures. Each undersigned person certifies that he or she is duly authorized to bind his or her respective Party to the terms of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall be one and the same instrument. Electronically transmitted signatures will be regarded as original signatures.

*SIGNATURE PAGE FOLLOWS*

IN WITNESS WHEREOF, the parties have signed this License Agreement for Temporary Use to be effective as of the Effective Date.

**OWNER:**

**Lafayette Opco LLC**

BY; LAFAYETTE PARENTCO LLC

ITS: MANAGER

By: *Rachel Brandenberger*  
Rachel Brandenberger, Manager

**CITY:**

**South Bend Redevelopment Commission**

\_\_\_\_\_  
Marcia I. Jones, President

**ATTEST:**

\_\_\_\_\_  
Vivian Sallie, Secretary

**EXHIBIT 1**

**Description of Property**

**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